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# Presidential Documents

**Title 3—**

## The President

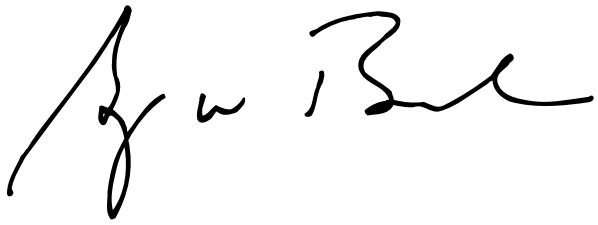
**Presidential Determination No. 2003–22 of May 6, 2003**

## Presidential Determination on Eligibility of Serbia and Montenegro to Receive Defense Articles and Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to Serbia and Montenegro will strengthen the security of the United States and promote world peace.

You are hereby authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
*Washington, May 6, 2003.*

[FR Doc. 03–12160
Filed 5–13–03; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–CE–37–AD; Amendment 39–13147; AD 94–20–04 R2]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises Airworthiness Directive (AD) 94–20–04 R1, which currently requires ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This AD maintains the actions of AD 94–20–04 R1, but makes the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and adds repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04. This AD is the result of the need to add a repetitive inspection of the fuselage bulkheads and change other inspections from a repetitive to a one-time action. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

**DATES:** This AD becomes effective on June 27, 2003.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of November 28, 1994 (59 FR 49785, September 30, 1994).

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*Has FAA taken any related action on the Raytheon airplane ruddervator system to this point?* On October 15, 2002, FAA issued AD 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), to require ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes.

The intent of this AD was to maintain the inspection and modification requirements of AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), but condense and clarify the information presented in AD 94–20–04.

*What has happened since AD 94–20–04 R1 to initiate this action?* Comments from the public since issuance of AD 94–20–04 R1 indicate a need for a revision to that AD. Specifically, the visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging should all be a one time action. Currently, they are to be accomplished repetitively at 100-hour time-in-service (TIS) intervals.

In addition, we inadvertently did not include the 100-hour TIS interval repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD and incorporate the above-referenced comments. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003 (68 FR 3829). The NPRM proposed to:

—maintain the actions of AD 94–20–04 R1, but would make the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and

—add repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

*What is the potential impact if FAA took no action?* This condition, if not corrected, could result in structural failure of the V-tail. Such failure could result in loss of control of the airplane.

*Was the public invited to comment?* The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

### Comment Issue No. 1: Provide Credit for Previously Accomplished Actions

*What is the commenter's concern?* A commenter points out that FAA left off the phrase ''unless already accomplished'' for the initial actions of the proposed AD. The commenter believes that this phrase should be added based on FAA's inclusion of the phrase in other ADs.

*What is FAA's response to the concern?* We concur that this phrase should be added to the initial actions of the proposed AD. We are changing the final rule AD action accordingly.

### Comment Issue No. 2: The Inspection of the Empennage, Aft Fuselage, and Ruddervator Control System Should Be Repetitive

*What is the commenter's concern?* Raytheon recommends that the

repetitive inspections of the empennage, aft fuselage, and ruddervator control system continue. This would include the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging. Raytheon states that ''these items can change with wear and usage and need to be maintained at specification to prevent unsafe conditions from developing.''

*What is FAA's response to the concern?* The FAA does not concur. The intent of AD 94–20–04 R1 was to maintain the actions of AD 94–20–04 on the affected airplanes. The inspections of the empennage, aft fuselage, and ruddervator control system were a one-time action in AD 90–20–04. We inadvertently made them repetitive in AD 90–20–04 R1. This action will incorporate FAA's intent. We will continue to monitor the service history of these airplanes. If necessary, we will initiate future rulemaking to address this subject.

We are not changing the final rule AD action based on this comment.

## FAA's Determination

*What is FAA's final determination on this issue?* We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

## Cost Impact

*How many airplanes does this AD impact?* We estimate that this AD affects 10,200 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the initial inspections:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 40 workhours at $60 per hour = $2,400 | Not Applicable | $2,400 per airplane | $24,480,000. |

These cost figures are exactly the same as what is currently required by AD 94–20–04 R1. Although we are adding the inspection of the fuselage bulkheads to this AD, we had already incorporated the costs of this inspection into the Cost Impact of AD 94–20–04 R1. Therefore, this AD presents no new costs upon the public.

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that may be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

## Regulatory Impact

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), and by adding a new AD to read as follows:

**94–20–04 R2 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15):** Amendment 39–13147; Docket No. 93–CE–37–AD; Revises AD 94–20–04 R1, Amendment 39–12919, which revised AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

**Note 1:** Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04. We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action. Part of this other AD action is the incorporation of Raytheon Service Raytheon Service Bulletin 27–3358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a)(1) and (a)(2) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Verify that the ruddervator balance is within the manufacturer's specified limits as defined in the applicable shop or maintenance manual. If the ruddervator is outside the specified limits, balance the ruddervator control surfaces. | Accomplish the verification within the next 100 hours time-in-service (TIS) after November 28, 1994 (the effective the date of AD 94–20–04), unless already accomplished, and thereafter prior to further flight after the ruddervators are repaired or repainted (even if the stripes are added or paint is touched up). Accomplish the balancing prior to further flight after the ruddervator is found outside the specified limits. | Verify in accordance with the applicable shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions. |
| (2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage.<br>(i) Repair or replace any damaged parts; and<br>(ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging. | Inspect and set the controls, tension, and rigging within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.<br>Accomplish any repairs and replacements prior to further flight after the inspection. | In accordance with the procedures and as specified in the instructions Beech Kit 35–4017–1 ''Kit Information Empennage and Aft Fuelsage Inspection'', as specified in Beech Service Bulletin No. 2188, dated May, 1987. |
| (3) Accomplish the following actions:<br>(i) Visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.);<br>(ii) Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks); and<br>(iii) Repair or replace damaged parts. | Initially inspect within the next 100 hours TIS after June 27, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Repair or replace prior to further flight after the inspection where damage is found. | In accordance with the procedures in the instructions to Beech Kit 35–4017–1 ''Kit Information Empennage & Aft Fuselage Inspection'', as specified in Beech SB 2188, dated May 1987. |
| (4) Remove all external stabilizer reinforcements installed during the incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable.<br>(i) Seal or fill any residual holes accomplished. with appropriate size rivets.<br>(ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained.<br>(iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(5)(i) of this AD.<br>(iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(5)(i) of this AD. | Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. | In accordance with the applicable maintenance information. |
| (5) Accomplish the following:<br>(i) Install stabilizer reinforcements;<br>(ii) Set the elevator nose-down trim; and<br>(iii) Replace the ruddervator tab control cables with larger diameter cables. | Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. | In accordance with the instructions to RAC Kit Nos. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987. |
| (6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies. | Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. Correct any discrepancies prior to further flight after the verification. | Use the procedures contained in the Appendix to this AD. |

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04 R1 or AD 94–20–04 are approved as alternative methods of compliance with this AD.

**Note 2:** This AD applies to each airplane identified in paragraphs (a)(1) and (a)(2) of

this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4107.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Beech Kit Nos. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, and the instructions to Beech Kit 35–4017–1 ''Kit Information Empennage & Aft Fuselage Inspection'', as applicable and specified in Beech Service Bulletin No. 2188, dated May 1987. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 as of November 28, 1994 (59 FR 49785, September 30, 1994). You may get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04 R1, Amendment 39–12919.

## Appendix to AD 94–20–04 R2

### Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

### Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

(j) *When does this amendment become effective?* This amendment becomes effective on June 27, 2003.

Issued in Kansas City, Missouri, on May 8, 2003.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–11977 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 375 and 376

**[Docket No. RM03–7–000; Order No. 632]**

## Delegations of Authority

Issued May 7, 2003.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations on delegations of authority to reflect changes in the Commission's internal structure. Specifically, the Commission is duplicating existing authorities delegated to the Offices of Markets, Tariffs and Rates and General Counsel for the newly formed Office of Market Oversight and Investigations (OMOI). Granting such delegations of authority to OMOI will better enable it to perform its market monitoring responsibilities.

**EFFECTIVE DATE:** This final rule is effective May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Arlene T. McCarthy, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8567.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission (Commission) is amending 18 CFR Parts 375 and 376 to duplicate certain existing delegations to two Commission office directors for a third office director and to make related changes in connection with changes in the Commission's internal structure. These changes came about as a result of the formation of the Office of Market Oversight and Investigations (OMOI). By this order, the Commission is not revising or expanding existing delegations of authority.[1]

2. In order to better understand natural gas, oil and power markets and to swiftly remedy market rule violations and abuse of market power, the Commission created OMOI, which became a formal, functioning office within the Commission in August 2002. OMOI serves as an early warning system to alert the Commission when market problems develop, and allows the Commission to analyze and address any problems more quickly. OMOI has begun an aggressive program of outreach to a wide variety of entities including other federal, state and provincial regulatory agencies, state consumer advocates, industry participants, academic institutions and think tanks, financial institutions (such as rating agencies), and Market Monitoring Units at Regional Transmission Organizations and Independent System Operators.

3. The formation of the new office implicates certain functions currently being performed under delegated authority by the Office of Market, Tariffs and Rates (OMTR) or by the Office of General Counsel (OGC). For example, currently the Director of OMTR has

[1] Existing delegations of authority were promulgated in a series of rulemakings initiated in 1978. *See* Delegations to Various Office Directors of Certain Commission Authority, 43 FR 36433 (Aug. 17, 1978), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,016 (1978); Chief Accountant, *et al.*, Delegation of Authority; Final Regulation, Order No. 38, 44 FR 45449 (Aug. 8, 1979), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,068 (1979), reh'g denied , 8 FERC ¶ 61,299 (1979); Delegation of the Commission's Authority to the Directors of Office of Electric Power Regulation, Office of the Chief Accountant, and Office of Pipeline and Producer Regulation, Order No. 147, 46 FR 29700 (June 3, 1981), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,259 (1981); Delegation of Authority, Order No. 224, 47 FR 17806 (April 26, 1982), FERC Stats. & Regs. Preambles 1982–1985 ¶ 30,356 (1982); Regulations Delegating Authority, Order No. 492, 53 FR 16058 (May 5, 1988), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,814 (1988); Streamlining Commission Procedures for Review of Staff Action, Order No. 530, 55 FR 50677 (May 5, 1988), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,906 (1990), *reh'g denied,* Order No. 530–A, 56 FR 4719 (Feb. 6, 1991), FERC Stats. & Regs.] Preambles 1991–1996 ¶ 30,914 (1991); Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation, and the General Counsel, Order No. 585, 60 FR 62326 (Dec. 6, 1995), FERC Stats. & Regs. Preambles January 1991–June 1996 ¶ 31,030 (1995); Delegation of Authority, Order No. 613, 64 FR 73403 (Dec. 30, 1991), FERC Stats. & Regs. Preambles July 1996–December 2000 ¶ 31,087 (1999).

delegated authority to sign non-financial audit reports of jurisdictional companies, a function which the Director of OMOI may also need so that OMOI employees are able to perform their market monitoring duties. Likewise, the General Counsel is currently authorized to terminate any informal non-public investigation, a function which the director of OMOI needs so that his enforcement staff may handle their workload efficiently. This rule duplicates those authorities by adding Section 314 to Part 375 of Title 18 of the Code of Federal Regulations, and, as noted, creates no new delegations. In addition, this rule corrects the structure of § 375.303(a), corrects a reference to paragraph numbers in § 375.307(f), changes the nomenclature of the Office of Finance and Accounting in § 375.312, and revises § 376.204(b)(2) to include the Director of OMOI on the list of Commission staff delegations of authority during an emergency.

4. Specifically, the existing delegations are being revised as follows:

**Part 375**

*Office of the Chief Accountant (existing § 375.303).* The paragraph structure of this section is corrected.

*Office of Markets, Tariffs and Rates (existing § 375.307).* Delegations in paragraphs (a), (c), (d), (g)(4), (h)(1), (i)(8) and (n)(3) are duplicated in paragraphs (i), (j), (k), (g), (e), (f) and (h) of new § 375.314, respectively. A reference to paragraph numbers ''(b)(1) or (b)(2)'' is corrected to read ''(f)(1) or (f)(2).''

*Office of the General Counsel (existing § 375.309).* Delegations in paragraphs (a), (b), (c) and (d) are duplicated in paragraphs (b), (c), (d), and (b) of new § 375.314, respectively.

*Office of the Finance, Accounting and Operations (existing § 375.312).* The nomenclature for this office is changed to the Office of the Executive Director.

**Part 376**

Part 376 governs the Commission's organization and its operations during emergency conditions. This rule making amends the list of officials authorized to conduct operations during emergency conditions to include the position of Director, OMOI, and replaces references to the former position of Director, OFAO, with the Executive Director in § 376.204(b)(2).

5. The Commission is issuing this order as a final rule without a period for public comment or delay in the effective date. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

**Information Collection Statement**

6. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12. This rule making contains no information collections and OMB review is therefore not required.

**Environmental Analysis**

7. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[2] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

**Regulatory Flexibility Act Certification**

8. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. 5 U.S.C. 601–612. The Commission is not required to make such analysis if a rule would not have such an effect. Because this rule concerns only matters of internal agency procedure, the Commission certifies that it will have no impact upon any entity other than the Commission.

**Document Availability**

9. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

10. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

11. User assistance is available for FERRIS and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

**Effective Date and Congressional Notification**

12. These regulations are effective on issuance. The Commission has determined that a delayed effective date for this final rule is unnecessary pursuant to 5 U.S.C. 553(d). Because the rule concerns only matters of internal agency procedure, the immediate implementation of the rule imposes no consequences to regulated entities or the general public, and any further delay could compromise the effective operation of the new office. Therefore, the Commission finds good cause for waiving the 30-day delay before the effective date of this final rule.

13. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. 5 U.S.C. 801. Rules of agency procedure and practice are excluded from this notification requirement. 5 U.S.C. 804(3)(C). Therefore, this final rule will not be submitted to Congress.

**List of Subjects**

*18 CFR Part 375*

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

*18 CFR Part 376*

Civil defense, Organization and functions (Government agencies).

By the Commission.

**Magalie R. Salas,**

*Secretary.*

In consideration of the foregoing, the Commission amends Parts 375 and 376, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

[2] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

## PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.303, introductory text is added and paragraph (a) is revised to read as follows:

### § 375.303 Delegations to the Chief Accountant.

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

(a) Issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

* * * * *

■ 3. In § 375.307, paragraph (f)(3) is revised to read as follows:

### § 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

* * * * *

(f) * * *

(3) Advise the filing party of any actions taken under paragraph (f)(1) or (f)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date hereof.

* * * * *

■ 4. In § 375.312, the title and the introductory text are revised to read as follows:

### § 375.312 Delegations to the Office of the Executive Director.

The Commission authorizes the Executive Director or the Executive Director's designee to:

* * * * *

■ 5. Section 375.314 is added to read as follows:

### § 375.314 Delegations to the Director of the Office of Market Oversight and Investigation.

*The Commission authorizes the Director or the Director's designee to:*

(a) Request information for purposes of a preliminary investigation under

Part 1b of this chapter, or for purposes of conducting market surveillance from an entity whose activities may affect energy markets, and from state or federal agencies that monitor or regulate such entities, whether or not subject to the Commission's jurisdiction.

(b) Designate, and terminate the authority of, officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and responses to interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records, in the course of formal investigations conducted by the Office of Market Oversight and Investigation, to the extent the Commission's order of investigation expressly provides for the exercise of such investigative powers.

(c) Grant or deny requests of persons pursuant to § 1b.12 of this chapter to procure copies of the transcripts of their testimony taken during non-public investigations conducted by the Office of Market Oversight and Investigation.

(d) Terminate any informal non-public investigation conducted by the Office of Market Oversight and Investigation.

(e) Issue reports for public information purposes. Any report issued without Commission approval must

(1) Be of a non-controversial nature, and

(2) Contain the statement, ''This report does not necessarily reflect the view of the Commission,'' in bold-face type on the cover.

(f) Deny or grant, in whole or in part, requests for waiver of the requirements for particular forms, including Electric Quarterly Reports required under § 35.10b of this chapter.

(g) Take appropriate action on applications for extensions of time to file required reports, data and information, and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or by order of the Commission.

(h) Undertake the following action with respect to data and reports submitted pursuant to Commission opinions or orders:

(1) Accept for filing data and reports that are in compliance and, when appropriate, notify the filing party of such acceptance;

(2) Reject for filing any data and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection, or

(3) Issue deficiency letters regarding such data or reports.

(i) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(j) Sign non-financial audit reports of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If the company does not agree with the audit report, provided that any notification of the opportunity for a hearing required under section 301(a) of the Federal Power Act or section 8(a) of the Natural Gas Act accompanies the audit report.

(k) Act upon requests by state and federal agencies to review staff audit working papers in connection with non-financial audits if the company agrees to the release of the audit working papers, and provided that:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

## PART 376—ORGANIZATION, MISSION, AND FUNCTIONS: OPERATIONS DURING EMERGENCY CONDITIONS

■ 6. The authority citation for part 376 continues to read as follows:

**Authority:** 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 7. In § 376.204, paragraphs (b)(2)(i), and (b)(2)(v) and (b)(2)(x) are revised to read as follows:

### § 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) * * *

(i) the Executive Director;

* * * * *

(v) Director of the Office of Market Oversight and Investigations;

* * * * *

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; Assistant General Counsels; and Assistant Directors and Division heads, Office of Market Oversight and Investigations; in order of seniority.

* * * * *

[FR Doc. 03–11952 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 505

### Privacy Act; Implementation

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is amending an existing exemption rule for the system of records A0025–55 TAPC, entitled 'Freedom of Information Act Program Files'. The amendments being made to the rule are administrative, *i.e.,* amending the system identifier, the system name, and revising the reasons for claiming the exemptions. No additional exemptions are being claimed.

**EFFECTIVE DATE:** This rule becomes effective May 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, ''Regulatory Planning and Review''**

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

**Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)**

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

**Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)**

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

**Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''**

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, ''Federalism''**

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR Part 505**

Privacy.

■ Accordingly 32 CFR part 505 is amended to read as follows:

## PART 505—THE ARMY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 505 continues to read as follows:

**Authority:** Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 505.5, paragraph (e)(3) is revised to read as follows:

**§ 505.5 Exemptions.**

* * * * *

(e) *Exempt Army Records.* * * *

(3) *A0025–55 TAPC.*

(i) *System name:* Freedom of Information Act Program Files.

(ii) *Exemption:* During the processing of Freedom of Information Act (FOIA) requests exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Department of the Army claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: April 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–12004 Filed 5–13–03; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD01–03–030]**

## Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulations.

**SUMMARY:** This notice implements the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

**DATES:** The regulations in 33 CFR 100.101 are effective on June 7, 2003, from 9:30 a.m. to 5 p.m. If the regatta is canceled due to weather, this section will be in effect on the following day, Sunday, June 8, 2003, during the same hours.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Nagle, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

**SUPPLEMENTARY INFORMATION:** This notice implements the permanent special local regulation governing the 2003 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: April 25, 2003.

**Vivien S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 03–11989 Filed 5–13–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–03–038]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Blue Angels Airshow to be held May 20 and 21, 2003, over the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

**EFFECTIVE DATES:** 33 CFR 100.518 is effective from 10:30 a.m. to 4 p.m. on May 20 and 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

**SUPPLEMENTARY INFORMATION:** The U.S. Naval Academy will sponsor the Blue Angels Airshow over the waters of the Severn River at Annapolis, Maryland. The events will consist of low flying, high performance aircraft performing precision maneuvers and aerial stunts. A fleet of spectator vessels is expected to gather near the event site to view the event. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 22, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–11986 Filed 5–13–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD01–03–040]**

## Drawbridge Operation Regulations: Cape Cod Canal, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain in the closed position from 6 a.m. through 1 p.m. on May 22, 2003 and May 27, 2003. This temporary deviation is necessary to facilitate scheduled structural repairs at the bridge.

**DATES:** This deviation is effective from May 22, 2003 through May 27, 2003.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:** The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR 117.589.

The owner of the bridge, the U. S. Army Corps of Engineers (USACE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate scheduled maintenance, the replacement of the rail tracks, at the bridge. This work must be performed with the bridge in the closed position.

The mariners who normally use this waterway were advised about the necessary repairs at the bridge and the temporary closures that will be required in order to facilitate the repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, may remain in the closed position from 6 a.m. through 1 p.m. on May 22, 2003 and May 27, 2003.

Mariners may contact the U.S. Army Corps of Engineers Marine Traffic Controller 24-hour telephone line at (508) 759–4431 for the operational status of the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 7, 2003.

**Vivien S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 03–11990 Filed 5–13–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD17–03–001]**

**RIN 1625–AA11**

## Vessel Movement Reporting System; Prince William Sound, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary regulation requiring all commercial and fishing vessels, regardless of length, to participate in the Vessel Movement Reporting System while operating within the Prince William Sound. This action is being taken to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts and incidents by providing the Coast Guard with the enhanced ability to track vessel traffic in the Prince William Sound. This action is necessary to ensure public safety and prevent sabotage, terrorist acts or incidents, and to facilitate the efforts of emergency services and law enforcement officers responding to terrorist incidents or attacks.

**DATES:** This rule is effective from April 3, 2003, through May 18, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD17–03–001 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 105 Clifton Street, Valdez, Alaska 99686 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT C.L. Huot, U.S. Coast Guard Marine Safety Office, 105 Clifton Street, Valdez, Alaska 99686, (907) 835–7262.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

Pursuant to 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard operates under a three-tiered system of Maritime Security (MARSEC) conditions that are aligned with the color coded Homeland Security Advisory System Conditions (HSAS). The port of Valdez has been elevated to the second highest level of alert MARSEC II/HSAS ORANGE based on the conflict with Iraq and, as such, vessel control measures for the Coast Guard to establish heightened deterrence and detection of terrorist activities in the port are necessary.

Additionally, the Maritime Administration recently issued MARAD Advisory 03–01 (071900Z FEB 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Further, the heightened security posture of the country and U.S. maritime interests, described below, continues. The publication of an NPRM is contrary to the public interest insofar as urgent action is required to address the ongoing threat to U.S. maritime transportation interests.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

## Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS *Cole.* These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and conflict in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The conflict in Iraq has caused the Attorney General in consultation with the Secretary of the Department for Homeland Security to elevate the HSAS threat condition to High/Orange and accordingly the Coast Guard has established MARSEC II in the port of Valdez. The Coast Guard will follow the guidance for the Department of Homeland Security and implement the following general measures: Coordinate necessary security efforts with Federal, State, and local law enforcement agencies or any National Guard or other appropriate armed forces organizations; take additional precautions at public events and possibly considering alternative venues or even cancellation; and restrict threatened facility access to essential personnel only. The measures contemplated by this rule are intended to prevent future terrorist attacks against critical maritime infrastructure including the Trans-Alaska Pipeline System's Valdez Marine Terminal, and the shipping lanes leading to and from it. This terminal supplies approximately half of the crude oil needs of the U.S. West Coast.

To address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a major crude oil loading terminal or other critical infrastructure in the port of Valdez would have on the public interest, the 17th Coast Guard District Commander is establishing vessel movement reporting requirements for all commercial and fishing vessels. These amendments to the existing rules for the Prince William Sound Regulated Navigation Area will help to prevent vessels or persons from engaging in terrorist actions against petroleum terminals, petroleum tankers, or other critical port facilities by providing the Coast Guard with the enhanced ability to track vessel movement in the Prince William Sound.

The Coast Guard is establishing these vessel movement reporting requirements within Prince William Sound, Alaska in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts or incidents. These requirements apply to commercial and fishing vessels operating within the boundaries of the Regulated Navigation Area defined in 33 CFR 165.1704. The Regulated Navigation Area is coextensive with the VTS Area and consists of the navigable waters of the United States north of a

line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146° 30′ W and 147° 20′ W and includes Valdez Arm, Valdez Narrows, and Port Valdez. In accordance with 33 CFR 161.19, at least 15 minutes before navigating in a VTS Area, a vessel must report its name and type, position, destination and ETA, intended route, time and point of entry, and dangerous cargo on board. In accordance with 33 CFR 161.20, vessels underway in the VTS Area must report their name and position upon entry, at designated reporting points, and upon direction from the Coast Guard Vessel Traffic Service. The designated reporting points for VTS Prince William Sound are set forth in 33 CFR Table 161.60(d) and in the *VTS Prince William Sound User's Manual.* We will issue Broadcast Notices to Mariners to further publicize the reporting requirements and any revisions to requirements. This regulation is issued under authority contained in 33 U.S.C. 1226 and 50 U.S.C. 191.

This rule temporarily requires all commercial and fishing vessels to participate in the Vessel Movement Reporting System. However, the COTP may, in his/her discretion grant waivers or exemptions to this rule, either on a case by case basis or categorically to a particular class of vessel or facility that otherwise is subject to adequate control measures. Vessels may be granted exemptions from the reporting requirements when, in the opinion of the Captain of the Port, position reporting would impede safe navigation of a vessel or would disclose sensitive information which requires protection in the interests of national security.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. These operational restrictions are tailored to provide the minimal interruption of vessel operations necessary to provide immediate, improved security for the public, vessels, and the port of Valdez. Vessels may be exempted from the reporting requirements when, in the opinion of the Captain of the Port, reporting would impede safe navigation of a vessel or disclose information which requires protection in the interests of national security. Recreational vessels have been exempted in order to limit the burden on the public. However, recreational boaters are still highly encouraged to file float plans.

Additionally, these reporting requirements are temporary in nature and vessels and facilities can appeal to the Captain of the Port for a waiver of the reporting requirements. Any hardships experienced by persons or vessels are outweighed by the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of commercial and fishing vessels intending to operate or transit in the Prince William Sound Regulated Navigation Area. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The short duration of the temporary rule does not coincide with major fishing openers in the Prince William Sound; further, a vessel's ability to transit the Prince William Sound will not be significantly impaired by the reporting requirements; finally, vessels with compelling interests that outweigh the port's security needs may be granted waivers from the reporting requirements.

**Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From April 3 through May 18, 2003, in § 165.1704, add temporary paragraphs (d), (e), (f) and (g) to read as follows:

**§ 165.1704 Prince William Sound, Alaska—regulated navigation area.**

* * * * *

(d) In addition to the requirements set forth in § 161.13 and § 161.60(c) of this chapter, all vessels, regardless of length, engaged in commercial service and all fishing vessels navigating or intending to navigate in the Prince William Sound VTS Area must participate in the Vessel Movement Reporting System as defined in 33 CFR part 161, subpart B and must make the voice reports required by 33 CFR 161.19, 33 CFR 161.20, and 33 CFR 161.21.The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel or waterfront facility upon finding that circumstances are such that application of the reporting requirements is unnecessary for national or port security, or are contrary to the interests of navigational safety. Reports and requests for waivers to the COTP required by this section must be made by telephone to (907) 835–7205 or by radio call on VHF–FM Channel 13 to U.S. COAST GUARD VALDEZ TRAFFIC. These numbers are operational 24 hours a day, 7 days a week.

(e) The reporting exemptions set forth in 33 CFR 161.16 do not apply to this section and this section is applicable to all sizes and classes of vessels engaged in commercial service and fishing vessels.

(f) In this section, consistent with 46 U.S.C. 2101(5), *commercial service* means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(g) In this section, consistent with 46 U.S.C. 2101(11a), *fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Dated: April 3, 2003.

**J.W. Underwood,**

*Rear Admiral, USCG, Commander, Seventeenth Coast Guard District.*

[FR Doc. 03–11988 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 674, 682, and 685

## Federal Student Aid Programs (Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program)

**ACTION:** Notice of waivers and modifications of statutory and regulatory provisions.

**SUMMARY:** The Secretary of Education announces waivers and modifications of statutory and regulatory provisions that are appropriate to assist students and borrowers under the Federal Perkins Loan Program, Federal Direct Loan Program, and Federal Family Education Loan Program who are members of the reserve components of the Armed Forces under Title 10 of the United States Code called or ordered to active duty for a period of more than 30 days, or who are regular active duty members of the Armed Forces reassigned to a different duty station for more than 30 days as a result of a military mobilization. The Secretary is issuing these waivers and modifications under the authority of Section 2(a) of the Higher Education Relief Opportunities for Students Act of 2001, Pub. L. 107–122. Section 2(b) of Pub. L. 107–122 requires the Secretary to publish a notice in the **Federal Register** specifying the waivers or modifications of statutory or regulatory provisions applicable to the student financial aid programs under title IV of the Higher Education Act of 1965, as amended (HEA), that the Secretary believes are appropriate to assist affected individuals so that they are not placed in a worse position financially, in relation to their loans, by their service. Section 2(b)(1) of Pub. L. 107–122 further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and Section 553 of the Administrative Procedures Act (5 U.S.C. 553) do not apply to the contents of this notice.

Section 2(c) of Pub. L. 107–122 requires the Secretary to provide an impact report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate not later than 15 months after first exercising any authority to issue a waiver or modification under section 2(a) of Pub. L. 107–122. The report will describe the impact of any waivers or modifications issued pursuant to section 2(a) of Pub. L. 107–122 on affected individuals and the programs under title IV of the HEA, and the basis for such determination,

and will include the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of the waivers or modifications.

**EFFECTIVE DATE:** May 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Harris, Senior Program Specialist, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW, (8th Floor) Washington, DC 20006. Telephone: (202) 502–7521.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The Secretary is waiving or modifying the following provisions of the HEA and regulations:

### Federal Perkins Loan Program

Under 34 CFR 674.33(d)(2) and section 464(e) of the HEA, there is a 3-year cumulative limit on the length of forbearances that a Perkins loan borrower can receive. To assist Perkins Loan borrowers described in the **SUMMARY** section of this notice, the Secretary is waiving these statutory and regulatory requirements so that any forbearance based on a borrower's military service is excluded from this 3-year cumulative limit.

### Federal Family Education Loan (FFEL) Program, Federal Direct Loan Program, and Federal Perkins Loan Program

Depending on the loan program, borrowers may qualify for loan cancellation if they are employed full-time in specified occupations, such as teachers, childcare providers, or law enforcement officers, pursuant to sections 428J(b)(1), 428K(d)(1), 460(b)(1), and 465(a)(2)(A)-(I) and (a)(3) of the HEA, 34 CFR 674.53(d), 674.55(a)(2), 674.55(b)(5), 674.55(c)(2), 674.56(d)(1), 674.57(b)(1), 674.58(b), 674.60(b), 34 CFR 682.215(d)(1), and 34 CFR 685.217(d)(1). Generally, borrowers must perform uninterrupted, otherwise qualifying service for a specified length of time (for example, one year) or for consecutive periods of time, such as 5 consecutive years, to be eligible for loan cancellation. For all borrowers described in the **SUMMARY** section of this notice, the Secretary is waiving the requirements in the various loan cancellation provisions that such periods of service be uninterrupted and/or consecutive. Loan holders should not consider the time that these borrowers are on active duty as an interruption in the required service for the borrower to receive a loan cancellation.

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You may also view this document in PDF at the following site: *ifap.ed.gov.*

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

**Program Authority:** 20 U.S.C. 1071, 1087a, 1087aa.

Dated: May 8, 2003.

**Sally L. Stroup,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 03–11982 Filed 5–13–03; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 4

**RIN 2900–AK86**

## Schedule for Rating Disabilities: Evaluation of Tinnitus

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities to state more explicitly the method of evaluation of tinnitus under diagnostic code 6260 in the portion of the rating schedule that addresses evaluation of disabilities of the ear. The intended effect of this action is to codify current standard VA practice by stating that recurrent tinnitus will be assigned only a single 10-percent evaluation whether it is perceived in one ear, both ears, or somewhere in the head.

**EFFECTIVE DATE:** This amendment is effective June 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Audrey Tomlinson, Medical Officer, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420, (202) 273–7215.

**SUPPLEMENTARY INFORMATION:** On September 19, 2002, VA published in the **Federal Register** (67 FR 59033) a proposal to amend diagnostic code 6260 in 38 CFR 4.87, in order to codify current standard VA practice concerning the evaluation of tinnitus. It states that recurrent tinnitus will be assigned only a single ten-percent evaluation, whether it is perceived in one ear, both ears, or somewhere in the head. Interested persons were invited to submit written comments on or before November 18, 2002. We received two comments, one from the American Legion and one from a concerned individual.

One commenter felt that limiting tinnitus to a single ten-percent evaluation is arbitrary and inconsistent with other provisions of VA's Schedule for Rating Disabilities that deal with bilateral disabilities, such as those providing separate evaluations for each ear with hearing impairment. The same commenter felt that the proposed rule document offered no substantive rationale for maintaining the current assignment of a single evaluation for tinnitus, regardless of whether it is perceived in one or both ears.

We disagree. VA's Audiology and Speech Pathology Service recently wrote a booklet titled *Hearing Impairment,* an Independent Study Course for health care providers. The section on tinnitus states that the fact that most tinnitus appears to be coming from the ear led to a belief that tinnitus was generated in the inner ear, but this is not the case. It further states that damage in the inner ear may be a precursor for subjective tinnitus, but that subjective tinnitus is generated within the central auditory pathways. Comparing tinnitus, a central nervous condition, to hearing loss, a disability from damage to an organ of special sense (the ear) is not a valid comparison. We have made no change in response to this comment. Because over 200,000 veterans are currently rated for tinnitus under diagnostic code 6260 under Diseases of the Ear, for

administrative efficiency, and because many are accustomed to looking in that section of the rating schedule, the current placement of tinnitus within the rating schedule will remain unchanged.

The **SUPPLEMENTARY INFORMATION** section of the proposed regulatory amendment explained that tinnitus is a single disability arising in the brain and that it consists of the perception of sound in the absence of an external stimulus. This definition applies whether the tinnitus is perceived in one ear, both ears, or somewhere undefined in the head. The commenter provided no information that would refute this medical explanation. The degree of disability, that is, the degree to which tinnitus impairs the veteran's earning capacity, is the same regardless of how the tinnitus is perceived. To rate each ear separately for this single disability would violate the prohibition on pyramiding, 38 CFR 4.14. Similarly, to rate each ear separately would be a violation of the principle of 38 CFR 4.25(b) that a ''single disease entity'' is to be given a single rating. A single evaluation for a single disability is appropriate. We have made no change based on this comment.

A second commenter suggested that we adopt measurable time and duration standards for the term ''recurrent.'' Because a substantive change to define the term ''recurrent'' is beyond the scope of this rulemaking, we have made no change based on this comment.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted without change.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Order 12866**

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

**List of Subjects in 38 CFR Part 4**

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 14, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

## PART 4—SCHEDULE FOR RATING DISABILITIES

### Subpart B—Disability Ratings

■ 1. The authority citation for part 4 continues to read as follows:

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

■ 2. In § 4.87, diagnostic code 6260 is revised to read as follows:

**§ 4.87 Schedule of ratings—ear.**

DISEASES OF THE EAR

| | Rating |
|---|---|
| * * * * * | |
| 6260 Tinnitus, recurrent ..... | 10 |

**Note (1):** A separate evaluation for tinnitus may be combined with an evaluation under diagnostic codes 6100, 6200, 6204, or other diagnostic code, except when tinnitus supports an evaluation under one of those diagnostic codes.

**Note (2):** Assign only a single evaluation for recurrent tinnitus, whether the sound is perceived in one ear, both ears, or in the head.

**Note (3):** Do not evaluate objective tinnitus (in which the sound is audible to other people and has a definable cause that may or may not be pathologic) under this diagnostic code, but evaluate it as part of any underlying condition causing it.

(Authority: 38 U.S.C. 1155).

[FR Doc. 03–12038 Filed 5–13–03; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 89

**[AMS–FRL–7498–2]**

### Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition: Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to receipt of adverse comments, EPA is withdrawing amendments that were included in the direct final rule published on April 11, 2003 (68 FR 17741), amending the definition of nonroad engines to also include all engines certified as part of a nonroad engine family if used in agricultural applications in the State of California. Because this amendment is being withdrawn, the existing definition regarding nonroad engines remains in effect. We will address the adverse comments in a subsequent final action based on the parallel proposal published on April 11, 2003 (68 FR 17763).

**DATES:** The following provision of the direct final rule published at 68 FR 17741 (April 11, 2003) is withdrawn as of May 14, 2003:

(1) The revision to 40 CFR 89.2, definition of ''Nonroad engine'', paragraph (1)(iv).

**ADDRESSES:** All comments and materials relevant to today's action are contained in Public Docket No. OAR–2003–0046 at the following address: U.S. Environmental Protection Agency (EPA), EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

*Docket:* Materials relevant to this rulemaking are contained in Public Docket Number OAR–2003–0046 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301

Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4277, fax (734) 214–4956, e-mail *larson.robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:** We stated in the direct final rule published at 68 FR 17741 (April 11, 2003) that if we received adverse comment on the amendment, by May 12, 2003, we would publish a timely withdrawal in the **Federal Register**. We have received adverse comments on the amendments to 40 CFR 89.2.

As a result of the adverse comments received, we are withdrawing the amendment to § 89.2. We intend to consider the issues raised by the comments in a final action based on the concurrent notice of proposed rulemaking (68 FR 17763).

### List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

**Jeffrey R. Holmstead,**

*Assistant Administrator for Office of Air and Radiation.*

[FR Doc. 03–12021 Filed 5–13–03; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2003–0173; FRL–7307–6]**

## Indoxacarb; Time-Limited Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues/combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno[1,2-e][1,3,4]oxadiazine- 4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e] [1,3,4]oxadiazine-4a (3H)-carboxylate in or on peaches. This action is in response to university extension specialists, DuPont, and EPA's combined efforts to generate the information necessary for registration of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum cuculio. This temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. This regulation establishes a maximum permissible level for residues of Indoxacarb in this food commodity pursuant to section 408(e) of Federal Food Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 15, 2006.

**DATES:** This regulation is effective May 14, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0173, must be received on or before July 14, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Background and Statutory Findings

In the **Federal Register** of April 16, 2003 (68 FR 18582) (FRL–7302–3), EPA issued a proposed rule pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), EPA, in cooperation with university extension specialists, and DuPont Pont Crop Protection, pursuant to sections 408(e) and (r) of FFDCA, proposed to establish a tolerance for combined residues of the reduced risk pesticide, Indoxacarb in or on peaches. This temporary tolerance supports a non-crop destruct EUP under section 5 of FIFRA authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. Section 5 of FIFRA authorizes EPA to issue an experimental use permit for a pesticide. This provision was not amended by FQPA. EPA has established regulations governing such experimental use permits in 40 CFR part 172. Section 408(r) of FFDCA authorizes EPA to issue time-limited tolerances for pesticide residues from FIFRA experimental use permits.

The proposed rule requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide, Indoxacarb, (S)-methyl 7-chloro-2,5- dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate, in or on peaches at 10.0 parts per million (ppm). The tolerance will expire on May 15, 2006.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino] carbonyl] indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)- carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl] indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)-carboxylate on peaches at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Indoxacarb are discussed in the proposed rule, as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

Refer to the April 16, 2003, **Federal Register** document (68 FR, 18582) for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment, including this use on peaches.

### *B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of Indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: Apple at 1.0 ppm, apple, wet pomace at 3.0 ppm, brassica, head and stem, subgroup at 5.0 ppm, cattle, goat, horse, sheep, and hog fat at 0.75 ppm, cattle, goat, horse, sheep, and hog meat at 0.03 ppm, cattle, goat, horse, sheep, and hog meat byproducts at 0.02 ppm, corn, sweet, forage at 10 ppm, corn, sweet, kernel plus cob with husk removed at 0.02 ppm, corn, sweet stover at 15 ppm, cotton gin byproducts at 15 ppm, cotton, undelinted seed at 2.0 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 10.0 ppm, milk at 0.10 ppm, and milk, fat at 3.0 ppm, pear at 0.20 ppm, and vegetables, fruiting, group at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from Indoxacarb in food as follows:

An acute dietary endpoint for females 13 years and older and for the general population, including infants and children has been identified. The acute population adjusted dose (aPAD) for females is 0.02 milligrams/kilogram/day (mg/kg/day). The acute dietary endpoint for the general population including infants and children is 0.12 mg/kg/day. The chronic population adjusted dose (cPAD) for all populations is 0.02 mg/kg/day. Indoxacarb has been classified as a ''not likely'' to be carcinogenic to humans. It has been determined that the FQPA safety factor could be reduced to 1X for Indoxacarb. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure. Currently, indoxacarb is not registered for use in residential settings.

For the chronic exposure estimates, it was assumed that all commodities had tolerance level residues and 100% of all RACs were treated with indoxacarb. Refined processing factors were used in the chronic analysis for several commodities, in place of the Dietary Exposure Evaluation Model (DEEM®) default processing factors. The Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models provided the estimated environmental concentrations (EECs) of indoxacarb. The EECs for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be

3.7 ppb for surface water and 0.02 ppb for ground water.

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989—1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute Tier II (partially refined analysis) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), assumed 100% crop treated (CT) for all crops other than peaches, and 1% CT for the peach EUP (300 acres). ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989—1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg body weight (bw)/day and as a percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM® default processing factors, assumed 100% CT for all crops other than peaches, and 1% CT for the peach EUP (300 acres) (Tier I).

iii. *Cancer*. There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to ARs to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

Dietary exposure estimates were based on 1% PCT for peaches. This PCT of 1% was based on the fact that the 2–year experimental use permit was issued for only 300 acres of peaches to be treated annually, which amounts to 0.2% of the total peach acreage in the United States. The reason for using 1% instead of 0.2% is to allow for any uncertainties in the residue evaluation. Before making this tolerance permanent, reevaluation of dietary exposure will be performed using all available information. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described 1% for Indoxacarb used on peaches is reliable and has a valid basis. A 2–year EUP has been issued for this use, which will allow for use of Indoxacarb on 300 acres of peaches in some eastern states. Before the use can be expanded for treatment of greater than 300 acres per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which Indoxacarb may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for Indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of Indoxacarb.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the PRZM/EXAMS to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use EECs from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model

estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to Indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated EECs of Indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether Indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, Indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that Indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

### *C. Safety Factor for Infants and Children*

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since:

i. Studies-both using methyl cellulose-comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species;

ii. Range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable;

iii. A dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because:

iv. Systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062;

v. based on the data base, the HIARC determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality;
- Signs of neurotoxicity in the acute neurotoxicity study-rat with indoxacarb (males and females), no mortality in males at neurotoxic doses;
- Clinical signs of neurotoxicity in the 90-day toxicity study-rat indoxacarb (females), mortality;
- Clinical signs of neurotoxicity in the 90-day toxicity study-mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males;
- Clinical signs of neurotoxicity in the 18 month carcinogenicity study-mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose; and
- Clinical signs of neurotoxicity in the developmental toxicity study-rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion*. The Agency concluded that the FQPA safety factor could be reducecd to 1X for Indoxacarb because:

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure;
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study—and a safety factor (e.g.: neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring)—and therefore does not warrant an FQPA safety factor; and
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children
- There are no registered residential uses at the current time.

### *D. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPAs Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default

body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to Indoxacarb will occupy 12% of the aPAD for the U.S. population, 64% of the aPAD for females 13 years and older, 67% of the aPAD for infants less than 1 year old and 79% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this Unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

| Population Subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.12 | 12 | 13.7 | 0.02 | 3,700 |
| Females 13+ | 0.12 | 64 | 13.7 | 0.02 | 218 |
| All infants less than 1 year | 0.12 | 67 | 13.7 | 0.02 | 400 |
| Children 1 to 2 | 0.12 | 79 | 13.7 | 0.02 | 760 |

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to Indoxacarb from food will utilize 30% of the cPAD for the U.S. population, 29% of the cPAD for infants less than 1 year and 79% of the cPAD for children 1 to 2 years old. There are no residential uses for Indoxacarb that result in chronic residential exposure to Indoxacarb. Based on the use pattern, chronic residential exposure to residues of Indoxacarb is not expected. In addition, there is potential for chronic dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO INDOXACARB

| Population Subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.02 | 30 | 3.7 | 0.02 | 490 |
| All infants less than 1 year old | 0.02 | 29 | 3.7 | 0.02 | 65 |
| Children 1 to 2 | 0.02 | 79 | 3.7 | 0.02 | 30 |

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore Indoxacarb is is not expected to pose carcinogenic risk when used as directed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to Indoxacarb residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (high performance liquid chromatography HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue., NW, Washington D.C. 20460; Telephone Number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### *B. International Residue Limits*

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of Indoxacarb; therefore, international

harmonization is not an issue at this time.

## V. Conclusion

Therefore, the time-limited tolerance is established for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)- carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)- carboxylate, in or on peaches at 10 ppm. This tolerance will expire and is revoked on May 15, 2006.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0173 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 14, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0173, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any

special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 2003.

**Debra Edwards**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.564 is amended by redesignating the existing text in paragraph (a) following the heading ''General'' as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

### § 180.564 Indoxacarb; tolerances for residues.

(a) * * *

(1) * * *

(2) Time-limited tolerances are established for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl]indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)- carboxylate, in connection with use of the pesticide under FIFRA section 5 experimental use permit granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Peach | 10 | May 15, 2006 |

[FR Doc. 03–11758 Filed 5–13–03; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2003–0109; FRL–7305–9]**

## Pyriproxyfen; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of pyriproxyfen in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 parts per million (ppm); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm; okra at 0.02 ppm; fig at 0.30 ppm; and fig, dried at 1.0 ppm. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective May 14, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0109, must be received on or before July 14, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal Production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0109. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

### II. Background and Statutory Findings

In the **Federal Register** of March 7, 2003 (68 FR 11093) (FRL–7289–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP) 2E6416, 2E6425, 2E6428, and 2E6436) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 ppm (PP 2E6416); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm (PP 2E6428); okra at 0.02 ppm (PP 2E6436); fig at 0.30 ppm (PP 2E6425); and fig, dried at 1.0 ppm (2E6425).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, *see* the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of pyriproxyfen on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 ppm (PP 2E6416); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm (PP 2E6428); okra at 0.02 ppm (PP 2E6436); fig at 0.30 ppm (PP 2E6425); and fig, dried at 1.0 ppm (2E6425). EPA's assessment of exposures and risks associated with establishing the tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed as well as the nature of the toxic effects caused by pyriproxyfen are discussed in Unit III.A. of the **Federal Registers** of June 5, 2001 (66 FR 30065) (FRL–6782–5), August 28, 2002 (67 FR 55150) (FRL–7195–7), and March 7, 2003 (68 FR 10972) (FRL–7289–6).

### *B. Toxicological Endpoints*

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated. A summary of the toxicological endpoints for pyriproxyfen used for human risk assessment is shown in Unit III.B. of the **Federal Register** of March 7, 2003 (68 FR 10972).

### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. There are no significant livestock feed items associated this action, thus the proposed uses will not result in the transfer of additional pyriproxyfen residues to livestock. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary exposure analysis was not conducted since no acute doses or toxicological endpoints were selected for the general U.S. population (including infants and children) or the females 13–50 years old population subgroup.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID®) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure assessment was performed using published and proposed tolerance levels, DEEM® default processing factors, and 100% crop treated (PCT) assumptions for all commodities. Some of the crops (atemoya, custard apple, ilama, birba, sapodilla, black and white sapote, star apple, and ugli fruit) considered in this risk assessment are not included in the present version of DEEM-FCID® due to their low consumption. In these cases, the DEEM-FCID® program underestimates the exposure to pyriproxyfen residues from these crops; however, because the consumption levels of these crops is so low (on a national basis), inclusion of these crops in a future version of DEEM-FCID® would likely make no difference in the overall predicted exposures to pyriproxyfen residues.

iii. *Cancer.* Pyriproxyfen was classified by the EPA (June, 1995) as a ''Group E'' chemical - no evidence of carcinogenicity to humans based on the absence of carcinogenicity in mice and rats.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyriproxyfen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyriproxyfen.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of

pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyriproxyfen they are further discussed in the aggregate risk sections in Unit III.E.

EPA determined that the residue of concern in water is pyriproxyfen *per se*. Drinking water estimates include surface water EECs based on the linked PRZM/EXAMS models and the SCI-GROW regression model, which was developed from studies with different hydrology and study conditions. Both models assumed a maximum seasonal application rate of 0.11 lb active ingredient per acre, applied 3 times per year. (The registered use for citrus). Based on the PRZM/EXAMS and SCI-GROW models the EECs of pyriproxyfen for acute exposures are estimated to be 2.15 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.40 ppb for surface water and 0.006 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyriproxyfen is currently registered for use on the following residential non-dietary sites: Residential sites for flea and tick control products (home environment and pet treatments) as well as products for ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays, and pipettes), granules, bait (indoor and outdoor), and impregnated materials (pet collars).

The risk assessment was conducted using the following residential exposure assumptions: There is a potential for short-term dermal and inhalation exposures to pet owners and homeowners who apply products containing pyriproxyfen (handlers); however, EPA did not identify any short-term dermal or inhalation endpoints. Because no short-term dermal or inhalation endpoints could be identified, EPA expects no short-term dermal or inhalation risks from exposure to pyriproxyfen. There is also a potential for non-dietary oral exposures (hand-to-mouth exposures) and dermal exposure following applications around the home and on pets for flea and tick control (carpet powder and pet shampoo). Short- and intermediate-term non-dietary oral and long-term dermal exposure assessments were included for toddlers since EPA selected toxicology endpoints for these exposures and toddlers are expected to have higher exposures than adults from treated home environments and pets due to their behavior patterns. Although EPA did not select a long-term non-dietary oral endpoint for pyriproxyfen, EPA used the chronic endpoint for the chronic (long-term) aggregate risk assessment.

Toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, furniture, and pets as follows: (i). Hand-to-Mouth: Short-, intermediate, and long-term hand-to-mouth exposures by toddlers from treated carpets, flooring (the efficacy of carpet powders is approximately 365 days); (ii). Hand-to-mouth: Short- and intermediate-term hand-to-mouth exposures by toddlers from petting treated animals (shampoos, sprays, spot-on treatments and collars). Long-term hand-to-mouth exposures by toddlers from petting treated animals (pet collars; efficacy of pet collars up to 395 days); (iii). Dermal: Long-term dermal exposures from treated carpets, flooring, and pets. (iv). Ingestion of granules or bait by toddlers (acute, episodic event): For the granular ingestion scenario, the Agency believes that if a toddler were to be exposed to a pellet/granular formulation (i.e., ant bait), the event is most likely to be ''episodic,'' that is, a one time occurrence and not likely to be repeated. It is not likely that a toddler would repeatedly locate and ingest very small, sand colored granules. For pyriproxyfen, EPA did not select an acute dietary endpoint, since an appropriate endpoint could not be attributed to a single oral dose; therefore, no granular assessment was performed.

Exposure and risk estimates from post-application exposure to indoor crack and crevice treatments are not presented in this assessment as indoor broadcast treatments (i.e., carpet powders and sprays) are anticipated to have a higher exposure potential. Additionally, the Agency acknowledges that pet owners could retreat the home environment and/or the pet near the end of the efficacy period identified on the product labels. However, there are no chemical-specific residue data for pyriproxyfen to determine the dissipation rate of residues or whether residues may be additive upon retreatment. Therefore, a Tier I assessment was performed based on Day 0 residues without accounting for daily residue dissipation. EPA anticipates that this assessment is protective as pyriproxyfen residues would be expected to dissipate from Day 0 residue values.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether [pyriproxyfen] has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyriproxyfen and any other substances and pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common

mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following pre/post natal exposure in the 2-generation reproduction study.

3. *Conclusion*. There is a complete toxicity data base for pyriproxyfen and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X because there was no evidence of prenatal or postnatal extra sensitivity or increased susceptibility in developmental studies in rats and rabbits, and in reproduction studies in rats. Likewise, there was no quantitative or qualitative evidence of increased susceptibility to rat or rabbit fetuses identified in the guideline prenatal developmental toxicity studies for rats and rabbits. Additionally, in the 2 non-guideline studies that evaluated perinatal and prenatal development, there was no evidence of quantitative or qualitative increased susceptibility. In 1–study, when pregnant rats were treated from gestation day 17 to lactation day 20, the resulting toxicity was comparable between adults (clinical signs, decreased body weight gain and food consumption) and offspring (decreased body weight and dilation of the renal pelvis) at the same dose. In the other study, when rats were exposed to pyriproxyfen prior to and in the early stages of pregnancy, no developmental toxicity was seen at the limit dose. Lastly, in the reproduction toxicity study, offspring toxicity (decreased body weight on pups during lactation days 14 to 21) occurred only in the presence of decreases in body weight in parental animals at the same dose level (i.e., comparable toxicity in adults and offspring).

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure milligrams/kilogram/day (mg/kg/day) = cPAD − (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPAs Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An acute dietary RfD for females 13–50 and the general U.S. population, including infants and children, was not selected because an acute oral endpoint attributable to a single-dose exposure could not be identified; therefore, acute dietary risk is not expected.

2. *Chronic aggregate risk*. Using the exposure assumptions described in this unit for chronic (long-term) exposure, EPA has concluded that exposure to pyriproxyfen from food will utilize 1.1% of the cPAD for the U.S. population, 2% of the cPAD for all infants, less than 1 year old and 3.9% of the cPAD for children 1 to 2 years old, the subpopulation at greatest exposure. Pyriproxyfen is an active ingredient in pesticide products registered for residential use. Based on the use patterns, the residential risk assessment was performed for toddlers since they are anticipated to have the higher chronic residential exposure to residues of pyriproxyfen. EPA considered background chronic-dietary exposure (food + water), long-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo), and long-term dermal exposure to toddlers. The total chronic food and residential aggregate MOEs were calculated. As these MOEs are greater than 100, the chronic aggregate risk does not exceed EPA's level of concern. In addition, there is potential for chronic dietary exposure to pyriproxyfen in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate chronic exposure to exceed the Agency's level of concern, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Short-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 9,200 | 100 | 0.4 | 0.006 | 12,000 |
| All infants < 1 year | 1,000 | 100 | 0.4 | 0.006 | 3,200 |
| Children 1–2 years | 860 | 100 | 0.4 | 0.006 | 3,100 |
| Children 3–5 years | 940 | 100 | 0.4 | 0.006 | 3,100 |
| Females 13–49 years | 13,000 | 100 | 0.4 | 0.006 | 10,000 |

3. *Short-term aggregate risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyriproxyfen is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyriproxyfen. EPA considered background chronic-dietary exposure (food + water) and short-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs for toddlers ranging from 1,600 for children 1 to 2 years old to 1,800 for children less than 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Sh ort-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| All infants (<1 year) | 1,800 | 100 | 0.4 | 0.006 | 9,400 |
| Children 1–2 years | 1,600 | 100 | 0.4 | 0.006 | 9,400 |
| Children 3–5 years | 1,700 | 100 | 0.4 | 0.006 | 9,400 |

4. *Intermediate-term aggregate risk*.Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for pyriproxyfen. EPA considered background chronic-dietary exposure (food + water) and intermediate-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs for toddlers ranging from 580 for children 1 to 2 years old to 650 for infants less than 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this Unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Inter-mediate-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| All infants < 1 year | 650 | 100 | 0.4 | 0.006 | 3,000 |
| Children 1–2 years | 580 | 100 | 0.4 | 0.006 | 2,900 |
| Children 3–5 years | 620 | 100 | 0.4 | 0.006 | 2,900 |

5. *Aggregate cancer risk for U.S. population*. There is no evidence of carcinogenicity to humans based on carcinogenicity studies in male and female rats and mice. The Agency concludes that pesticidal uses of

pyriproxyfen are not likely to pose a carcinogenic hazard to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyriproxyfen residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromotography/nitrogen phosphorous detector method (RM-33P-1-3a)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

There are no Codex, Canadian, or Mexican maximum residue limits established for residues of pyriproxyfen in or on the subject food commodities.

## V. Conclusion

Therefore, the tolerance is established for residues of pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine], in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 parts per million (ppm); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm; okra at 0.02 ppm; fig at 0.30 ppm; and fig, dried at 1.0 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0109 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 14, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.*jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0109, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.510 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

### § 180.510 Pyriproxyfen: tolerances for residues.

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Atemoya | 0.20 |
| Avocado | 1.0 |
| Biriba | 0.20 |
| Black sapote | 1.0 |
| * * * | * * |
| Canistel | 1.0 |
| Cherimoya | 0.20 |
| * * * | * * |
| Custard apple | 0.20 |
| * * * | * * |
| Fig | 0.30 |
| Fig, dried | 1.0 |
| * * * | * * |
| Ilama | 0.20 |
| * * * | * * |
| Mamey sapote | 1.0 |
| Mango | 1.0 |
| * * * | * * |
| Okra | 0.02 |
| * * * | * * |
| Papaya | 1.0 |
| * * * | * * |
| Sapodilla | 1.0 |
| * * * | * * |
| Soursop | 0.20 |
| * * * | * * |
| Star apple | 1.0 |
| * * * | * * |
| Sugar apple | 0.20 |
| * * * | * * |

* * * * *

[FR Doc. 03–12022 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**45 CFR Part 2**

## Testimony by Employees and the Production of Documents in Proceedings Where the United States Is Not a Party

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations which provide that employees and former employees of the Department of Health and Human Services may not provide testimony as part of their official duties in litigation where the United States or a Federal agency is not a party, without the approval of the head of the agency. The purpose of these amendments is to modify provisions which provide that subpoenas *duces tecum* and other requests for documents from third parties shall be treated as requests for documents under the Freedom of Information Act (''FOIA''). Under these amendments, the FOIA shall not apply to a subpoena when the Department is subject to the jurisdiction of the issuing Federal court or other Federal tribunal and the subpoena is properly served. The regulation provides that where there is no jurisdiction over the Department, as in the case of subpoenas issuing out of State, local and tribal courts, the FOIA will apply to such subpoenas.

**EFFECTIVE DATE:** June 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Drews, Associate General Counsel, General Law Division, Office of the General Counsel, at (202) 619–0150.

**SUPPLEMENTARY INFORMATION:** In 1987, the Department of Health and Human Services published regulations which addressed the issue of the increasing number of requests for the testimony of Department employees in litigation involving only private parties and not the United States. The regulation addresses this matter by generally prohibiting both voluntary appearances and compliance with subpoenas for testimony as part of an employee's official duties, except where the relevant agency head or his or her designee determines that the appearance would promote the objectives of the Department. In addition, the regulation provides that subpoenas for the production of documents would be processed under the Freedom of Information Act, 5 U.S.C. 552.

These amendments are designed to address cases in which a Federal court has jurisdiction to issue a subpoena for DHHS documents. In such cases, the current regulation may infringe on the power of the court by allowing greater authority to withhold a document under the FOIA than would be the case under the rules governing disclosure of documents in court. *See FTC* versus *Grolier, Inc.,* 462 U.S. 19, 27–28 (1983). Because it is not the intention of the Department to create or broaden a Federal litigation privilege through this part, we are amending the regulation to limit the applicability of the FOIA to situations in which the issuing tribunal has no jurisdiction over the Department.

Accordingly, we are amending §§ 2.1, 2.3, and 2.5 to provide that when the Office of the General Counsel determines that a subpoena is ''legally sufficient,'' including when the issuing court has jurisdiction over the Department or its employee(s), the Department will follow the applicable procedural and substantive rules relating to the production of information and documents by a non-party. In cases of informal requests for documents, and where the tribunal issuing the subpoena does not have jurisdiction over the Department—such as is the case in most subpoenas issuing out of State, local and tribal courts, *see, e.g., Boron Oil Co.* versus *Downie,* 873 F.2d 67, 70 (4th Cir. 1989); *Environmental Enterprises, Inc.* versus *EPA,* 664 F. Supp. 585, 586 (D.D.C. 1987); *Reynolds Metals Co.* versus *Crowther,* 572 F. Supp. 288, 290–91 (D. Mass. 1982)—the regulation provides that we will continue to treat the request as a request made pursuant to the FOIA.

The amendments also include examples following the text of § 2.1 which illustrate the applicability of this regulation to situations in which the regulation may or may not apply.

The amendments also reflect changes in the organizational structure in the Department. The references in § 2.2 to the Assistant Secretary for Human Development Services and the Assistant Secretary for Family Support are deleted and replaced by references to the Assistant Secretary for Children and Families as the Agency Head for requests involving the Administration for Children and Families and by the Assistant Secretary for Aging for requests involving the Administration on Aging. In addition, reference to the Commissioner of Social Security is deleted, due to the March 31, 1995, independence of the Social Security Administration.

These amendments also modify § 2.6 to delete the reference to the Freedom of Information Act regulations, 45 CFR part 5, to reflect the policy that the Department will certify any disclosed documents upon request, not just those disclosed pursuant to part 5.

*Public Participation:* This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A) as a rule of ''agency organization, procedure, or practice.''

*Paperwork Reduction Act:* This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal rules governing Department of Health and Human Services personnel.

*Cost/Regulatory Analysis:* In accordance with Executive Order 12291, the Secretary has determined that these amendments will not constitute a ''major'' rule and therefore are not subject to the regulatory impact and analysis requirements of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year and have certain other economic impacts.

These amendments will not have a significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

**List of Subjects in 45 CFR Part 2**

Administrative practice and procedure, Freedom of Information, Government employees.

■ Accordingly, for the reasons set forth in the preamble, 45 CFR part 2 is amended as follows:

## PART 2—[AMENDED]

■ 1. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552.

■ 2. Section 2.1 is amended by revising paragraphs (a), (b), (c), (d)(4), (d)(6), and adding Examples (1) through (5) to paragraph (d)(7) to read as follows:

### § 2.1 Scope, purpose, and applicability.

(a) This part sets forth rules to be followed when an employee or former employee of the Department of Health and Human Services (''DHHS'' or ''Department''), other than an employee of the Food and Drug Administration, is requested or subpoenaed to provide testimony in a deposition, trial, or other similar proceeding concerning information acquired in the course of performing official duties or because of such person's official capacity with DHHS. This part also sets forth procedures for the handling of subpoenas duces tecum and other requests for any document in the

possession of DHHS, other than the Food and Drug Administration, and for the processing of requests for certification of copies of documents. Separate regulations, 21 CFR part 20, govern the Food and Drug Administration, and those regulations are not affected by this part.

(b) It is the policy of the DHHS to provide information, data, and records to non-federal litigants to the same extent and in the same manner that they are *made* available to the general public *and*, when subject to the jurisdiction of a court or other tribunal presiding over non-federal party litigation, to follow all applicable procedural and substantive rules relating to the production of information, data, and records by a non-party. The availability of Department employees to testify in litigation not involving federal parties is governed by the Department's policy to maintain strict impartiality with respect to private litigants and to minimize the disruption of official duties.

(c) This part applies to state, local and tribal judicial, administrative, and legislative proceedings, and to federal judicial and administrative proceedings.

(d) This part does not apply to:

* * * * *

(4) Employees serving as expert witnesses in connection with professional and consultative services as approved outside activities in accordance with 5 CFR 2635.805 and 5 CFR 5501.106. (In cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the DHHS.)

* * * * *

(6) Any matters covered in 21 CFR part 20-,involving the Food and Drug Administration.

* * * * *

(7) * * *

*Example (1):* While on duty, an employee of the Department witnesses an incident in which a fellow employee trips on a loose piece of carpeting and sustains an injury. The injured employee brings a private tort action against the contractor installing the carpeting and the private landlord maintaining the building. The employee/witness is served with a subpoena to appear at a deposition to testify about the incident. The person seeking the testimony would not be required to obtain Agency head approval prior to requesting the testimony, because the subject of the testimony does not ''relate to'' the Department, within the meaning of § 2.1(d)(5).

*Example (2):* While on duty, an employee of the Department witnesses a mugging while looking out the window to check the weather, and then notifies the local police of what she observed. She is subsequently subpoenaed to testify in a criminal proceeding. The local prosecutor would not be required to obtain Agency head approval prior to requiring the employee to testify, because the subject of the testimony does not ''relate to'' the Department, within the meaning of § 2.1(d)(5).

*Example (3):* A nurse on duty at an Indian Health Service hospital emergency room treats a child who is brought in following a report of domestic violence. The nurse is subsequently served with a subpoena to testify in a criminal proceeding against one of the child's parents concerning the injuries to the child which he observed. The local prosecutor would be required to obtain Agency head approval prior to requiring the nurse to testify, because the subject of the testimony involves ''information acquired in the course of performing official duties or because of the person's official capacity,'' within the meaning of § 2.1(a).

*Example (4):* A personnel specialist working for the Department is subpoenaed to testify concerning the meaning of entries on time and attendance records of an employee, which the requesting party received from the employee pursuant to discovery in a personal injury action brought by the employee. The party requesting the personnel specialist to appear would be required to obtain Agency head approval prior to compelling the personnel specialist to testify, because the testimony sought involves ''information acquired in the course of performing official duties or because of the person's official capacity,'' within the meaning of § 2.1(a).

*Example (5):* A National Institutes of Health physician is subpoenaed in a private medical malpractice action to provide expert testimony in her specialty. The party requesting her testimony would be required to obtain Agency head approval prior to her testifying in response to the subpoena, because the expert testimony sought involves ''information acquired in the course of performing official duties or because of the person's official capacity,'' within the meaning of § 2.1(a).

■ 3. Section 2.2 is revised to read as follows:

**§ 2.2 Definitions.**

*Agency head* refers to the head of the relevant operating division or other major component of the DHHS, or his or her delegatee. *Agency head* for the purposes of this part means the following officials for the components indicated:

(1) Office of the Secretary—Assistant Secretary for Administration and Management;

(2) Administration on Aging—Assistant Secretary for Aging;

(3) Administration for Children and Families—Assistant Secretary for Children and Families;

(4) Agency for Healthcare Research and Quality—Administrator;

(5) Agency for Toxic Substances and Disease Registry—Administrator;

(6) Centers for Disease Control and Prevention—Director;

(7) Centers for Medicare and Medicaid Services—Administrator;

(8) Health Resources and Services Administration—Administrator;

(9) Indian Health Service—Director;

(10) National Institutes of Health—Director;

(11) Substance Abuse and Mental Health Services Administration—Administrator;

(12) Office of Inspector General—Inspector General.

Employee includes:

(1) Commissioned officers in the Public Health Service Commissioned Corps, as well as regular and special DHHS employees (except employees of the Food and Drug Administration), when they are performing the duties of their regular positions, as well as when they are performing duties in a temporary assignment at DHHS or another organization.

(2) Any employees of health insurance intermediaries and carriers performing functions under agreements entered into pursuant to sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u; *and*

(3) Current and former employees and contractors of entities covered under the Federally Supported Health Centers Assistance Act of 1992, as amended, 42 U.S.C § 233 (FSHCAA), provided that the requested testimony or information relates to the performance of medical, surgical, dental or related functions which were performed at a time when the DHHS deemed the entity to be covered by the FSHCAA.

Certify means to authenticate under seal, pursuant to 42 U.S.C 3505, official documents of the Department.

*Testify and testimony* includes both in-person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits, or other formal participation.

■ 4. Section 2.3 is revised to read as follows:

**§ 2.3 Policy on Presentation of testimony and production of documents.**

No employee or former employee of the DHHS may provide testimony or produce documents in any proceedings to which this part applies concerning information acquired in the course of performing official duties or because of the person's official relationship with the Department unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with

the request would promote the objectives of the Department.

■ 5. Section 2.4 is revised to read as follows:

**§ 2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.**

(a) All requests for testimony by an employee or former employee of the DHHS in his or her official capacity and not subject to the exceptions set forth in § 2.1(d) of this part must be addressed to the Agency head in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interest of the DHHS or the federal government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has not acted by the return date, the employee will be directed to appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

■ 6. Section 2.5 is revised to read as follows:

**§ 2.5 Subpoenas duces tecum.**

(a) Whenever a subpoena duces tecum has been served upon a DHHS employee or former employee commanding the production of any record, such person shall refer the subpoena to the Office of the General Counsel (including regional chief counsels) for a determination of the legal sufficiency of the subpoena, whether the subpoena was properly served, and whether the issuing court or other tribunal has jurisdiction over the Department.) If the General Counsel or his designee determines that the subpoena is legally sufficient, the subpoena was properly served, and the tribunal has jurisdiction, the terms of the subpoena shall be complied with unless affirmative action is taken by the Department to modify or quash the subpoena in accordance with Fed. R. Civ. P. 45 (c).

(b) If a subpoena duces tecum served upon a DHHS employee or former employee commanding the production of any record is determined by the Office of the General Counsel to be legally insufficient, improperly served, or from a tribunal not having jurisdiction, such subpoena shall be deemed a request for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure established in 45 CFR part 5.

■ 7. Section 2.6 is revised to read as follows:

**§ 2.6 Certification and authentication of records.**

Upon request, DHHS agencies will certify, pursuant to 42 U.S.C. 3505, the authenticity of copies of records that are to be disclosed. Fees for copying and certification are set forth in 45 CFR 5.43.

Dated: May 6, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–11818 Filed 5–13–03; 8:45 am]

BILLING CODE 4120–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Ch. I

**[IB Docket No. 02–18, FCC 03–63]**

## Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy Statement.

**SUMMARY:** This document is a summary of the Commission's decision to eliminate the comity-based prohibitions on call-back and the policy that allowed a foreign government or entity to make use of the enforcement mechanisms of the FCC to enforce foreign government prohibitions against U.S. carriers from offering call0singaling abroad. The FCC determined that the policy is no longer necessary in today's pro-competitive environment.

**DATES:** Effective March 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Krech, International Bureau, (202) 418–1460.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order (Order), FCC 03–63, adopted on March 24, 2003, and released on March 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the Consumer and Government Affairs Bureau's Reference Information Center, (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–63A1.pdf.* The complete text of this document also may be purchased from the Commission's copy contractor, Qualex, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20054, telephone (202) 863–2893.

### Summary of Order

1. On January 30, 2002, the Commission released a Notice of Proposed Rulemaking (67 FR 10656, March 9, 2002) to review the Commission's international call-back enforcement policy. International call-back arrangements allow foreign callers to take advantage of low U.S. international services rates, many of which are significantly lower than the rates available in their home countries. Specifically, the Commission's international call-back policy extends to the uncompleted call signaling configuration of call-back. Uncompleted call signaling involves a foreign caller who dials the call-back provider's switch in the United States, waits a predetermined number of rings, and hangs up before the switch answers. The switch then automatically returns the call, and upon completion, provides the caller in the foreign country with a U.S. dialtone.

2. In a 1994 order, the Commission authorized U.S. carriers to provide call-back service. The Commission concluded that the provision of call-back does not violate U.S. law or international law or regulations. In 1995, the Commission reconsidered its decision in light of international comity. The Commission adopted a policy prohibiting U.S. carriers from offering international call-back using the completed call signaling configuration to countries where it has been expressly prohibited. Foreign governments were invited to notify the Commission of the legality of call-back within their territory, and the Commission maintains a public file containing the submitted material from foreign governments.

3. Since adopting its call-back policy in 1995, the Commission has taken significant steps to open the U.S. international market to competition and to enhance consumer benefits on U.S. international routes. In this Order, the Commission concluded that the policy is no longer necessary in today's pro-competitive environment. Thus, the Commission decided to eliminate its comity-based call-back policy and discontinue the policy that allows a foreign government or entity to make use of the enforcement mechanisms of the Commission to prohibit the U.S.

carriers from offering one form of call-back abroad.

4. The Commission continues to maintain that its policy allowing the uncompleted call signaling configuration of call-back is consistent with international law.

5. Further, the Commission finds that this change to its policy on call-back services is also consistent with the ITU Plenipotentiary 2002 Resolution 21 and the 1994 Kyoto Declaration.

6. The Commission will continue to maintain a public file to inform call-back providers about the legality of call-back in foreign nations. Also, the FCC will continue to maintain its policies prohibiting call-back configurations that degrade the network or constitute fraudulent activity.

**Final Regulatory Flexibility Certification**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 6013612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 957, requires a final regulatory flexibility analysis in notice-and-comment proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The policy change adopted in this Order does not impose any additional compliance burden on small entities dealing with the Commission. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the policy change adopted in this Order does not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the RFA. This final certification will also be published in the **Federal Register**.

In this Order, the Commission eliminated the comity-based prohibitions on call-back and the policy that allowed a foreign government or entity to make use of the enforcement mechanisms of the FCC to enforce foreign government prohibitions against U.S. carriers from offering call-signaling aboard. After careful consideration, the Commission concluded that eliminating the policy will foster competition for both small and large entities.

The Commission does not know the precise number of small entities that may be affected by this Order because it does not maintain statistical data on the size and scope of call-back providers. However, the Commission believes that most, if not all, of the call-back providers would not be considered small entities because many of these entities are wireline carriers with more than 1500 employees (*see* NAICS Code 517110, 13 CFR parts 121–201). Thus, very few, if any, small entities would be affected by this Order. Elimination of the call-back policy will be beneficial for both large and small entities. The Commission's Order is pro-competitive and will provide, for both large and small entities, lower prices, new and better products and services, and greater consumer choices. In addition, the Commission will maintain an on-going public file to inform both large and small carriers about the legality of call-back in foreign countries. The public file will enable all entities to note which foreign governments have notified the Commission that call-back is illegal in their countries.

Therefore, we certify that eliminating the call-back policy will not have a significant economic effect on a substantial number of small entities.

**Ordering Clauses**

7. Accordingly, pursuant to sections 1, 4 (j)(–j), 201(b), 214, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)(j), 201(b), 214, 303(r), and 403, this Order *is hereby adopted.*

8. The condition placed on international Section 214 authorizations regarding the provision of international call-back services through the use of uncompleted call-signaling, *is hereby removed* from all existing Section 214 authorizations.

9. The Commission's Consumer and Government Affairs Bureau's Reference Information Center, shall send a copy of this Order including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 03–11847 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 1

**[WT Docket No. 02–57; FCC 03–79]**

## Repetitious or Conflicting Applications

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Federal Communications Commission (FCC) amends its rules to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application. This amendment simplifies and clarifies the prohibition against repetitious applications. This action is intended to promote the most efficient use of the FCC's resources by preventing the filing of repetitious applications and barring applicants from initiating reexamination of such matters within a short time after a final decision.

**DATES:** Effective June 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Peter Waltonen, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Report and Order, FCC 03–79, adopted on April 9, 2003, and released on April 16, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text also may be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In this *Report and Order,* the FCC amends § 1.937 of its rules to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application. It also streamlines rule barring repetitious applications by combining § 1.937(a) and (b). The amendment of § 1.937 will simplify and clarify prohibition against repetitious applications. The FCC believes that this action will promote the most efficient use of it's resources by

preventing the filing of such applications and barring applicants from initiating reexamination of such matters within a short time after final decision.

**Background**

2. The Commission's Rules have long prevented the filing of repetitious license applications. Prior to 1998, the rules barring repetitious license applications were set forth in separate rule parts pertaining to each of the Wireless Radio Services. These rules generally prohibited the filing of a repetitious application within twelve months of the denial or dismissal with prejudice of a substantially similar application. In 1998, the Commission consolidated its licensing rules for all Wireless Radio Services, and enacted § 1.937 to replace its prior service-specific rules on the filing of repetitious or conflicting applications. Section 1.937 provides,

(a) Where the Commission has, for any reason, dismissed an application for a new station or for any modification of services or facilities with prejudice, or revoked the license for a radio station in the Wireless Radio Services, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) If an applicant has been afforded an opportunity for a hearing with respect to an application for a new station or an enlargement of service area, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application for service of the same type to the same area by that applicant, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, until after the lapse of 12 months from the effective date of final Commission action on the original application.

(c) If an appeal has been taken from the action of the Commission denying a particular application, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing. Section 1.937 and its antecedents were adopted to achieve sound administrative process by barring applicants from immediately re-litigating matters already decided.

3. On March 20, 2002, the Commission released a *Notice of Proposed Rule Making,* 67 FR 34651, May 15, 2002, in which it proposed to amend § 1.937 to clarify that the prohibition on repetitive applications applies to all types of license applications (*i.e.*, new applications and renewal applications), and applies equally to all dispositive actions, including dismissals with prejudice, denials, and revocations. Comments were filed by the American Mobile Telecommunications Association, Inc. (AMTA). AMTA supports the Commission's effort to simplify its rules, but cautions the Commission to do so carefully so as not to apply the sanction to applications dismissed without prejudice.

**Procedural Matters**

*A. Regulatory Flexibility Act Analyses*

4. The FCC, pursuant to 5 U.S.C. 605(b) certifies that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this *Report and Order* is to prohibit the filing of applications for radio station licenses within twelve months of the denial of a substantially similar application. This change is made to promote the most efficient use of the FCC's resources by preventing the immediate filing of repetitious applications. The FCC has analyzed the information submitted during the comment period and the proposed rule change does not impose any additional compliance burden on small entities regulated by the FCC. Accordingly, we certify, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), that the rule change established in this *Report and Order* will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA. The FCC's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order,* including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. We shall also publish a copy of this certification in the **Federal Register**.

*B. Paperwork Reduction Act*

5. This *Report and Order* does not contain either a proposed or modified information collection.

**Ordering Clauses**

6. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Report and Order is hereby adopted.*

7. The rules set forth in the rule changes *will become effective* June 13, 2003.

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order* including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble the FCC amends 47 CFR part 1 as follows:

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Section 1.937 is amended by revising paragraph (a), removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

**§ 1.937 Repetitious or conflicting applications.**

(a) Where the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) [Reserved]

(c) If an appeal has been taken from the action of the Commission dismissing with prejudice or denying any application in the Wireless Radio Services, or if the application is subsequently designated for hearing, a like application for service of the same type to the same area, in whole or in

part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

* * * * *

[FR Doc. 03–11964 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

**[CC Docket No. 99–200; CC Docket No. 96–98; FCC 00–104]**

### Numbering Resource Optimization; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains a correction to a final regulation (47 CFR 52.15(f)(1)(ii)) published in the **Federal Register** on June 16, 2000 (65 FR 37703). The regulation related to the maximum amount of days that numbers previously assigned to business and residential customers could be aged. Inadvertently, the number ''360,'' instead of ''365,'' was included in that regulation as the maximum amount of days that numbers previously assigned to business customers could be aged.

**DATES:** Effective May 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gorny, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 or e-mail at *jgorny@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On June 16, 2000, the Federal Communications Commission published in the **Federal Register** (65 FR 37703) a document amending section 52.15(f) of its rules to include new information collection requirements. Inadvertently, the number ''360,'' instead of ''365,'' was placed in section 52.15(f)(1)(ii) as the maximum amount of days that a number previously assigned to a business customer could be aged. This document corrects paragraph (f)(1)(ii) of that rule.

### List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

■ Accordingly, 47 CFR part 52 is corrected by making the following correcting amendment:

## PART 52—NUMBERING

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply Secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

### § 52.15 [Corrected]

■ 2. In § 52.15, paragraph (f)(1)(ii), in the last sentence, remove the number ''360'' and add, in its place, ''365.''

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 03–11963 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Parts 255 and 399

**[Docket Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]**

**RIN 2105–AC65**

## Computer Reservations System (CRS) Regulations; Statements of General Policy

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of public hearing.

**SUMMARY:** On Thursday, May 22, 2003, at 9:30 a.m., the Department will conduct a public hearing on its pending rulemaking on computer reservations systems (CRSs). The public hearing will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

**DATES:** The hearing will be held on Thursday, May 22, 2003 at 9:30 a.m. Notices from those who wish to participate in the hearing must be submitted as soon as possible.

**ADDRESSES:** The hearing will be held at the Mariott at Metro Center, 775, 12th St. NW., Washington, DC. Notices of intent to participate must be marked with the docket number, OST–97–2881, and should be submitted by only one of the following means:

(1) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(2) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(3) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:** The Department is conducting a rulemaking to determine whether its rules governing CRS operations, 14 CFR Part 255, remain necessary and, if so, whether the current rules are effective. We issued a notice of proposed rulemaking that set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366 (November 15, 2002). We have given all interested persons the opportunity to file comments and reply comments and established a lengthy comment period totaling more than six months. However, we have decided that a public hearing where interested persons may express their views on the major issues would also be useful. We are therefore holding such a hearing on May 22. We have chosen to hold the hearing before the end of the comment period, which we have extended to June 9, so that interested persons can address points raised at the hearing in their reply comments. 98 FR 24896 (May 9, 2003). In addition, holding the hearing before the end of the comment period will enable us to invite both participants in the hearing and other commenters to discuss specific points in their reply comments.

The presiding official will be Michael Reynolds, the Deputy Assistant Secretary for Aviation and International Affairs. Participants will have the opportunity to present a statement of their views on the issues. Our presiding officer may ask questions on factual, policy, and legal issues. If a participant appearing on behalf of a firm or organization is not familiar with all of the issues, that person can bring someone who can answer questions. The hearing will not serve as a forum where speakers may cross-examine other commenters or Department officials and staff members. We have previously explained why a hearing with cross-examination would be neither particularly useful nor consistent with our intent to complete this rulemaking as promptly as possible. 68 FR 12883, 12884 (March 18, 2003).

Persons who wish to speak at the hearing should submit requests to us as soon as possible in Docket OST–97–2881, the principal docket for this proceeding. To help us organize the hearing, each notice should state generally which issues the person plans to address. Each person should also provide an E-mail address or phone number so that if necessary we may provide additional information on procedures during the last few days before the hearing.

In view of our decision to limit the hearing to one day and the likelihood that a number of persons will wish to speak, we are limiting the time for each speaker and the number of persons who may speak. We currently plan to allow people to speak on a first-come, first-served basis, based on the time of our receipt of their submission of their notice of their wish to participate. Only one person from each individual firm, trade association, or other group will be allowed to speak, except as necessary to answer questions from the presiding official. To ensure a balance of views and interests, we may choose to include some persons with divergent views in addition to the first requesters. Persons who are unable to speak at the hearing may, of course, present their views on the issues (and on statements made at the hearing) in their reply comments.

After we obtain the notices from persons wishing to participate, we will provide more detailed information on the procedures for the hearing and the time available for each speaker.

The hearing will be most beneficial to us if participants focus on the following specific issues:

Whether rules governing system operations are still necessary, and, if so, whether they should cover all systems, only systems owned or marketed by airlines, or both systems and Internet distribution channels that may be comparable to the systems.

Whether the mandatory participation rule and the rule prohibiting discriminatory booking fees (sections 255.6(a) and 255.7 of the current rules) should be eliminated or modified.

Whether the rules should restrict which marketing and booking data generated by the systems can be obtained by airlines.

Whether and how rules should restrict the systems' travel agency contract practices.

Each participant at the hearing, however, may choose which issues to discuss and may address other issues if he or she wishes.

Seating is restricted to about 150 people. If more people appear than can be accommodated, the first ones to arrive will be seated. We plan to prepare a record of the hearing and place it in the docket for this rulemaking, so that anyone who is unable to attend the hearing can learn what was said.

Any person who wishes to have a sign language interpreter present at the hearing should so advise us by Monday, May 19, so that we may make the necessary arrangements.

Finally, Sabre on its own initiative has filed a document stating its views on when a hearing should be held and how it should be organized. Other commenters have filed responses supporting or opposing Sabre's proposals. We have reviewed these documents and determined that the hearing procedures and timing set forth in this notice will best suit our purpose of supplementing the record without delaying a final decision. The opportunity to submit comments and reply comments will give all interested persons the ability to set forth in detail their positions on the factual, legal, and policy issues presented in this proceeding. As some of the commenters requested, however, we have extended the reply comment period to June 9. That will give interested persons additional time for their preparation of reply comments and their participation in the hearing.

Issued in Washington, DC, on May 9, 2003.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 03–12072 Filed 5–12–03; 2:32 pm]

BILLING CODE 4910–62–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–113007–99]**

**RIN 1545–AU98**

## Obligations of States and Political Subdivisions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations on the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments. These regulations affect issuers of tax-exempt bonds and provide needed guidance for applying the private activity bond restrictions to refunding issues. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by August 19, 2003. Outlines of topics to be discussed at the public hearing scheduled for September 9, 2003, at 10 a.m., must be received by August 19, 2003.

**ADDRESSES:** Send submissions to CC:PA:RU (REG–113007–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–113007–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Gary W. Bornholdt, (202) 622–3980; concerning submissions and the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

In general, under section 103 of the Internal Revenue Code (Code), gross income does not include the interest on any State or local bond. However, this exclusion does not apply to private activity bonds (other than certain qualified bonds). Section 141(a) defines a private activity bond as any bond issued as part of an issue that meets either (1) the private business use test in section 141(b)(1) and the private security or payment test in section 141(b)(2) (the private business tests) or (2) the private loan financing test in section 141(c) (the private business tests and the private loan financing test are referred to collectively as the ''private activity bond tests'').

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6) defines private business use as use directly or indirectly in a trade or business that is carried on by any person other than a governmental unit.

The private security or payment test is met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) to be derived from payments, whether or not to the issuer, in respect of property, or borrowed money, used or to be used for a private business use.

The private loan financing test is satisfied if more than the lesser of $5 million or 5 percent of the proceeds of an issue are to be used to make or finance loans to persons other than governmental units.

In 1994, proposed regulations (FI–72–88) were published in the **Federal Register** (59 FR 67658) (the 1994 Proposed Regulations) to provide guidance under the Code with respect to the application of the private activity bond tests. Generally, the 1994 Proposed Regulations provide that the private business use of a facility is equal to the greatest percentage of private business use of that facility for any one year period during the term of the bonds. The amount of private security or private payments is determined by comparing the present value of the private security or private payments to the present value of the debt service to be paid over the term of the issue, using the bond yield as the discount rate.

With respect to refunding issues, the 1994 Proposed Regulations provide that the determination of whether a refunding issue satisfies either the private business tests or the private loan financing test is made without regard to whether the prior issue satisfied those tests. In general, under the 1994 Proposed Regulations, the private business tests and the private loan financing test are applied to a refunding issue by treating the proceeds of the refunding issue as used for the same purposes as the proceeds of the prior issue, but disregarding any use of the property financed with the prior issue that occurred before the issue date of the refunding issue. In addition, in applying the private business tests to a refunding issue under the 1994 Proposed Regulations, an issuer may treat the refunding issue as a continuation of the prior issue.

On January 16, 1997, final regulations (TD 8712) relating to the definition of private activity bond and related rules under sections 103, 141, 142, 144, 145, 147, 148, and 150 were published in the **Federal Register** (62 FR 2275) (the Final Regulations). Under the Final Regulations, the amount of private business use of property financed by an issue is equal to the average percentage of private business use of that property during a defined measurement period. The measurement period begins on the later of the issue date of the issue or the

date that the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates). The Final Regulations retain the basic approach in the 1994 Proposed Regulations relating to the measurement of private security and private payments.

The Final Regulations reserve § 1.141–13 for rules regarding the application of the private business tests and the private loan financing test to refunding issues. This document amends the Income Tax Regulations (26 CFR part 1) under section 141 by proposing rules on the application of the private business tests and the private loan financing test to refunding issues. This document also amends the Income Tax Regulations under sections 145, 149 and 150 by proposing rules on certain related matters. These regulations are published as proposed regulations (the proposed regulations) to provide an opportunity for public review and comment.

**Explanation of Provisions**

*A. Application of Private Activity Bond Tests to Refunding Issues*

1. In General

The proposed regulations provide that, in general, a refunding issue and a prior issue are tested separately under section 141. Thus, the determination of whether a refunding issue consists of private activity bonds generally does not depend on whether the prior issue consists of private activity bonds.

The proposed regulations apply to determine whether a refunding issue satisfies the private business tests or the private loan financing test, but do not impact the methodology used to determine whether the prior issue satisfies those tests. For example, following a refunding, the private business use test continues to apply to a prior issue based on the measurement period for the prior issue.

2. Allocation of Proceeds

The proposed regulations provide that, in applying the private business tests and the private loan financing test to a refunding issue, the proceeds of the refunding issue are allocated to the same purpose investments (including any private loan under section 141(c)) and expenditures as the proceeds of the prior issue.

3. Measurement of Private Business Use

The proposed regulations generally provide that the amount of private business use of a refunding issue is determined based on the separate measurement period for the refunding issue under § 1.141–3(g) (for example, without regard to any private business use that occurred before the issue date of the refunding issue). Thus, for instance, if an issuer refunds a taxable bond or an exempt facility bond, any private business use of the refinanced facilities before the issue date of the refunding issue is disregarded in applying the private business use test to the refunding issue.

In the case of a refunding issue that refunds a prior issue of governmental bonds, however, the amount of private business use is generally determined based on a combined measurement period. For purposes of the proposed regulations, a governmental bond is any bond that, when issued, purported to be either a governmental bond, as defined in § 1.150–1(b), or a qualified 501(c)(3) bond, as defined in section 145(a). The combined measurement period is the period that begins on the first day of the measurement period (as defined in § 1.141–3(g)) for the prior issue (or the first issue of governmental bonds in the case of a series of refundings of governmental bonds) and ends on the last day of the measurement period for the refunding issue.

As an alternative to the combined measurement period approach, the proposed regulations permit issuers to measure private business use based on the separate measurement period of the refunding issue, but only if the prior issue of governmental bonds does not satisfy the private business use test during a shortened measurement period. The shortened measurement period begins on the first day of the measurement period of the prior issue (or the first issue of governmental bonds in the case of a series of refundings of governmental bonds) and ends on the issue date of the refunding issue. Whether a prior issue satisfies the private business use test during the shortened measurement period is determined based on the actual use of proceeds, without regard to the reasonable expectations test of § 1.141–2(d).

4. Measurement of Private Security and Private Payments

If the amount of private business use is determined based on the separate measurement period for the refunding issue, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue as a separate issue. On the other hand, if the amount of private business use is determined based on a combined measurement period, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue and all earlier issues taken into account in determining the combined measurement period as a combined issue. The proposed regulations contain specific rules for determining the present value of the debt service on, and the private security and private payments allocable to, a combined issue.

The proposed regulations also permit an issuer to use the yield on a prior issue of governmental bonds to determine the present value of private security or private payments under arrangements that were not entered into in contemplation of the refunding issue. For this purpose, any arrangement that was entered into more than one year before the issue date of the refunding issue will be treated as not entered into in contemplation of the refunding issue.

5. Multipurpose Issue Allocations

Section 1.148–9(H) permits an issuer to treat the portion of a multipurpose issue allocable to a separate purpose as a separate issue for certain of the arbitrage provisions of section 148. The proposed regulations allow an issuer to apply § 1.148–9(h) to a multipurpose issue for certain purposes under section 141. An allocation will not be reasonable for this purpose if it achieves more favorable results under section 141 than could be achieved with actual separate issues. In addition, allocations under the proposed regulations and § 1.148–9(h) must be consistent for purposes of sections 141 and 148. The proposed regulations do not permit allocations for purposes of section 141(c)(1) (relating to the private loan financing test) or section 141(d)(1) (relating to certain restrictions on acquiring nongovernmental output property).

6. Application of Reasonable Expectations Test to Certain Refunding Bonds

Section 1.141–2(d) of the Final Regulations provides that an issue consists of private activity bonds if the issuer (1) reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test, or (2) takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the

private loan financing test to be satisfied. In general, a deliberate action is any action taken by the issuer that is within its control.

The proposed regulations provide that an action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of § 1.141–2(d) if (1) the action is not a deliberate action within the meaning of § 1.141–2(d)(3), and (2) the weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

*B. Treatment of Issuance Costs Financed by Prior Issue of Qualified 501(c)(3) Bonds*

Under the Final Regulations, the use of proceeds of an issue of qualified 501(c)(3) bonds to pay issuance costs of the issue is treated as a private business use. The proposed regulations provide that, solely for purposes of applying the private business use test to a refunding issue, the use of proceeds of the prior issue (or any earlier issue in a series of refundings) to pay issuance costs of the prior issue (or the earlier issue) is treated as a government use.

*C. Limitation on Advance Refundings of Private Activity Bonds*

Under section 149(d)(2), interest on a bond is not excluded from gross income if any portion of the issue of which the bond is a part is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). The proposed regulations provide that, for purposes of section 149(d)(2), the term private activity bond includes a qualified bond described in section 141(e) (other than a qualified 501(c)(3) bond), regardless of whether the refunding issue consists of private activity bonds under the proposed regulations. The proposed regulations also provide that, for purposes of section 149(d)(2), the term private activity bond does not include a taxable bond.

**Proposed Effective Date**

The proposed regulations will apply to bonds that are (1) sold on or after the date of publication of final regulations under § 1.141–13 in the **Federal Register** and (2) subject to the Final Regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 9, 2003, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by August 19, 2003 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by August 19, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the application of the private loan financing test to refunding issues.

**Drafting Information**

The principal authors of these regulations are Bruce M. Serchuk and Gary W. Bornholdt, Office of Chief Counsel (Tax-exempt and Government Entities), Internal Revenue Service and Stephen J. Watson, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

2. Section 1.141–0 is amended by adding entries to the table in numerical order for §§ 1.141–13 and 1.141–15(j) to read as follows:

**§ 1.141–0 Table of contents**

* * * * *

**§ 1.141–13 Refunding Issues.**

(a) In general.

(b) Application of private business use test and private loan financing test.

(1) Allocation of proceeds.

(2) Determination of amount of private business use.

(c) Application of private security or payment test.

(1) Separate issue treatment.

(2) Combined issue treatment.

(3) Special rule for arrangements not entered into in contemplation of the refunding issue.

(d) Multipurpose issue allocations.

(1) In general.

(2) Exceptions.

(e) Application of reasonable expectations test to certain refunding bonds.

(f) Examples.

* * * * *

**§ 1.141–15 Effective dates.**

* * * * *

(j) Effective dates for certain regulations relating to refundings.

* * * * *

3. In § 1.141–1, paragraph (b) is amended by revising the definition of governmental bond to read as follows:

**§ 1.141–1 Definitions and rules of general application.**

* * * * *

*Governmental bond* has the same meaning as in § 1.150–1(b), except that, for purposes of § 1.141–13, governmental bond is defined in § 1.141–13(b)(2)(iv).

* * * * *

4. Section 1.141–13 is added to read as follows:

**§ 1.141–13 Refunding Issues**

(a) *In general.* Except as provided in this section, a refunding issue and a

prior issue are tested separately under section 141. Thus, the determination of whether a refunding issue consists of private activity bonds generally does not depend on whether the prior issue consists of private activity bonds.

(b) *Application of private business use test and private loan financing test*— (1) *Allocation of proceeds.* In applying the private business use test and the private loan financing test to a refunding issue, the proceeds of the refunding issue are allocated to the same expenditures and purpose investments as the proceeds of the prior issue.

(2) *Determination of amount of private business use*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of private business use of a refunding issue is determined under § 1.141–3(g), based on the measurement period for that issue (for example, without regard to any private business use that occurred prior to the issue date of the refunding issue).

(ii) *Refundings of governmental bonds.* In applying the private business use test to a refunding issue that refunds a prior issue of governmental bonds, the amount of private business use of the refunding issue is the amount of private business use—

(A) During the combined measurement period; or

(B) At the option of the issuer, during the period described in paragraph (b)(2)(i) of this section, but only if, without regard to the reasonable expectations test of § 1.141–2(d), the prior issue does not satisfy the private business use test, based on a measurement period that begins on the first day of the combined measurement period and ends on the issue date of the refunding issue.

(iii) *Combined measurement period.* For purposes of this section, the *combined measurement period* is the period that begins on the first day of the measurement period (as defined in § 1.141–3(g)) for the prior issue (or, in the case of a series of refundings of governmental bonds, the first issue of governmental bonds in the series) and ends on the last day of the measurement period for the refunding issue.

(iv) *Governmental bond.* For purposes of this section, the term governmental bond means any bond that, when issued, purported to be a governmental bond, as defined in § 1.150–1(b), or a qualified 501(c)(3) bond, as defined in section 145(a).

(v) *Special rule for refundings of qualified 501(c)(3) bonds with governmental bonds.* For purposes of applying this paragraph (b)(2) to a refunding issue that refunds a qualified 501(c)(3) bond, any use of the property refinanced by the refunding issue before the issue date of the refunding issue by a 501(c)(3) organization with respect to its activities that do not constitute an unrelated trade or business under section 513(a) is treated as government use.

(c) *Application of private security or payment test*—(1) Separate issue treatment. If the amount of private business use of a refunding issue is determined based on the measurement period for that issue in accordance with paragraph (b)(2)(i) or (b)(2)(ii)(B) of this section, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue as a separate issue.

(2) *Combined issue treatment.* If the amount of private business use of a refunding issue is determined based on the combined measurement period for that issue in accordance with paragraph (b)(2)(ii)(A) of this section, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue and all earlier issues taken into account in determining the combined measurement period as a combined issue. For this purpose, the present value of the private security and private payments is compared to the present value of the debt service on the combined issue (other than debt service paid with proceeds of any refunding bond). Present values are computed as of the issue date of the earliest issue taken into account in determining the combined measurement period (the earliest issue). Except as provided in paragraph (c)(3) of this section, present values are determined by using the yield on the combined issue as the discount rate. The yield on the combined issue is determined by taking into account payments on the refunding issue and all earlier issues taken into account in determining the combined measurement period (other than payments made with proceeds of any refunding bond), and based on the issue price of the earliest issue. In the case of a partial refunding, the unrefunded debt service is not taken into account in determining the yield on the combined issue.

(3) *Special rule for arrangements not entered into in contemplation of the refunding issue.* In applying the private security or payment test to a refunding issue that refunds a prior issue of governmental bonds, the issuer may use the yield on the prior issue to determine the present value of private security and private payments under arrangements that were not entered into in contemplation of the refunding issue. For this purpose, any arrangement that was entered into more than 1 year before the issue date of the refunding issue is treated as not entered into in contemplation of the refunding issue.

(d) *Multipurpose issue allocations*— (1) *In general.* For purposes of section 141, unless the context clearly requires otherwise, § 1.148–9(h) applies to allocations of multipurpose issues (as defined in § 1.148–1(b)), including allocations involving the refunding purposes of the issue. An allocation is not reasonable under this paragraph (d) if it achieves more favorable results under section 141 than could be achieved with actual separate issues. Allocations made under this paragraph (d) and § 1.148–9(h) must be consistent for purposes of section 141 and section 148.

(2) *Exceptions.* This paragraph (d) does not apply for purposes of sections 141(c)(1) and 141(d)(1).

(e) *Application of reasonable expectations test to certain refunding bonds.* An action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of § 1.141–2(d) if—

(1) The action is not a deliberate action within the meaning of § 1.141–2(d)(3); and

(2) The weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

(f) *Examples.* The following examples illustrate the application of this section.

*Example 1. Measuring private business use.* In 2002, Authority A issues tax-exempt bonds that mature in 2032 to acquire an office building. The measurement period for the 2002 bonds under § 1.141–3(g) is 30 years. At the time A acquires the building, it enters into a 10-year lease with a nongovernmental person under which the nongovernmental person will use 5 percent of the building in its trade or business during each year of the lease term. In 2007, A issues bonds to refund the 2002 bonds. The 2007 bonds mature on the same date as the 2002 bonds and have a measurement period of 25 years under § 1.141–3(g). Under paragraph (b)(2)(ii)(A) of this section, the amount of private business use of the proceeds of the 2007 bonds is 1.67 percent, which equals the amount of private business use during the combined measurement period (5 percent of 1/3rd of the 30-year combined measurement period). In addition, the 2002 bonds do not satisfy the private business use test, based on a measurement period beginning on the first day of the measurement period for the 2002 bonds and ending on the issue date of the 2007 bonds, because only 5 percent of the proceeds of the 2002 bonds are used for a private business use during that period.

Thus, under paragraph (b)(2)(ii)(B) of this section, A may treat the amount of private business use of the 2007 bonds as 1 percent (5 percent of 1/5th of the 25-year measurement period for the 2007 bonds). The 2007 bonds do not satisfy the private business use test.

*Example 2. Combined issue yield computation.* (i) On January 1, 2000, County B issues 20-year bonds with an interest rate of 8% and an issue price of $100 million. The debt service payments on the 2000 bonds are as follows:

| Date | Debt service |
|---|---|
| 1/1/01 | $10,306,800 |
| 1/1/02 | 10,306,800 |
| 1/1/03 | 10,306,800 |
| 1/1/04 | 10,306,800 |
| 1/1/05 | 10,306,800 |
| 1/1/06 | 10,306,800 |
| 1/1/07 | 10,306,800 |
| 1/1/08 | 10,306,800 |
| 1/1/09 | 10,306,800 |
| 1/1/10 | 10,306,800 |
| 1/1/11 | 10,306,800 |
| 1/1/12 | 10,306,800 |
| 1/1/13 | 10,306,800 |
| 1/1/14 | 10,306,800 |
| 1/1/15 | 10,306,800 |
| 1/1/16 | 10,306,800 |
| 1/1/17 | 10,306,800 |
| 1/1/18 | 10,306,800 |
| 1/1/19 | 10,306,800 |
| 1/1/20 | 10,306,800 |
| | $206,136,000 |

(ii) On January 1, 2005, B issues 15-year bonds to refund all of the outstanding 2000 bonds. The 2005 bonds have an interest rate of 6% and an issue price of $93,250,000. The debt service payments on the 2005 bonds are as follows:

| Date | Debt service |
|---|---|
| 1/1/06 | $9,657,800 |
| 1/1/07 | 9,657,800 |
| 1/1/08 | 9,657,800 |
| 1/1/09 | 9,657,800 |
| 1/1/10 | 9,657,800 |
| 1/1/11 | 9,657,800 |
| 1/1/12 | 9,657,800 |
| 1/1/13 | 9,657,800 |
| 1/1/14 | 9,657,800 |
| 1/1/15 | 9,657,800 |
| 1/1/16 | 9,657,800 |
| 1/1/17 | 9,657,800 |
| 1/1/18 | 9,657,800 |
| 1/1/19 | 9,657,800 |
| 1/1/20 | 9,657,800 |
| | $144,867,000 |

(iii) For purposes of determining the amount of private security and private payments with respect to the 2005 bonds, the 2005 bonds and the 2000 bonds are treated as a combined issue under paragraph (c)(2) of this section. The yield on the combined issue is 7.5036 percent per year compounded semiannually, computed as follows:

| Date | Unrefunded new money debt service | Refunding debt service | Total debt service | Present value on 1/1/00 |
|---|---|---|---|---|
| 1/1/00 | | | | ($100,000,000.00) |
| 1/1/01 | $10,306,800 | | $10,306,800 | 9,574,857.71 |
| 1/1/02 | 10,306,800 | | 10,306,800 | 8,894,894.64 |
| 1/1/03 | 10,306,800 | | 10,306,800 | 8,263,219.48 |
| 1/1/04 | 10,306,800 | | 10,306,800 | 7,676,403.02 |
| 1/1/05 | 10,306,800 | | 10,306,800 | 7,131,259.62 |
| 1/1/06 | | $9,657,800 | 9,657,800 | 6,207,676.64 |
| 1/1/07 | | 9,657,800 | 9,657,800 | 5,766,835.53 |
| 1/1/08 | | 9,657,800 | 9,657,800 | 5,357,300.97 |
| 1/1/09 | | 9,657,800 | 9,657,800 | 4,976,849.70 |
| 1/1/10 | | 9,657,800 | 9,657,800 | 4,623,416.36 |
| 1/1/11 | | 9,657,800 | 9,657,800 | 4,295,082.25 |
| 1/1/12 | | 9,657,800 | 9,657,800 | 3,990,064.95 |
| 1/1/13 | | 9,657,800 | 9,657,800 | 3,706,708.59 |
| 1/1/14 | | 9,657,800 | 9,657,800 | 3,443,474.92 |
| 1/1/15 | | 9,657,800 | 9,657,800 | 3,198,934.91 |
| 1/1/16 | | 9,657,800 | 9,657,800 | 2,971,761.03 |
| 1/1/17 | | 9,657,800 | 9,657,800 | 2,760,720.01 |
| 1/1/18 | | 9,657,800 | 9,657,800 | 2,564,666.17 |
| 1/1/19 | | 9,657,800 | 9,657,800 | 2,382,535.18 |
| 1/1/20 | | 9,657,800 | 9,657,800 | 2,213,338.32 |
| | $51,534,000 | $144,867,000 | $196,401,000 | 0.00 |

*Example 3. Refunding taxable bonds and qualified bonds.* (i) In 1999, City C issues taxable bonds to finance the construction of a facility for the furnishing of water. The bonds are secured by revenues from the facility. The facility is managed pursuant to a management contract with a nongovernmental person that gives rise to private business use. In 2007, C terminates the management contract and takes over the operation of the facility. In 2009, C issues bonds to refund the 1999 bonds. On the issue date of the 2009 bonds, C reasonably expects that the facility will not be used for a private business use during the term of the 2009 bonds. In addition, during the term of the 2009 bonds, the facility is not used for a private business use. Under paragraph (b)(2)(i) of this section, the 2009 bonds do not satisfy the private business use test because the amount of private business use is based on the measurement period for those bonds and therefore does not take into account any private business use that occurred pursuant to the management contract.

(ii) The facts are the same as in paragraph (i) of this *Example 3,* except that the 1999 bonds are issued as exempt facility bonds under section 142(a)(4). The 2009 bonds do not satisfy the private business use test.

*Example 4. Multipurpose issue.* In 2001, State D issues bonds to finance the construction of two office buildings, Building 1 and Building 2. D expends an equal amount of the proceeds on each building. D enters into arrangements that result in 8 percent of Building 1 and 12 percent of Building 2 being used for a private business use during the measurement period under § 1.141–3(g). These arrangements result in a total of 10 percent of the proceeds of the 2001 bonds being used for a private business use. In 2006, D purports to allocate, under paragraph (d) of this section, an equal amount of the outstanding 2001 bonds to Building 1 and Building 2. D also enters into another private business use arrangement with respect to Building 1 that results in 10 percent of Building 1 being used for a private business use during the measurement period. An allocation is not reasonable under paragraph (d) of this section if it achieves more favorable results under section 141 than could be achieved with actual separate

issues. D's allocation is unreasonable because, if permitted, would result in more that 10 percent of the proceeds of the 2001 bonds being used for a private business use.

5. Section 1.141–15 is amended by revising paragraphs (b)(1), (c), (d) and (h) and adding paragraph (j) to read as follows:

**§ 1.141–15 Effective dates.**

* * * * *

(b) *Effective Dates*—(1) *In general.* Except as otherwise provided in this section, §§ 1.141–0 through 1.141–6(a), 1.141–9 through 1.141–12, 1.141–14, 1.145–1 through 1.145–2(c), and the definition of bond documents contained in § 1.150–1(b) (the 1997 regulations contained in 26 CFR Part 1, revised as of April 1, 2003) apply to bonds issued on or after May 16, 1997, that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

* * * * *

(c) *Refunding bonds.* Except as otherwise provided in this section, the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003) do not apply to any bonds issued on or after May 16, 1997, to refund a bond to which those regulations do not apply unless—

(1) The refunding bonds are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602); and

(2)(i) The weighted average maturity of the refunding bonds is longer than—

(A) The weighted average maturity of the refunded bonds; or

(B) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(ii) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive application of regulations.* Except as provided in paragraph (e) of this section, the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003) may be applied in whole, but not in part, to actions taken before February 23, 1998, with respect to—

(1) Bonds that are outstanding on May 16, 1997 and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997 that are subject to 141.

* * * * *

(h) *Permissive retroactive application.* Except as provided in paragraphs (d), (e) or (i) of this section, §§ 1.141–1 through 1.141–6(a), 1.141–7 through 1.141–14, 1.145–1 through 1.145–2, 1.149(d)–1(g), 1.150–1(a)(3), the definition of bond documents contained in § 1.150–1(b) and § 1.150–1(c)(3)(ii) may be applied by issuers in whole, but not in part, to—

(1) Outstanding bonds that are sold before the date of publication of final regulations in the **Federal Register**, and subject to section 141; or

(2) Refunding bonds that are sold on or after the date of publication of final regulations in the **Federal Register**, and subject to section 141.

* * * * *

(j) *Effective dates for certain regulations relating to refundings.* Except as otherwise provided in this section, §§ 1.141–13, 1.145–2(d), 1.149(d)–1(g), 1.150–1(a)(3) and 1.150–1(c)(3)(ii) apply to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003).

6. Section 1.145–0 is amended by adding an entry to the table in numerical order for § 1.145–2(d) to read as follows:

**§ 1.145–0 Table of contents.**

* * * * *

**§ 1.145–2 Application of private activity bond regulations.**

* * * * *

(d) Issuance costs financed by prior issue.

* * * * *

7. In § 1.145–2, paragraph (d) is added to read as follows:

**§ 1.145–2 Application of private activity bond regulations.**

* * * * *

(d) *Issuance costs financed by prior issue.* Solely for purposes of applying the private business use test to a refunding issue under § 1.141–13, the use of proceeds of the prior issue (or any earlier issue in a series of refundings) to pay issuance costs of the prior issue (or the earlier issue) is treated as a government use.

8. Section 1.149(d)–1 is amended by revising paragraph (g) and adding paragraph (h) to read as follows:

**§ 1.149(d)–1 Limitations on advance refundings.**

* * * * *

(g) *Limitation on advance refundings of private activity bonds.* Under section 149(d)(2) and this section, interest on a bond is not excluded from gross income if any portion of the issue of which the bond is a part is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). For this purpose, the term private activity bond—

(1) Includes a qualified bond described in section 141(e) (other than a qualified 501(c)(3) bond), regardless of whether the refunding issue consists of private activity bonds under § 1.141–13; and

(2) Does not include a taxable bond.

(h) *Effective dates*—(1) *In general.* Except as provided in this paragraph (h), this section applies to bonds issued after June 30, 1993, to which §§ 1.148–1 through 1.148–11 apply, including conduit loans that are treated as issued after June 30, 1993, under paragraph (b)(4) of this section. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(2) *Special effective date for paragraph (b)(3).* Paragraph (b)(3) of this section applies to any advance refunding issue issued after May 28, 1991.

(3) *Special effective date for paragraph (f)(3).* Paragraph (f)(3) of this section applies to bonds sold on or after July 8, 1997 and to any issue to which the election described in § 1.148–11(b)(1) is made. See § 1.148–11A(i) for rules relating to certain bonds sold before July 8, 1997.

(4) *Special effective date for paragraph (g).* See § 1.141–15 for the applicability date of paragraph (g) of this section.

9. Section 1.150–1 is amended by revising paragraphs (a)(3) and (c)(3)(ii) to read as follows:

**§ 1.150–1 Definitions.**

(a) * * *

(3) *Exceptions to general effective date. See* § 1.141–15 for the applicability date of the definition of bond documents contained in paragraph (b) of this section and the effective date of paragraph (c)(3)(ii) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) *Exceptions.* This paragraph (c)(3) does not apply for purposes of sections 141, 144(a), 148, 149(d) and 149(g).

* * * * *

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 03–11926 Filed 5–9–03; 11:31 am]

BILLING CODE 4830–01–P

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

**RIN 1512–AC60**

**[TTB Notice No. 8]**

## San Bernabe and San Lucas Viticultural Areas (2001R–170P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes the establishment of the San Bernabe viticultural area (the proposed area) and the realignment of the adjacent San Lucas viticultural area. Both viticultural areas exist entirely within the Central Coast and Monterey viticultural areas and within Monterey County, California. The proposed San Bernabe viticultural area consists of 24,796 acres that the petitioner states are predominantly rolling hills of sandy soils. The realignment would transfer 1,281 acres of rolling, sandy land from the northwest San Lucas area to the south San Bernabe area. This proposed realignment would avoid splitting a large vineyard between two viticultural areas and prevent overlapping of viticultural areas. Claude Hoover of Delicato Family Vineyards, Monterey, California, filed both petitions.

**DATES:** We must receive written comments by July 14, 2003.

**ADDRESSES:** You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 8);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov* (An online comment form is posted with this notice on our Web site).

You may view copies of this notice and any comments received at *http://www.ttb.gov* or by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone 202–927–7890.

*See* the Public Participation section of this notice for specific instructions and requirements, and for information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** N. A. Sutton, Specialist, Regulations and Procedures Division (California), TTB, PO Box 4644, Petaluma, California 94955–4644; telephone 415–271–1254.

**SUPPLEMENTARY INFORMATION:**

### TTB Background

*What Is the Impact of the Homeland Security Act on Rulemaking?*

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

### Background on Viticultural Areas

*What Is TTB's Authority To Establish a Viticultural Area?*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes TTB to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

*What Is the Definition of an American Viticultural Area?*

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographical origin.

*What Is Required To Establish a Viticultural Area?*

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence of local and/or national name recognition of the proposed viticultural area as the area specified in the petition;
- Historical or current evidence that the proposed viticultural area's boundaries are as specified in the petition;
- Evidence of geographical characteristics, such as climate, soil, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features reflected on United States Geological Survey (USGS) approved maps of the largest applicable scale; and
- A copy (or copies) of the USGS-approved map(s) with the boundaries prominently marked.

*Will This Proposal Impact on Current Wine Labels?*

If this proposed viticultural area is established, bottlers who use brand names like the name of the viticultural area may be affected. If you do use a brand name like San Bernabe, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area.

If the wine is not eligible to use the appellation, you must change the brand name of that wine and obtain approval of a new label. Different rules apply if you label a wine in this category with a label approved before July 7, 1986. *See* 27 CFR 4.39(i) for details. Additionally, where the name of a viticultural area is presented on a wine label in a context other than as the claimed appellation of origin, then the use of such a viticultural area name is subject to the general prohibitions against misleading representation in part 4 of the regulations.

### San Bernabe and San Lucas Petitions

We received two petitions proposing (1) the establishment of a new viticultural area to be named San Bernabe and (2) a realignment of the adjacent, established San Lucas viticultural area. Both areas are located in central Monterey County, California. The proposed San Bernabe viticultural area encompasses 24,796 acres, of which 7,636 acres are vineyard. The petitioned realignment of the San Lucas viticultural area would transfer 1,281 acres to the proposed San Bernabe

viticultural area, create a common boundary line between the two areas, and avoid overlapping of the viticultural areas. Claude Hoover of Delicato Family Vineyards, Monterey, California, filed both petitions.

*What Name Evidence Related to San Bernabe Has Been Provided?*

According to the 1991 publication of ''Monterey County Place Names, A Geographical Dictionary,'' by Donald Thomas Clark, Father Pedro Font, a member of the California expedition of Spanish explorer DeAnza, documented the initial reference to San Bernabe on March 8, 1776. He wrote in his diary, ''we had passed a spur of the Sierra de Santa Lucia * * * The road at first runs through a spur of mountains, until it descends to a wide valley called the Cañada de San Bernabe.'' Eventually the area became known as ''Rancho San Bernabe.''

The Thompson Canyon and San Lucas USGS quadrangle maps prominently identify the area as San Bernabe. The relevant Thomas Guide labels this area Rancho San Bernabe. The TopoZone map Web site identifies this rural area as San Bernabe.

The 13,000-acre San Bernabe vineyard, with 7,636 acres planted to grapes, sits almost entirely within the proposed new and realignment viticultural areas. The petitioner explains that the small portion of the vineyard estate outside these proposed boundaries is unplanted and unsuitable for grape cultivation. The San Bernabe vineyard estate is recognized as the largest continuous vineyard estate under a single ownership in the free world, according to the petitioner.

*What Historical/Current Evidence Supports the Boundaries as Specified?*

According to the 1991 ''Monterey County Place Names, A Geographical Dictionary,'' the San Bernabe area land grants were given to Jesus Molina in 1841 and in 1842 to Petronillo Rios. In 1842 Rios bought the Molina land grant and the Rios family began raising cattle and crops on this land and producing wine from their own grapes. The Rios ranch, known as Rancho San Bernabe, eventually became a successful vineyard and wine producing property.

According to the petitioner, in the 1970s Prudential-Southdown purchased the San Bernabe acreage for vineyard development. The petitioner explains that in 1988 the Delicato family bought the San Bernabe vineyard for its premium and super-premium wine market potential. The San Bernabe vineyard estate occupies 52 percent of the proposed viticultural area of the same name.

The petitioner defines the proposed San Bernabe viticultural area boundaries on USGS maps by connecting benchmarks, mountain peaks, and other geographical features with straight lines and by using several existing roads that follow the hilly terrain and soil changes.

The proposed San Bernabe viticultural area shares portions of its west and southwest boundary lines with the surrounding Monterey viticultural area, which is also surrounded by the Central Coast viticultural area. If the petitioned realignment is approved, the proposed San Bernabe area will share its southeast boundary with the San Lucas viticultural area. According to the petitioner, the transfer of 1,281 acres of the San Lucas viticultural area to the San Bernabe proposed viticultural area would better define the geographical differences between the established San Lucas and the proposed San Bernabe viticultural areas and avoid splitting an existing vineyard between viticultural areas.

*What Geographical Features Distinguish San Bernabe From Other Areas?*

The proposed San Bernabe viticultural area is located immediately south of King City in the long Salinas Valley. The approximately 9-mile-long and 7-mile-wide proposed viticultural area occupies the valley floor and rolling foothills from the Salinas River west to the Santa Lucia Mountains. The petitioner explains the unique qualities of the San Bernabe area include its climate, water quality, wind-produced eolian soils, and rolling hills. The petitioner claims that the 1,281 acres proposed for realignment possess the similar eolian soils, rolling hills topography, and the same irrigation water quality of the petitioned San Bernabe viticultural area.

Soil

Grapes grow below the 700-foot elevation level on rolling hills in wind-produced eolian soils, according to the petition. The Oceano, Garey, and Garey-Oceano complex eolian soil types, which are well to excessively well-drained, dominate the petitioned San Bernabe viticultural area. The petitioner states that small niches of alluvial soils, derived from the shale-based Santa Lucia Mountains, lie within the petitioned area and immediately to the north and south of the proposed boundary lines.

The surrounding, larger Monterey viticultural area consists of only 1.6 percent eolian soils, and the alluvial Lockwood series soils dominate the adjacent San Lucas viticultural area, according to the petitioner. The proposed realignment area possesses a predominance of the wind-produced eolian soils that contrast to the alluvial type soils of the San Lucas area. Above and west of the 700-foot contour line, the soils are derived from the shale-based Santa Lucia Mountains. The bench soils along the east boundary are common to the Salinas River area. East of the proposed viticultural area, the Gabilan Mountain Range includes calcareous sandstone, shale, and siltstone, which come from a different source material, according to the petitioner.

Climate

The petitioner explains that the Salinas Valley forms a broad funnel for the strong, cool, afternoon marine winds coming off Monterey Bay during the warm months. The winds are drawn inland and south through the Salinas Valley by rising, warm air and moderate the valley's high and low temperatures to varying degrees, which produces a graduated effect within the Salinas Valley. As a result, the proposed San Bernabe area is warmer than viticultural areas to the north and that are closer to Monterey Bay and cooler than the adjoining San Lucas viticultural area to the immediate south, according to the petition.

The moderating effect dissipates as the winds travel inland, creating a series of temperature-unique, grape-growing areas within the long Salinas Valley. San Bernabe, at 60 miles south of the Monterey Bay, averages a 30-degree daily temperature variation, while Salinas, at 17 miles from the Monterey Bay, averages an 18-degree daily temperature variation, according to the petition.

The cool night air helps retain the grapes' acid and color, while the daily heat encourages ripeness and flavor. The petition states that the San Bernabe area averages 30 frost-days annually, while Salinas, closer to Monterey Bay, averages only four frost-days.

According to the petitioner, most rain falls at the Salinas Valley's extreme north and south ends. Less rain falls in between, including the proposed viticultural area. The petition states that the San Bernabe area averages 13 inches annual rainfall, while Salinas at the north end averages 17.5 inches, and Paso Robles at the south end averages 19 inches.

Water Resources

The petitioner explains that irrigation water is used extensively in the

vineyards. The water comes from area reservoirs and contains small amounts of carbonates and nitrates, which benefits the grapevines and soil. Toward the Monterey Bay, water quality declines as nitrate and carbonate levels increase, according to the petitioner.

*What San Lucas Boundary Descriptions Have Been Provided?*

We are considering the San Bernabe petition and a revision of the north boundary of the San Lucas viticultural area as defined in 27 CFR 9.56 at the same time. The proposed revision would reduce the San Lucas viticultural area from 34,642 to 33,361 acres, a loss of 3.5 percent, or 1,281 acres, which would be incorporated into the proposed San Bernabe viticultural area. A series of high elevation boundary points establishes the San Lucas area north border and currently overlaps the south boundary line of the proposed San Bernabe viticultural area. The San Lucas north boundary line bisects seven of the petitioner's vineyard blocks. Ninety percent of the large San Bernabe vineyard estate is within the proposed San Bernabe viticultural area, and ten percent is within the San Lucas viticultural area, according to the petitioner. Approval of the San Lucas realignment would avoid a division of this vineyard.

In support of the San Lucas boundary revision, the petitioner indicates that the soils in this area closely reflect the sandy loam soils of the San Bernabe area. The 1972 U.S. Department of Agriculture, Soil Conservation Service, Soil Survey of Monterey County map documents a change from the Oceano loamy sand and Garey sandy loam soils that dominate the San Bernabe area to the Greenfield, Lockwood, and Metz soils that dominate the San Lucas area. The petitioner explains that the same climate and irrigation factors exist in the proposed 1,281-acre realignment area and the proposed new San Bernabe viticultural area, as is demonstrated by the petitioner's uniform viticulture practices within the 13,000-acre vineyard estate.

*What Maps Reflect the Boundaries of the Proposed San Bernabe Viticultural Area and the Boundary Revision of the San Lucas Viticultural Area?*

The petitioned new San Bernabe viticultural area and the established San Lucas viticultural area are located in Monterey County, California. Four USGS-published, 1:24,000 scale topographic maps define the boundaries of the proposed San Bernabe viticultural area. The maps are—

(1) Thompson Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984);

(2) San Lucas Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984);

(3) Espinosa Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1979); and

(4) Cosio Knob Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984).

The USGS publishes the two maps used to mark the boundaries of the San Lucas viticultural area's proposed realignment. The scale is 1:24,000, and the maps are—

(1) Espinosa Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1979); and

(2) San Lucas Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984).

This proposed realignment area is an angular strip of land in the northwest San Lucas viticultural area, adjacent to the proposed San Bernabe viticultural area.

**Public Participation**

*Who May Comment on This Notice?*

We request comments from anyone interested. TTB is particularly interested in whether the adjustment of the San Lucas viticultural area boundaries will impact other vineyards or wineries. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

*Will TTB Keep My Comments Confidential?*

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

*How Can I Get Information About This Notice?*

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per 8.5 11-inch page. Contact the ATF Librarian at the above address or telephone 202–927–7890 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. All posted comments will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access the online copy of this notice, visit *http://www.ttb.gov* and select ''Alcohol,'' then ''Rules and Regulations,'' then ''Notices of proposed rulemaking (Alcohol).'' Select the ''View Comments'' link under this notice number to view the posted comments.

*How Should I Submit Comments?*

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5-by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic-mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5-by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov.* Select ''Alcohol,'' then ''Rules and Regulations,'' then Notices of proposed rulemaking (Alcohol).'' Select the ''Send comments via email'' link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to

determine, in light of all circumstances, whether a public hearing will be held.

**Regulatory Analyses and Notices**

*Does the Paperwork Reduction Act Apply to This Proposed Rule?*

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

*Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the areas. Rather, it is a system that identifies areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from the proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

*Is This Proposed Rule a Significant Regulatory Action?*

This proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

**Drafting Information**

The principal author of this document is N. A. Sutton (California), and the editor is Jane R. Stefanik (Washington, DC), Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

**List of Subjects in 27 CFR Part 9**

Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. Subpart C is amended by adding Section 9.ll to read as follows:

## Subpart C—Approved American Viticultural Areas

### § 9.ll San Bernabe

(a) *Name.* The name of the viticultural area described in this section is ''San Bernabe''.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the San Bernabe viticultural area are four 1:24,000 scale, USGS-published topographic maps. They are titled:

(1) Thompson Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(2) San Lucas Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(3) Espinosa Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1979).

(4) Cosio Knob Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(c) *Boundary.* The proposed viticultural area is located in central Monterey County, south of King City, California, and west of highway 101. The point of beginning is benchmark 304, located one-half mile southwest of King City, along the Salinas River, in Township 20 South (T20S) and Range 8 East (R8E) (Thompson Canyon Quadrangle); then

(1) Proceed southeast in a straight line for 2.35 miles to benchmark 304, at the intersection of a trail and the 300-foot contour line, between highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(2) Proceed southeast in a straight line for 2.9 miles to benchmark 336, between highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(3) Proceed southeast in a straight line for 3 miles to benchmark 340, between U.S. highway 101 and the Salinas River, in T21S and R9E (San Lucas Quadrangle); then

(4) Proceed south in a straight line for 0.8 mile to the intersection of the Salinas River and the highway 198 bridge, in T21S and R9E (Espinosa Canyon Quadrangle); then

(5) Proceed southwest along highway 198 for 0.6 mile to its intersection with an unnamed light duty road, in T21S and R9E (Espinosa Canyon Quadrangle); then

(6) Proceed northwest, followed by southwest, about 1.2 miles along the meandering, unnamed, light duty road to its intersection with the fork of an intermittent stream, in T21S and R8E (Espinosa Canyon Quadrangle); then

(7) Proceed southwest in a straight line for 0.6 mile to the 595-foot peak, Section 13, in T21S and R8E (Espinosa Canyon Quadrangle); then

(8) Proceed southwest in a straight line for 1.3 miles to the 788-foot peak, section 23, in T21S and R8E (Espinosa Canyon Quadrangle); then

(9) Proceed southwest in a straight line for 0.7 mile to the intersection of the unimproved road and jeep trail, east of the 73-degree longitudinal line, section 26, in T21S and R8E (Espinosa Canyon Quadrangle); then

(10) Proceed northwest in a straight line for 3.2 miles to the northwest corner of section 16, in T21S and R8E (Espinosa Canyon Quadrangle); then

(11) Proceed southwest in a straight line for 1.5 miles to the northeast corner of section 19, in T21S and R8E (Cosio Knob Quadrangle); then

(12) Proceed southwest in a straight line for 2.2 miles to the southwest corner of section 24, in T21S and R7E (Cosio Knob Quadrangle); then

(13) Proceed north in a straight line for 2 miles to the northwest corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(14) Proceed east in a straight line for 1 mile to the northeast corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(15) Proceed north in a straight line for 2 miles, along the R7E and R8E common boundary line, to the northwest corner of section 6, in T21S and R8E (Thompson Canyon Quadrangle); then

(16) Proceed east in a straight line for 0.1 mile to the southwest corner of section 31 and continue diagonally to the northeast corner of section 31, in T20S and R8E (Thompson Canyon Quadrangle); then

(17) Proceed west in a straight line for 2 miles to the southwest corner of section 25, in T20S and R7E (Thompson Canyon Quadrangle); then

(18) Proceed due north in a straight line for 0.1 mile to the intersection with a light duty road, named Pine Canyon Road, in section 25, and continue northeast along that road for 3.2 miles to its intersection with an unnamed secondary highway, north of benchmark 337, section 18, in T20S and R8E (Thompson Canyon Quadrangle); then

(19) Proceed northwest along the unnamed secondary highway for 0.3 mile to its intersection with highway 101, in T20S and R8E (Thompson Canyon Quadrangle); then

(20) Proceed northeast along highway 101 for 0.7 mile to benchmark 304, returning to the point of beginning (Thompson Canyon Quadrangle).

3. Amend section 9.56, San Lucas viticultural area, to revise paragraphs (c)(24) and (c)(25) and add paragraphs (c)(26) and (c)(27) to read as follows:

**§ 9.56 San Lucas**

* * * * *

(c) *Boundary.* * * *

(24) Then northeasterly approximately 1.3 miles to the 595-foot promontory, section 13, T. 21 S., R. 8 E. (Espinosa Canyon Quadrangle);

(25) Then northeasterly approximately 0.6 mile to the intersection of a meandering, unnamed, light duty road and the fork of an intermittent stream, then continues meandering northeasterly, followed by southeasterly, approximately 1.1 miles to its intersection with an unnamed, light duty road south of the windmill, T. 21 S., R. 8 E. (Espinosa Canyon Quadrangle);

(26) Then northeasterly along the unnamed road approximately 0.6 mile to its intersection with the Salinas River, then continues 0.8 mile north in a straight line to benchmark 340, between highway 101 and the Salinas River, in T. 21 S., R. 9 E. (San Lucas Quadrangle);

(27) Then approximately 0.4 mile northwesterly in a straight line to the intersection with a water tank, then continues northeasterly in a straight line approximately 0.7 mile, and returns to the point of beginning in the northwest corner of section 5, in T. 21 S., R. 9 E. (San Lucas Quadrangle).

Signed: April 29, 2003.

**Arthur J. Libertucci,**

*Administrator.*

[FR Doc. 03–11970 Filed 5–13–03; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 62, 66, 67, and 72

**[USCG–2001–10714]**

**RIN 1625–AA34 (Formerly RIN 2115–AG25)**

## Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise its aids to navigation and maritime information regulations by updating technical information concerning buoys, sound signals, international rules at sea, communications procedures, and large navigational buoys, and by rewriting some regulations to make them clearer and gender-neutral. The proposed changes would update existing rules to reflect current practices and make them easier to understand.

**DATES:** Comments and related material must reach the Docket Management Facility on or before August 12, 2003.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10714), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, contact Mr. Dan Andrusiak, Project Manager, Program Management Division, Office of Short-Range Aids to Navigation (G–OPN), Coast Guard, telephone 202–267–0327 (email: *dandrusiak@comdt.uscg.mil*).

If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10714), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard's Office of Short-Range Aids to Navigation frequently reviews the rules on Aids to Navigation. During our most recent review, we found that many rules do not reflect current technologies and practices. For example, what we formerly called ''fog signals,'' we now call ''sound signals.'' Also, we want to inform users that certain safety information, such as ''Notice to Mariners'' can now be found on the World Wide Web. Therefore, the Assistant Commandant for Operations proposes to update our aids to navigation rules and to eliminate any ambiguous or confusing language in them.

### Discussion of Proposed Rule

The regulations we propose to revise are in 33 CFR parts 62, 66, 67 and 72. Our discussion of our proposed revisions are presented below under the four corresponding subject area headings: United States Aids to Navigation System, Private Aids to Navigation, Aids to Navigation on Artificial Islands and Fixed Structures, and Marine Information.

**United States Aids to Navigation System**

*Large navigational buoys.* We propose to remove § 62.39 because the Coast Guard no longer uses the large navigational buoys described in that section. We now use the Differential Global Positioning System (DGPS) for navigational assistance.

*Maritime radiobeacon system.* We propose to remove subpart C (Maritime Radiobeacons) of 33 CFR part 62. The sections in it, §§ 62.55, 62.57, 62.59, and 62.61, describe a radiobeacon system that has been replaced by DGPS.

*Procedures for reporting defects and discrepancies.* We propose to revise § 62.65(c)(2) by removing the last sentence that allows the use of collect calls. Because there are so many ways to reach the Coast Guard, this collect call option is no longer necessary.

**Private Aids to Navigation**

*Application procedure.* In § 66.01–5(g) we propose to remove the term ''fog signals'' and add, in its place, the term ''sound signals'' to reflect current usage. These signals alert operators to many environmental conditions besides fog that reduce visibility—for example, mist, rain, falling snow, smoke, and dust.

*State waters for private aids to navigation; designations; revisions, and revocations.* We propose to make the language in § 66.05–10 gender-neutral.

*Change and modification of State aids to navigation.* We propose to make the language in § 66.05–25 gender-neutral. We also propose to remove the word ''preferably'' to give a definitive deadline for the State Administrator to inform the District Commander of the need for a change in the State aids to navigation.

*Notice to Mariners.* We propose to make § 66.05–30 gender-neutral.

*Designation of navigable waters as State waters for private aids to navigation.* In § 66.05–100(e), for clarity, we propose to change the reference to ''Each navigable water'' to simply ''Navigable waters''.

*Uniform State waterway aids to navigation.* In § 66.10–15, we propose to make paragraphs (b), (c), (e)(1), and (e)(3) gender-neutral. And we propose to remove the editorial note for § 66.10–15. This note points out that the heading of amendatory instruction no. 16 at 63 FR 33574, June 19, 1998, referred to a non-existent § 66.19–15; the heading should have read ''*§ 66.10–15 Aids to navigation.*'' This NPRM serves to document that error and eliminate the need for maintaining this distracting note in the CFR.

**Aids to Navigation on Artificial Islands and Fixed Structures**

Throughout 33 CFR part 67, we propose to replace the term ''fog signals'' with ''sound signals'' to reflect current usage. These signals alert operators to many environmental conditions, not just fog.

*General requirements.* We propose to make §§ 67.01–10, 67.01–15, 67.01–20, and 67.05–1 gender-neutral. In addition, we proposed to revise the first three of these sections to clarify the roles of agency personnel.

*Classification of structures.* As part of our proposed clarification of § 67.01–15, classification of structures, we plan to consolidate common language repeated in six district regulations in subpart 67.50 into this one section applicable to all of part 67. By moving this commonly-shared classification of structures language to § 67.01–15, we will be able to delete this repetitive language from §§ 67.50–5, 67.50–15, 67.50–20, 67.50–30, 67.50–45, and 67.50–50.

*Lights and signals on attendant vessels.* We propose to revise § 67.15–1 by correcting a U.S. Code citation and adding new authority references.

*Spoil Banks, artificial islands, and dredged channels marking requirements.* We propose to revise § 67.15–10(b) to establish that the District Commander would both review applications and issue permits.

*Class A and B requirements.* We propose to make the language in §§ 67.20–10 and 67.25–10 gender-neutral and to change the term ''fog signal'' to ''sound signal''.

*Obstruction lights.* We propose to revise § 67.30–5(a) to replace an old address with a current one.

*Fog Signals.* We propose to revise § 67.30–10, including its heading, to change the term ''fog signal'' to ''sound signal''.

*Notification to District Commander.* We propose to make the language in § 67.40–1 gender-neutral. We also propose to allow those constructing structures an additional means of notifying the District Commander that construction has commenced. We currently require notice by telegram. We propose to add the option of notification via overnight mail.

*Notification waivers.* We propose to make the language in § 67.40–5 gender-neutral.

*Charges for marking structures invoiced to owner.* We propose to revise § 67.40–20 to change the term ''fog signal'' to ''sound signal''.

**Marine Information**

*Local Notice to Mariners.* We propose to add a note to § 72.01–5 to inform the reader of a Web address where an electronic version of ''Local Notice to Mariners'' can be located.

*Notice to Mariners.* We propose to add a Web address note to § 72.01–10 to inform the reader where an electronic version of ''Notice to Mariners'' can be located.

*Free distribution of Light List.* We propose to add a note to § 72.05–10 to inform the reader of a Web address where an electronic version of Coast Guard Light List data may be obtained.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

*Cost of Rule.* The proposed rule would impose no costs either on owners and operators of aids to navigation or on owners and operators of vessels on waters subject to the jurisdiction of the United States. Some owners and operators, however, may need to update contact information in their files, which is a normal business practice and therefore the cost is negligible.

*Benefits of the Rule.* The proposed rule would update various technical references to incorporate improvements in technology and practices. The rule would also rewrite some sections to make them easier to understand and to reflect gender-neutral language. We expect that this proposed rule would improve operational efficiency and boater's safety.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule would update technical information to reflect current practices and to rewrite some sections for clarity.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Dan Andrusiak, Program Management Division, Office of Aids to Navigation, Coast Guard, telephone 202–267–0327 (email: *dandrusiak@comdt.uscg.mil*).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this proposed rule and concluded under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects**

*33 CFR Part 62*

Navigation (water).

*33 CFR Part 66*

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

*33 CFR Part 67*

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

*33 CFR Part 72*

Government publications, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 62, 66, 67, and 72 as follows:

## PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

**Authority:** 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

**§ 62.39 [Removed]**

2. Remove § 62.39.

**§§ 62.55–62.61 (Subpart C) [Removed and Reserved]**

3. Remove and reserve subpart C, consisting of §§ 62.55 through 62.61.

**§ 62.65 [Amended]**

4. In § 62.65, in paragraph (c)(2), remove the last sentence.

## PART 66—PRIVATE AIDS TO NAVIGATION

5. The authority citation for part 66 continues to read as follows:

**Authority:** 14 U.S.C. 83, 85; 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

**§ 66.01–5 [Amended]**

6. In § 66.01–5(g), remove the word ''fog,'' and add in its place, the word ''sound.''

**§ 66.05–10 [Amended]**

7. In § 66.05–10—

(a) In paragraph (c), wherever the word ''his'' appears, remove it; and

(b) In paragraph (e), in the first sentence, add the words ''or her'' immediately after the word ''his'', and add the word ''or her'' immediately after the words ''by him.''

**§ 66.06–25 [Amended]**

8. Amend § 66.05–25 to read as follows:

**§ 66.05–25 Change and modification of State aids to navigation.**

Wherever a State Administrator determines the need for change in State aids to navigation, he or she must inform the District Commander of the nature and extent of the changes, as soon as possible, but not less than 30 days in advance of making the changes.

**§ 66.05–30 [Amended]**

9. In § 66.05–30 revise paragraph (a) to read as set forth below.

**§ 66.05–30 Notice to Mariners.**

(a) To improve public safety, the District Commander may publish information concerning State aids to navigation, including regulatory markers, in the Coast Guard Local Notices to Mariners.

* * * * *

**§ 66.05–100 [Amended]**

10. In § 66.05–100, in paragraph (e), remove the words ''Each navigable water'' and add, in their place, the words ''Navigable waters.''

**§ 66.10–15 [Amended]**

11. In § 66.10–15—

a. In paragraphs (b) and (c), in the last sentence, remove the word ''he'' and add, in its place, the words ''the user'',

b. In paragraphs (e)(1), (e)(2) and (e)(3), remove the word ''he'' and add, in its place, the words ''the operator''.

## PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

12. The authority citation for part 67 continues to read as follows:

**Authority:** 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

## PART 67—[AMENDED]

13. In part 67, remove the words ''fog signal'' and ''fog signals'' and add, in their place, respectively, the words ''sound signal'' and ''sound signals'' in the following places:

a. Section 67.01–1 (a);

b. Section 67.01–5 (e) and (f), including the section heading for (f);

c. Subpart 67.10, subpart heading;

d. Sections 67.10–1 introductory text;

e. Section 67.10–5 introductory text;

f. Section 67.10–10 (a) introductory text, (a)(3) and (b);

g. Section 67.10–15, section heading, paragraphs (a) introductory text, (a)(1), (a)(2), and (b);

h. Section 67.10–20, section heading, paragraphs (a) introductory text, and (a)(3);

i. Section 67.10–25 introductory text and (a)(2);

j. Section 67.10–30;

k. Section 67.10–35(a) and (b);

l. Section 67.10–40, section heading and text;

m. Section 67.20–10, section heading, and paragraphs (a)(1), (a)(2) and (b);

n. Section 67.25–10, section heading, paragraphs (a)(1), (a)(2), (b) introductory text, (b)(2), and (c)(1);

o. Section 67.30–10, section heading, paragraphs (a) introductory text, (b), (c), (d) introductory text and (d)(2); q

p. Section 67.35–1(b);

q. Section 67.35–5(b);

r. Section 67.40–1(a);

s. Section 67.40–5(b);

t. Section 67.40–20; and

u. Section 67.50–25(f).

**§ 67.01–10 [Amended]**

14. Amend § 67.01–10 to read as follows:

**§ 67.01–10 Delegation of functions.**

The Coast Guard District Commander may delegate the authority for performing inspections, enforcement, and administration of regulations to any civilian or military position in the Coast Guard.

**§ 67.01–15 [Amended]**

15. Amend § 67.01–15 to read as follows:

**§ 67.01–15 Classification of structures.**

(a) *When will structures be assigned to a Class?* The District Commander will assign structures to Class A, B, or C as part of processing an application for a permit to establish and operate lights and sound signals.

(b) *In general, where will the different classes of structures be located?* Specific criteria in paragraph (c) of this section may create exceptions, but in general structures the farthest from shore are likely to be assigned to Class A and required to have obstruction lights and sound signals that can be detected from the farthest distance. Structures closest to shore are likely to be assigned to Class C and, while subject to requirements to ensure that they are also detectable from a safe distance away, will be required to have the least powerful obstruction lights or sound signals. The location and standards for Class B structures will generally be in between Class A and C structures.

(c) *What criteria will be used to classify structures?* When assigning a structure to a class, the District Commander will take into consideration whether a line of demarcation has been prescribed, and matters concerning, but not necessarily limited to, the dimensions of the structure and the depth of water in which it is located, the proximity of the structure to vessel routes, the nature and amount of vessel traffic, and the effect of background lighting.

(1) If a line of demarcation has been prescribed, the District Commander will assign those structures seaward of the line of demarcation to Class A. He or she will assign all structures shoreward of the line of demarcation to either Class B or Class C, unless the District Commander determines under § 67.05–25 that the structure should be assigned to Class A because of the structure's proximity to a navigable channel, fairway or line of demarcation.

(2) If a line of demarcation has not been prescribed, the District Commander will assign a structure to Class A, B, or C as he or she deems appropriate.

16. Amend § 67.01–20 to read as follows:

**§ 67.01–20 Prescribing lines of demarcation.**

The District Commander sends recommendations for establishing or changing lines of demarcation to the Commandant. For the purposes of this part, when the Commandant approves of additions to or changes in prescribed lines of demarcation, such additions or changes will be published in the **Federal Register** and will become effective on the date specified in that publication.

**§ 67.05–1 [Amended]**

17. In § 67.05–1(f), immediately after the words, ''the angle of the approach, until'', remove the word ''he'', and add, in its place, the words, ''the mariner''.

**§ 67.10–10 [Amended]**

18. In addition to amendments set forth in the nomenclature instruction above, in § 67.10–10, remove the third word (''fog'') in paragraph (a)(3).

**§ 67.15–1 [Amended]**

19. Amend § 67.15–1 to read as follows:

**§ 67.15–1 Lights and signals on attendant vessels.**

The requirements prescribed by this part apply to structures. The barges, vessels, and other miscellaneous floating plants in attendance must display lights and signals under the International Navigational Rules Act of 1977 (33 U.S.C. 1601–1608) that adopted the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), or the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001–2038). When vessels are fixed to or submerged onto the seabed, however, they become structures as described in § 67.01–5.

**§ 67.15–10 [Amended]**

20. Amend § 67.15–10(b) to read as follows:

**§ 67.15–10 Spoil banks, artificial islands, and dredged channels.**

* * * * *

(b) To receive a permit to establish and maintain a private aid to navigation for the purposes described in paragraph (a) of this section, submit your application to the District Commander. The District Commander will review all applications and issue all permits.

21. In addition to amendments set forth in the nomenclature instruction above, in § 67.20–10, in paragraph (b), add the words ''or she'' immediately after the words ''of this section, if he''.

22. In addition to amendments set forth in the nomenclature instruction above, in § 67.25–10, in the introductory text of paragraph (c), add the words ''or she'' immediately after the words ''of this section, if he''.

**§ 67.30–5 [Amended]**

23. In § 67.30–5, in paragraph (a), remove the address ''Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120.'' and add, in its place, the following address: ''Document Automation and Production Service, 700 Robbins Avenue, Building 4, Section D, Philadelphia, PA 19111–5091.''

**§ 67.40–1 [Amended]**

24. In addition to amendments set forth in the nomenclature instruction above, in § 67.40–1(a), remove the second sentence, and add, in its place, the two following sentences: ''Persons constructing structures must notify the District Commander by either telegram or overnight mail on the day they begin construction. Within this notice, they must inform him or her of the lights and sound signals they will use during construction.''

**§ 67.40–5 [Amended]**

25. In addition to amendments set forth in the nomenclature instruction above, in § 67.40–5—

a. In paragraph (a), add the words ''or her'' immediately after the words ''whenever, in his'', and

b. In paragraph (b), add the words ''or she'' immediately after the words ''marine navigation, he'' and add the words ''or her'' immediately after the words ''revoke or revise his''.

26. In §§ 67.50–5 (b), 67.50–15 (b), 67.50–20 (b), 67.50–30 (b), 67.50–35 (b), 67.50–45 (b), and 67.50–50 (b), remove the sentences: ''The District Commander shall assign structures to classes as he deems appropriate at the time of application for a permit to establish and operate lights and fog signals. In so doing, he shall take into consideration matters concerning, but not necessarily limited to, the dimensions of the structure and the depth of water in which it is located; the proximity of the structure to vessel routes; the nature and amount of vessel traffic; and the effect of background lighting.''

**CHAPTER I—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY**

## PART 72—MARINE INFORMATION

27. The authority citation for part 72 continues to read as follows:

**Authority:** 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

**§ 72.01–5 [Amended]**

28. In § 72.01–5, add a note at the end of the section that reads as follows:

**§ 72.01–5 Local Notice to Mariners.**

* * * * *

**Note to § 72.01–5:** You may also access Local Notice to Mariners free of charge on the Internet from the Coast Guard Navigation website (*http://www.navcen.uscg.gov/*); look for ''Local Notice to Mariners''.

**§ 72.01–10 [Amended]**

29. In § 72.01–10, add a note at the end of the section that reads as follows:

**§ 72.01–10 Notice to Mariners.**

* * * * *

**Note to § 72.01–10:** You may also access Notice to Mariners through the National Imagery and Mapping Agency website (*http://pollux.nss.nima.mil*); look for ''U.S. Notice to Mariners''.

30. In § 72.05–10, add a note at the end of the section that reads as follows:

**§ 72.05–10 Free Distribution.**

* * * * *

**Note to § 72.05–10:** You may also access Coast Guard Light List data through the following National Imagery and Mapping Agency Web site (*http://pollux.nss.nima.mil/pubs/USCGLL/pubs lj luscgll l list.)*

Dated: May 5, 2003.

**David S. Belz,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.*

[FR Doc. 03–11987 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Part 1137

**[STB Ex Parte No. 637 (Sub–No. 1)]**

## Removal of Divisions of Revenue Regulations

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking; correction of prior document.

**SUMMARY:** The Surface Transportation Board (Board) is correcting its prior document by adding an **ADDRESSES** caption.

**DATES:** Comments are due June 5, 2003.

**ADDRESSES:** Send an original and 10 copies of comments referring to ''Ex Parte No. 637 (Sub-No. 1)'' to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** On May 6, 2003, at 68 FR 23947–23948, the Board published a notice of proposed rulemaking in this proceeding seeking comments but inadvertently omitting the **ADDRESSES** caption. The Board is here correcting that omission by including the relevant address information.

Dated: May 8, 2003.

By the Board, Vernon A. Williams, Secretary.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–12001 Filed 5–13–03; 8:45 am]

BILLING CODE 4915–00–P

# Notices

Federal Register

Vol. 68, No. 93

Wednesday, May 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Deschutes Provincial Advisory Committee (DPAC); Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes Advisory Committee will meet on June 11th, 2003 starting at 9 a.m. at the Jefferson County Firehall on the corner of Adam and ''J'' Street in Madras, Oregon. Agenda items will include a presentation on the Deschutes National Forest Recreation Initiative, Update on the status of the Aquatic Conservation Strategy and Survey and Management Supplemental EISs, Update on the Upper Deschutes Resource Management Plan and Metolious Basin Subcommittees, Rechartering, Wrap up of the 2002 NWFP monitoring, and a briefing on the new Stewardship Contract authority. The remainder of the day will include info sharing and a Public Forum from 4 p.m. till 4:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Dated: May 7, 2003.

**Leslie A.C. Weldon,**

*Deschutes National Forest Supervisor.*

[FR Doc. 03–11869 Filed 5–13–03; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet on May 28, 2003, in Anderson, CA. The purpose of the meeting will be to receive updates about funded projects, to form working committees, and the future of RAC appointments.

**DATES:** The meeting will be held on May 28, 2003, from 8 a.m. to noon.

**ADDRESSES:** The meeting will be held at Sierra Pacific Industries, 19794 Riverside Avenue, Anderson, CA—off Oxyoke Road between Interstate-5 and Highway 273.

**FOR FURTHER INFORMATION CONTACT:** Deb Romberger, Designated Federal Official, USDA Forest Service, (530) 336–5521. E-mail: *dromberger@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: May 7, 2003.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 03–11973 Filed 5–13–03; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Idaho Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 12 p.m. (m.d.t.) on Wednesday May 21, 2003.

This conference call is available to the public through the following call-in number: 1–800–659–1088, access code: 16702259. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Phillip Montez, of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, May 20, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, April 24, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–11968 Filed 5–13–03; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4:30 p.m. on Tuesday, May 13, 2003, at the New Jersey State House, 125 W. State Street, Room 1, Trenton, NJ 08625. The purpose of this meeting is to review status of current activity, plan new projects, and receive briefings from invited speakers on civil rights developments in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, May 6, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–11967 Filed 5–13–03; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–846]**

### Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results and partial rescission of the fifth antidumping duty administrative review and final results of the seventh new shipper review.

**SUMMARY:** On January 8, 2003, the Department of Commerce published the preliminary results and preliminary partial rescission of the fifth antidumping duty administrative review and preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031 (January 8, 2003) (''*Preliminary Results*''). These reviews examined 18 exporters [1] (''the respondents''), five of which are exporters included in three exporter/producer combinations and two of which are new shippers. The period of review is April 1, 2001, through March 31, 2002 (''POR''). We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for the respondents in these reviews. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Reviews.''

**EFFECTIVE DATE:** May 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1280, or (202) 482–1766, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 8, 2003, the Department published in the **Federal Register** the *Preliminary Results* (*see* 68 FR 1031).

On January 28, 2003, we placed on the record information obtained from the U.S. Customs Service (now the U.S. Bureau of Customs and Border Protection (''BCBP'')) then known as the, for the six outstanding entries noted in the December 31, 2002, memorandum titled, ''Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made by the Exporter/Producer Combinations-Preliminary Results'' (*see*—''Partial Rescission of Administrative Review'' section below for further discussion). Also on January 28, 2003, and in accordance with 19 CFR 351.301(c)(3)(ii), the respondents submitted additional publicly available information for consideration in the final results.

On February 5, 2003, the Department published in the **Federal Register** an amended preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') to reflect its intention to assign exporter/producer combination cash deposit rates to the new shipper companies in the final results. *See Brake Rotors from the People's Republic of China: Amended Preliminary Results of the Seventh New Shipper Review*, 68 FR 5867. On February 21, 2003, the petitioner [2] and the respondents submitted case briefs, and on February 28, 2003, they submitted rebuttal briefs.

On February 4, and 25, 2003, we placed on the record additional publicly available information on electricity, pallet wood and brokerage and handling for consideration in the final results. On March 7, 2003, the petitioner submitted comments on the publicly available information we had placed on the record on February 25, 2003.

### Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

[1] The names of the respondents in the fifth administrative review are as follows: (1) China National Industrial Machinery Import & Export Corporation (''CNIM''); (2) Laizhou Automobile Brake Equipment Company, Ltd. (''LABEC''); (3) Longkou Haimeng Machinery Co., Ltd. (''Haimeng''); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. (''Hongda''); (5) Hongfa Machinery (Dalian) Co., Ltd. (''Hongfa''); (6) Qingdao Gren (Group) Co. (''GREN''); (7) Qingdao Meita Automotive Industry Company, Ltd. (''Meita''); (8) Shandong Huanri (Group) General Company (''Huanri General''); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. (''Winhere''); and (10) Zibo Luzhou Automobile Parts Co., Ltd. (''ZLAP''); (11) Beijing Concord Auto Technology Inc. (''Beijing Concord''); (12) China National Machinery and Equipment Import & Export (Xinjiang) Corporation (''Xinjiang''); (13) China National Automotive Industry Import & Export Corporation (''CAIEC''); (14) Laizhou CAPCO Machinery Co., Ltd. (''Laizhou CAPCO''); (15) Laizhou Luyuan Automobile Fittings Co. (''Laizhou Luyuan''); and (16) Shenyang Honbase Machinery Co., Ltd. (''Shenyang''). (The exporter/producer combinations excluded from the antidumping duty order are: Xinjiang/Zibo Botai Manufacturing Co. Ltd (''Zibo''); CAIEC or Laizhou CAPCO/Laizhou CAPCO; and Laizhou Luyuan or Shenyang/Laizhou Luyuan or Shenyang). The names of the respondents in the seventh new shipper review are as follows: (17) Shanxi Fengkun Metallurgical Ltd. Co. (''Shanxi Fengkun''); and (18) Zibo Golden Harvest Machinery Limited Company (''Golden Harvest'').

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

**Partial Rescission of Administrative Review**

Pursuant to 19 CFR 351.213(d)(3), we have determined that, during the POR, the exporters which are part of the three exporter/producer combinations which received zero rates in the less-than-fair-value (''LTFV'') investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we have determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo.

In order to make this determination, we first examined POR subject merchandise shipment data furnished by the Customs Service by performing a data query. Because the data from our initial query was voluminous, we randomly selected 31 entries from the data query results for further examination by the Customs Service (*see* Memorandum dated October 3, 2002, from Davina Hashmi, Senior Analyst, to the File, titled, ''Request for Assistance: Shipments of Brake Rotors from the People's Republic of China Which Were Manufactured and/or Exported by Five PRC Companies during the Period April 1, 2001, Through March 31, 2002'').

Specifically, we requested the Customs Service to examine further the documentation filed at the U.S. port for each of those selected entries made by the exporters at issue to determine the manufacturer of the merchandise. In response to our request for information, the Customs Service was only able to provide us with information on 25 entries made by these respondents. After a review of the data we received from the Customs Service in response to our data query, we found no evidence that any of the exporter/producer combinations subject to this administrative review made shipments of the subject merchandise during the POR (*see* Memoranda dated December 31, 2002, from Davina Hashmi, Senior Analyst, and January 28, 2003, from Terre Keaton, Analyst, to the File, both titled, ''Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made By Exporter/Producer Combinations''). Therefore, we are rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and Xinjiang. *See* Issues and Decision Memorandum (''*Decision Memo*'') from Jeffrey May, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration at Comment 1 for further discussion.

**Facts Available**

In the *Preliminary Results*, 68 FR at 1033, the Department determined that the use of facts available was warranted in accordance with section 776(b) of the Tariff Act of 1930, as amended (''the Act'') to calculate the dumping margin for Beijing Concord. Because Beijing Concord failed to provide requested information and did not properly notify the Department of its difficulty in meeting our requirements in accordance with section 782©) of the Act, we determined that Beijing Concord did not cooperate to the best of its ability. Since the preliminary results nothing has changed to reverse our preliminary decision regarding Beijing Concord. Therefore, for the final results of this review we continue to find that Beijing Concord is not eligible to receive a separate rate and thus it continues to be part of the PRC non-market economy (''NME'') entity, subject to the PRC-wide rate.

**Analysis of Comments Received**

All issues raised in the case briefs are addressed in the *Decision Memo*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memo* are identical in content.

**Changes Since the Preliminary Results**

Based on the use of additional publicly available information and the comments received from the interested parties, we have made changes in the margin calculation for each respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the *Decision Memo.*

For the final results, we calculated average surrogate percentages for factory overhead, selling, general and administrative expenses, and profit using the 2000–2001 financial data of Kalyani Brakes Limited (''Kalyani''), Mando Brake Systems India Limited (''Mando''), and Rico Auto Industries Limited (''Rico''). *See Decision Memo* at Comment 3.

To value direct, indirect, and packing labor, we used the updated value from the International Trade Administration Web site at *http://ia.ita.doc.gov/wages/index.html.*

To value electricity, we used the 2000–2001 ''revised estimate'' average rate for industrial consumption as published in the *Annual Report (2001–02) on the Working of State Electricity Boards & Electricity Departments* by the Government of India's Planning Commission (Power & Energy Division).

To value pallet wood, we used the April 2000–March 2001 average import values from *Monthly Statistics of the Foreign Trade of India* (''*Monthly Statistics*'').

For those respondents which reported in their responses that they used non-alloy pig iron to produce the subject merchandise, we used the April 2001–December 2001 average import values for the appropriate non-alloy pig iron HTS subcategory from *Monthly Statistics* to value this input. *See Decision Memo* at Comment 2.

To value foreign brokerage and handling expenses, we relied on public information reported in the 1998–1999 antidumping duty administrative and new shipper reviews of stainless steel bar from India.

We corrected a calculation error which affected the surrogate value used for marine insurance.

We deducted an amount for foreign brokerage and handling expenses from the U.S. starting prices reported by Golden Harvest which we inadvertently did not do in the preliminary results.

We corrected a programming error which affected the direct labor per-unit amounts for certain brake rotor models reported by Golden Harvest.

We corrected a programming error which affected the marine insurance calculation for U.S. sales with C.I.F. terms of sale reported by LABEC. In addition, based on data contained in LABEC's response, we subtracted an amount for marine insurance for certain sales which LABEC had indicated it incurred this expense which we inadvertently did not do in the preliminary results.

We corrected a programming error by adding an amount for loading fees to Huanri General's coal freight cost instead of its carton freight cost.

We corrected a calculation error which affected the entered values derived for GREN.

**Final Results of Reviews**

We determine that the following weighted-average margin percentages exist for the following companies during the period April 1, 2001, through March 31, 2002:

| Manufacturer/producer/exporter | Margin percent |
|---|---|
| PRC NME entity (which includes Beijing Concord) | 43.32 |
| China National Industrial Machinery Import & Export Corporation | * 0.08 |
| Hongfa Machinery (Dalian) Co., Ltd. | 0.00 |
| Laizhou Automobile Brake Equipment Company, Ltd. | * 0.22 |
| Longkou Haimeng Machinery Co., Ltd. | * 0.05 |
| Laizhou Hongda Auto Replacement Parts Co., Ltd. | 0.00 |
| Qingdao Gren (Group) Co. | * 0.06 |
| Qingdao Meita Automotive Industry Company, Ltd. | * 0.09 |
| Shanxi Fengkun Metallurgical Ltd. Co. | 0.00 |
| Shandong Huanri (Group) General Company | 0.00 |
| Yantai Winhere Auto-Part Manufacturing Co., Ltd. | 0.00 |
| Zibo Golden Harvest Machinery Limited Company | 0.00 |
| Zibo Luzhou Automobile Parts Co., Ltd. | * 0.14 |

*De minimis.

**Assessment Rates**

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value for those sales where this information was unavailable, we subtracted applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the BCBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct the BCBP to liquidate them at the cash deposit rate in effect at the time of entry.

**Cash Deposit Requirements**

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Harvest or Shanxi Fengkun of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) The cash deposit rate for CNIM, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Winhere, ZLAP, Golden Harvest (*i.e.*, for subject merchandise manufactured and exported by Golden Harvest) and Shanxi Fengkun (*i.e.*, for subject merchandise manufactured and exported by Shanxi Fengkun) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (including Beijing Concord) and for subject merchandise exported by either Golden Harvest or Shanxi Fengkun but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 43.32 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: May 8, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—Issues in Decision Memo**

**Comments**

1. Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations
2. Whether We Should Have Requested a Respondent to Submit Revised Databases Based on Our Verification Findings
3. Whether to Use Data Contained in the Financial Statements Submitted for Two Additional Indian Producers of Subject and/or Comparable Merchandise
4. Surrogate Value Selection for Pig Iron
5. Whether the Respondents' Case Brief Complies With the Department's Filing and Service Requirements

[FR Doc. 03–12031 Filed 5–13–03; 8:45 am]

BILLING CODE 3510–DS–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

May 8, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** May 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing, special swing, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 8, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 14, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month limit [1] |
|---|---|
| Group I | |
| 200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group. | 228,318,899 square meters equivalent. |
| Sublevels in Group I | |
| 225/317/326 | 46,009,868 square meters. |
| 619/620 | 17,031,646 square meters. |
| 625/626/627/628/629 | 22,162,195 square meters. |
| Group II | |
| 237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group. | 602,836,385 square meters equivalent. |
| Sublevels in Group II | |
| 336 | 156,723 dozen. |
| 338/339 | 1,071,224 dozen. |
| 347/348 | 1,514,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15]. |
| 435 | 27,866 dozen. |
| 436 | 5,497 dozen. |
| 438 | 31,020 dozen. |
| 445/446 | 146,174 dozen. |
| 638/639 | 6,468,061 dozen. |
| 642 | 748,171 dozen. |
| 647/648 | 5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [16]. |
| 659–S | 1,713,821 kilograms. |
| Within Group II Subgroup | |
| 342 | 261,378 dozen. |
| 351 | 285,837 dozen. |
| 447/448 | 22,874 dozen. |
| 636 | 383,919 dozen. |
| 651 | 560,432 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.
[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505. 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–11957 Filed 5–13–03; 8:45 am]

BILLING CODE 3510–DR–S

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of March 4, 2003 (68 FR 10210), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Cigarette Lighters (16 CFR part 1210). No comments from members of the public were received in response to the **Federal Register** notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval.

The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce.

The Commission uses the records of testing and other information required by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

**Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, Washington, DC 20207.

*Title of information collection:* Safety Standard for Cigarette Lighters, 16 CFR part 1210.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of disposable and novelty cigarette lighters.

*Estimated number of respondents:* 60.

*Estimated average number of hours per respondent:* 175 per year.

*Estimated number of hours for all respondents:* 10,500 per year.

*Estimated cost of collection for all respondents:* $951,000 to $1,900,000 per year.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by June 13, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc–os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–7671.

Dated: May 7, 2003.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 03–12007 Filed 5–13–03; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## Notice of Availability of the Supplemental Environmental Assessment for the Pentagon Memorial

**AGENCY:** Washington Headquarters Services, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Defense (DoD) Washington Headquarters Services (WHS) announces that a Supplemental Environmental Assessment (SEA) for the Pentagon Memorial is available for public review and comment within 30 days of the date of this publication. The Memorial is planned for the Pentagon Reservation.

The SEA documents an evaluation of the environmental effects of the proposed Memorial in accord with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 to 4370b), Council of Environmental Quality (CEQ) implementing regulations (Title 40 Code of Federal Regulations, Parts 1500–1508), and DoD Instruction 4715.9, Environmental Planning and Analysis. The SEA is tiered to the Pentagon Reservation Master Plan Final Report of May 28, 1991 and the Final Environmental Assessment of May 28, 1991, developed for the comprehensive renovation of the Pentagon. The SEA identifies the purpose and need for the proposed action, alternative analysis of potential sites, and environmental consequences of the proposed action. Environmental consequences examined include potential impacts on air quality, noise, hazardous materials, natural/ecological features, land use and socio-economics, transportation, urban systems, and cultural resources.

The proposed action associated with the Pentagon Memorial involves construction of a Memorial Park commemorating the September 11, 2001 terrorist attack on the Pentagon and the 184 lives lost in the Pentagon and on American Airlines Flight 77. The proposed action, as directed by Congress, will be constructed within the limits of the Pentagon Reservation.

The SEA is available on the Internet at *http://memorial.pentagon.mil/*

For those with access or escort, copies are also available in the FOB2 Building Managers Office, Room 1030, and in the Pentagon Library Reference Center on the Pentagon Concourse.

**DATES:** Public comments are invited and must be either e-mailed or postmarked on or before June 13, 2003.

**ADDRESSES:** To request a copy of the SEA or provide comments, contact Michael Yopp at telephone: 703–693–8954, e-mail: *yoppm@army.pentagon.mil*, or mail: Pentagon Renovation Program, 100 Boundary Channel Drive, Arlington, VA 22202. Individuals also may download the SEA from the Web site.

**FOR FURTHER INFORMATION CONTACT:** For additional information on the SEA, contact Michael Yopp at telephone: 703–693–8954, or e-mail: *yoppm@army.pentagon.mil*.

Dated: May 7, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–11971 Filed 5–13–03; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0147]**

## Federal Acquisition Regulation; Submission for OMB Review; Pollution Prevention and Right-to-Know Information

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning pollution prevention and right-to-know information. A request for public comments was published in the **Federal Register** at 68 FR 15155 on March 28, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 13, 2003.

**ADDRESSES:** Submit comments, including suggestions for reducing this

burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Craig Goral, Acquisition Policy Division, GSA, 501–3856.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Executive Order 12856 of August 3, 1993, ''Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements,'' requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The executive order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

### B. Annual Reporting Burden

*Number of Respondents:* 2,550.
*Responses Per Respondent:* 7.647.
*Annual Responses:* 19,500.
*Average Burden Per Response:* 45 minutes.
*Total Burden Hours:* 14,500.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: May 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–11946 Filed 5–13–03; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0076]**

## Federal Acquisition Regulation; Submission for OMB Review; Novation/Change of Name Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/change of name requirements. A request for public comments was published in the **Federal Register** at 68 FR 10212, on March 4, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 13, 2003.

**ADDRESSES:** Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

### B. Annual Reporting Burden

*Respondents:* 1,000.
*Responses Per Respondent:* 1.
*Annual Responses:* 1,000.
*Hours Per Response:* .458.
*Total Burden Hours:* 458.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: May 8, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03–11947 Filed 5–13–03; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 14, 2003.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used

in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2003.

**Joseph Schubart,**

*Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.*

**Federal Student Aid**

*Type of Review:* Extension.

*Title:* Lender's Request for Payment of Interest and Special Allowance—LaRS.

*Frequency:* Quarterly, annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 14,184.

Burden Hours: 34,573.

*Abstract:* The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,546 lenders participating in the title IV, part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2273. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–11979 Filed 5–13–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–461–000]**

## Alliance Pipeline L.P.; Notice of Compliance Filing

May 8, 2003.

Take notice that on April 30, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing a cost and revenue study. Alliance states that the purpose of the filing is to comply with Ordering Paragraph (F) of the certificate order issued by the Federal Energy Regulatory Commission (Commission) on September 17, 1998, in Docket No. CP97–168–000, *et al.* Ordering Paragraph (F) required Alliance to make a filing within three years of the pipeline's in-service date, either justifying its existing recourse rates or proposing alternative rates to be effective no later than three years after the in-service date.

Alliance's in-service date was December 1, 2000. Alliance states that its filing justifies the continued use of the existing recourse rates.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 14, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12020 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–1757–004, et al.]**

## The Empire District Electric Company, et al.; Electric Rate and Corporate Filings

May 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. The Empire District Electric Company

[Docket No. ER99–1757–004]

Take notice that on May 1, 2003, Empire District Electric Company (Empire) submitted certain information intended to supplement the Supply Margin Assessment submitted March 25, 2003, in support of Empire's February 4, 2003, updated market power analysis. Empire also submitted a correction to the revised version of market-based rate tariff that was included as part of the March 25 Filing.

*Comment Date:* May 22, 2003.

### 2. ISO New England Inc.

[Docket No. ER01–316–009]

Take notice that on May 1, 2003, ISO New England Inc. (the ISO) submitted for filing its Index of Customers for first quarter of 2003 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.

The ISO states that copies have been served on all parties in Docket No. ER01–316–000.

*Comment Date:* May 22, 2003.

### 3. New England Power Pool

[Docket No. ER03–562–001]

Take notice that on May 1, 2003, the New England Power Pool (NEPOOL) Participants Committee filed a Report of Compliance with respect to the April 4, 2003, letter order, issued in Docket No. ER03–562–000. NEPOOL submitted revised tariff sheets to the Ninety-Fifth Agreement Amending Restated NEPOOL Agreement. NEPOOL states that the revised tariff sheets reflect a modification to the discussion of Excepted Transactions 21 and 23 in the Addendum to Attachment G to the NEPOOL Open Access Transmission

Tariff requested by intervenors MASSPOWER and Pittsfield Generating LLP.

NEPOOL states that copies of these materials were sent to the NEPOOL participants, non-participant transmission customers and the New England State governors and regulatory commissions.

*Comment Date:* May 22, 2003.

**4. Aquila Piatt County Power L.L.C.**

[Docket No. ER03–725–001]

Take notice that on May 1, 2003, Aquila Piatt County Power L.L.C. filed a supplement to its application in Docket No. ER03–725–000 revising the language in its proposed rate schedule.

*Comment Date:* May 22, 2003.

**5. Oncor Electric Delivery Company**

[Docket No. ER03–799–000]

Take notice that on May 1, 2003, Oncor Electric Delivery Company (Oncor) tendered for filing four transmission service agreements entered into between Oncor and Cargill Power Markets, LLC, Calpine Energy Service, L.P., Constellation Power Source, Inc., and TXU Portfolio Management Company LP under Oncor's Tariff for Transmission Service To, From and Over Certain Interconnections (TFO Tariff).

Oncor seeks waiver of the Commission's notice requirements to permit the transmission service agreements to be effective on the date of the commencement of service. Oncor states that this filing has been served upon each customer taking service under the agreements and the Public Utility Commission of Texas.

*Comment Date:* May 22, 2003.

**6. Southern California Edison Company**

[Docket No. ER03–800–000]

Take notice that on May 1, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Mountainview Power Company L.L.C. (Mountainview) to supplement the terms of the Interconnection Facilities Agreement between SCE and Mountainview, Service Agreement No. 6 under SCE's Transmission Owner Tariff (TO Tariff).

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Mountainview.

*Comment Date:* May 22, 2003.

**7. Ohio Power Company**

[Docket No. ER03–801–000]

Take notice that on May 1, 2003, American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to section 35.15 of the Federal Energy Regulatory Commission's Regulations, a notice of cancellation of Ohio Power Company FERC Electric Rate Schedule No. 71 consisting of an agreement between Ohio Power Company and the Ohio Edison Company. AEPSC requests an effective date of June 30, 2003, for the cancellation.

AEPSC served copies of the filing upon the Ohio Edison Company and upon the Public Utilities Commission of Ohio.

*Comment Date:* May 22, 2003.

**8. Black Hills Wyoming, Inc.**

[Docket No. ER03–802–000]

Take notice that on April 30, 2003, Black Hills Wyoming, Inc. (Black Hills Wyoming), submitted to the Federal Energy Regulatory Commission (FERC or Commission) a notice of succession notifying the Commission that is has succeeded, by reason of name change, to the market-based rate wholesale power sales rate schedule (the Rate Schedule) of Black Hills Generation, Inc., Rate Schedule FERC No. 1. In addition, Black Hills Wyoming states that it filed the Rate Schedule, updated as appropriate and in conformance with Order Nos. 614 and 2001, as Black Hills Wyoming, Inc., Rate Schedule FERC No. 1.

*Comment Date:* May 21, 2003.

**9. Panda Guadalupe Power Marketing, LLC**

[Docket No. ER03–803–000]

Take notice that on May 1, 2003, Panda Guadalupe Power Marketing, LLC tendered for filing in Docket No. ER03–803–000, a Notice of Termination and a Notice of Cancellation of Rate Schedule FERC No. 1.

*Comment Date:* May 22, 2003.

**10. Virginia Electric and Power Company**

[Docket No. ER03–804–000]

Take notice that May 1, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion Virginia Power) tendered for filing an executed First Revised Network Integration Transmission Service Agreement (NITSA) including an executed revised Network Operating Agreement (collectively, Revised NITSA) between Dominion Virginia Power and Old Dominion Electric Cooperative (ODEC).

Dominion Virginia Power requests that the Commission accept the Revised NITSA for filing and make it effective on April 1, 2003. Dominion Virginia Power states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

*Comment Date:* May 22, 2003.

**11. Sierra Pacific Power Company Nevada Power Company**

[Docket No. ER03–806–000]

Take notice that on May 1, 2003, Sierra Pacific Power Company and Nevada Power Company (collectively, Applicants ) tendered for filing pursuant to section 205 of the Federal Power Act and section 35 of the Commission's regulations, a revised Attachment K (Sheet Nos. 254–57) to Sierra Pacific Resources Operating Companies FERC Electric Tariff, Third Revised Volume No. 1. The Applicants state that the revision is being filed to establish distribution loss factors in connection with their implementation of retail access in Nevada.

*Comment Date:* May 22, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11943 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2552–058]**

### FPL Energy Maine Hydro, LLC; Notice of Availability of Final Environmental Assessment

May 8, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff reviewed the application for surrender of project license for the Fort Halifax Project, located on the Sebasticook River, Kennebec County, Maine, and prepared a final environmental assessment (EA) for the project. In the final EA, staff analyze the potential environmental effects of the surrender of license and conclude that the surrender, or any other alternative considered, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. To be notified via email of new filings and issuances related to this or other pending projects, register online at *http://www.ferc.gov/esubscribenow.htm*. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12016 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–37–000]**

### Williston Basin Interstate Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Grasslands Pipeline Project

May 8, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Williston Basin Interstate Pipeline Company (WBI), the Grasslands Pipeline Project, in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including a system alternative; major route alternatives; and route variations.

The U.S. Department of the Interior, Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of this FEIS because the project would cross Federal land under the jurisdiction of two field offices in Wyoming and Montana. The U.S. Department of Agriculture, Forest Service (USFS) is also a cooperating agency in the preparation of this document because the Little Missouri National Grasslands would be crossed by the project. The FEIS will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on all Federal lands.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- Approximately 223 miles of new 16-inch-diameter pipeline from near Belle Creek, Montana, to the proposed Manning Compressor Station in Dunn County, North Dakota;
- Approximately 28 miles of 16-inch-diameter pipeline loop [1] adjacent to WBI's existing Bitter Creek supply lateral pipeline in Wyoming;
- Maximum allowable operating pressure (MAOP) upgrade on approximately 28 miles of existing 8-inch-diameter Bitter Creek supply lateral pipeline in Wyoming from 1,203 pounds per square inch gauge (psig) to 1,440 psig, and abandonment in-place of segments of existing pipe at three road crossings and replacement with heavier walled pipe;
- MAOP upgrade on approximately 40 miles of existing 8-inch-diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana from 1,203 psig to 1,440 psig, and abandonment in-place of segments of existing pipe at eight road crossings and replacement with heavier walled pipe;
- 4,180 horsepower (hp) of gas fired compression (comprised of two 2,090 hp compressors) at one new compressor station located in Dunn County, North Dakota (Manning Compressor Station), and electric coolers installation at this station;
- An additional transmission compressor unit (1,200 hp) at the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 0.9 mile of 12-inch-diameter pipeline from the proposed mainline to the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 1.0 mile of 16-inch-diameter pipeline from the proposed Manning Compressor Station to interconnect with Northern Border Pipeline Company's Compressor Station 5 in Dunn County, North Dakota; and
- Various additional facilities, including 14 mainline valves, 6 cathodic protection units, 8 pig launchers/receivers, 5 metering stations, and 3 regulators.

The purpose of the proposed facilities would be to provide an additional outlet for the increased production of natural gas in the Powder River Basin, allowing transportation of about 80 million cubic feet per day of natural gas; provide access to WBI's storage facilities to shippers of gas produced in the Powder River Basin and elsewhere; and provide access to and from WBI's storage facilities to and from the facilities of Northern Border Pipeline Company for delivery to Midwestern and other national markets.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12008 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption to Increase its Authorized Nameplate Capacity.

b. *Project No*: 12094–004.

c. *Date Filed:* April 11, 2003.

d. *Applicant:* Hydro Technology Systems Inc.

e. *Name of Project:* Meyers Falls 1910 Hydroelectric Project.

f. *Location:* The project is located on the Colville River, in Stevens County, Washington.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Michael Johnson, President, Hydro Technology Systems Inc., P.O. 683 Kettle Falls, WA 99141 (509) 738–6544.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *robert.shaffer@ferc.gov*.

j. *Deadline for filing comments and or motions*: June 9, 2003.

k. *Description of Request*: The exempt project has an authorized capacity of 300 kW (one generating unit) with a hydraulic capacity of 50 cfs. Now the exemptee is planning to install two units instead of one but with the same authorized installed and hydraulic capacity. In addition, the exemptee is proposing to add a small 65–kW generating unit with a hydraulic capacity of 12 cfs. The exemptee states this proposal would improve the operations efficiency of the project by utilizing low flows (0 to 12 cfs) that are available for generation but fall below the minimum hydraulic capacity of the bigger generating units.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12009 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1273–009.

c. *Date Filed:* November 15, 2002.

d. *Applicant:* Parowan City.

e. *Name of Project:* Center Creek Hydroelectric Project.

f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site ( *http://www.ferc.gov* ) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Center Creek Hydroelectric Project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12014 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2210–089]**

## Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and are available for public inspection:

a. *Application Types*: Non-Project Use of Project Lands.

b. *Project Nos*: 2210–089.

c. *Date Filed:* April 11, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2451.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions*: June 9, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–089) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request*: APC is requesting Commission approval to permit J.W. Holdings, Inc. (permittee) to install and operate 3 stationary docks for a total of one hundred seventeen (117) covered stationary slips and nineteen (19) floating courtesy docks. The facilities would be constructed along the Roanoke River at an area known as the Bridge Club. No dredging is planned as part of this proposal.

l. *Location of the Application*: This filing is available for review at the

Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12015 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Shoreline Management Plan.

b. *Project No*: 271–068.

c. *Date Filed:* April 14, 2003.

d. *Applicant:* Entergy Arkansas, Inc. (Entergy).

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* On the Ouachita River, a navigable waterway of the United States, in Garland and Hot Springs Counties, Arkansas. There are 34.3 acres of federally owned lands within the project boundary around Lake Hamilton which are under the supervision of the U.S. Army Corps of Engineers (Corps).

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas R. Sikes, Manager, Hydro Operations, Entergy Arkansas, Inc., 141 West County Line Road, Malvern, AR 72104. Phone: (501) 844–2148.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for filing comments and/or motions*: June 9, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (271–068) on any comments or motions filed.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

k. *Description of Proposal*: Entergy developed a Shoreline Management Plan (SMP) to comply with article 408 of the project license. The SMP is a comprehensive plan to manage the multiple resources and uses of the project's shorelines in a manner that is consistent with license requirements and project purposes, and to address the needs of the local public. The SMP introduces some new strategies regarding the management and permitting of shoreline activities and facilities, but is based on management practices established over the years. The SMP designates multiple classifications of the shoreline and specifies what shoreline facilities and activities will be allowed in each of the classifications to help manage non-project uses of shoreline lands within the project boundary.

l. *Locations of the Application*: This filing is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12017 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM01–12–000]**

### Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

May 8, 2003.

Take notice that a technical conference will be held on June 11, 2003, from 1 p.m. to 5 p.m. at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. Members of the Commission will attend and participate in the discussions.

This conference shall be one of a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the final rule in this proceeding to benefit customers within the region. The Commission will issue notices of subsequent conferences at a later time.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's FERRIS system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12018 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM01–12–000]**

### Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

May 8, 2003.

Take notice that a technical conference will be held on May 20, 2003, from approximately 10 a.m. to 4 p.m., at the Boston Marriott Copley Place, 110 Huntington Avenue, Boston, Massachusetts. Members of the Commission will attend and participate in the discussions.

This conference shall be the first of a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the final rule in this proceeding to benefit customers within the region. The Commission will issue notices of subsequent conferences at a later time.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's FERRIS system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12019 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12097–001]**

### Green River 3 Associates; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Green River 3 Associates, permittee for the proposed Green River Dam 3 Project, has requested that its preliminary permit be terminated. The permit was issued on November 26, 2001, and would have expired on October 31, 2004. The project would have been located on the Green River in Ohio County, Kentucky.

The permittee filed the request on April 7, 2003, and the preliminary permit for Project No. 12097 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12011 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12096–001]**

### Green River 5 Associates; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Green River 5 Associates, permittee for the proposed Green River Dam 5 Project, has requested that its preliminary permit be terminated. The permit was issued on November 26, 2001, and would have expired on October 31, 2004. The project would have been located on the Green River in Butler County, Kentucky.

The permittee filed the request on April 7, 2003, and the preliminary permit for Project No. 12096 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12010 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12123–001]**

### Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Quantum Energy Solutions, permittee for the proposed Columbia River Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on April 22, 2002, and would have expired on March 31, 2005. The project would have been located on the existing Columbia River Jetty in Clatsop County, Oregon.

The permittee filed the request on April 2, 2003, and the preliminary permit for Project No. 12123 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12012 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12124–001]**

### Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Quantum Energy Solutions, permittee for the proposed Tillamook River Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the existing Tillamook River Jetty in Tillamook County, Oregon.

The permittee filed the request on April 2, 2003, and the preliminary permit for Project No. 12124 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12013 Filed 5–13–03; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7498–4]**

### Partial Delegation of Authority for Prevention of Significant Deterioration of Air Quality; Washington Department of Ecology

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Information notice.

**SUMMARY:** The State of Washington Department of Ecology (Ecology) has requested partial delegation of authority to implement and enforce the Federal prevention of significant deterioration of air quality (PSD) permit program regulations, as revised in amendments published on December 31, 2002 (federal PSD regulations). The Clean Air Act (CAA) authorizes EPA to delegate its authority to implement and enforce the federal PSD regulations to any state that has submitted a demonstration that it possesses adequate implementation and enforcement resources and procedures. After thorough consideration of Ecology's request and other available information, EPA has determined that such delegation of authority is appropriate consistent with the conditions set forth in the delegation agreement reproduced below.

**DATES:** The delegation agreement granting authority to Ecology for the Federal PSD program is effective March 28, 2003.

**ADDRESSES:** Copies of information relevant to the partial delegation are available for inspection during normal business hours at the following location: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Dan Meyer, EPA, Region 10, Office of Air Quality, (206) 553–4150.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002. The PSD program covers any new construction or any major modification of a major stationary air emission source in an area which has air quality better than the national ambient air quality standards. The program requires the issuance of permits prior to construction or modification of certain sources. EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. *See* 67 FR 80186 (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources.

Ecology has requested authority to continue to implement the federal PSD regulations, as published on December 31, 2002, to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. EPA has reviewed the States' current statutory and regulatory authority and has determined that Ecology has authority to implement and enforce the federal PSD regulations, as published on December 31, 2002, except for applications for PAL

increases under 40 CFR 52.21(aa)(11), subject to the conditions set forth in the Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology dated March 28, 2003.

## II. Terms of Delegation of Authority

A copy of the Delegation Agreement can be viewed or downloaded from the Internet at *http://www.ecy.wa.gov/programs/air/psd/PSD_EPA_Final03.pdf.* The Delegation of the federal PSD regulations to Ecology is subject to the conditions set forth in the following agreement:

**Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United State Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology**

Through this agreement, the Washington State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) establish the legal and procedural bases for Ecology to conduct new source review and to implement and enforce portions of the federal PSD regulations found in 40 CFR 52.21 (effective March 3, 2003).

### I. Introduction

Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173–400–117, –141, 113 and –171 (effective September 15, 2001). The provisions of WAC 173–400–117, –141, and –171 as in effect on September 15, 2001, shall hereafter be referred to as the ''State PSD regulations.''

Based on those changes, EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002.

EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. *See* 67 FR 80186, (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources. The provisions of 40 CFR 52.21, as revised on March 3, 2003 shall hereafter be referred to as the ''federal PSD regulations.''

Ecology and EPA desire to continue to have Ecology implement and enforce the federal PSD regulations to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. Accordingly, EPA and Ecology are entering into this partial Delegation Agreement.

As part of the transition process for implementing the new provisions, Ecology and EPA intend to allow permit applicants to withdraw any PSD permit applications submitted prior to March 3, 2003, and currently under review to afford permit applicants the opportunity to re-evaluate their projects in light of the revised federal PSD requirements if they so choose.

### II. Legal Authority

A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.

B. As discussed above, Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. *See* WAC 173–400–117, –141, and –171.

C. EPA has determined that Chapter 43.05 of the Revised Code of Washington (RCW), often referred to as ''House Bill 1010,'' conflicts with the delegation requirements of 40 CFR 52.21(u). Based on this determination, Ecology has determined that Chapter 43.05 RCW does not apply to permit to construct requirements of Chapter 173–400 WAC, including the State PSD regulations.

D. The Ecology Division of the Washington Attorney General's Office has issued an opinion [1] stating that the provisions of RCW 70.94.035, ''Air Technical Assistance Visits by Ecology,'' do not prevent enforcement actions, but only require Ecology to wait until the end of the correction period to determine whether enforcement action is appropriate. Based on that opinion letter, EPA has determined that RCW 70.94.035 does not impermissibly interfere with Washington's enforcement authority. *See* 59 FR 42552 (August 18, 1994) (proposed interim approval of Washington's title V program).

E. Ecology and EPA agree that requirements issued in PSD permits under the authority of WAC 173–400–110, –113 and –141 are federally enforceable requirements of the State Implementation Plan even in cases where a federal PSD permit is not required under 40 CFR 52.21. For purposes of incorporating all applicable requirements into the Title V permit, the components of the PSD permit applicable to State PSD requirements remains federally enforceable as a component of the SIP notice of construction approval.

### III. Scope of Delegation

A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to Ecology partial responsibility for conducting federal new source review and for implementing and enforcing the federal PSD regulations for all sources located in the State of Washington as follows, subject to the terms and conditions of this Delegation Agreement:

1. Ecology has full delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all new major stationary sources.

2. Ecology has partial delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all physical or operational changes to existing stationary sources [2] as follows:

a. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), Ecology is delegated authority to receive all permit applications, requests for applicability determination, notifications, reports, notices and other documents required under or that relate to the federal PSD regulations.

b. Ecology is delegated authority to process, issue, and enforce PSD permits for any physical or operational change to an existing stationary source that Ecology determines is subject to the State PSD regulations and the federal PSD regulations, provided, however, that Ecology will note in the permit record any instance where Ecology determines that an emission unit or pollutant is subject to the State PSD regulations but not the federal PSD regulations.

c. Ecology is delegated authority to conduct applicability determinations that relate to the applicability of the federal PSD regulations to physical or operational changes to existing stationary sources, provided, however, that the following additional conditions apply in the circumstances described below. For purposes of this Delegation Agreement, an applicability determination includes a written determination in a preliminary decision or permit.

(i) *Determining the Emissions Increase*

(A) *Applicability Test for Physical or Operational Changes to Existing Electric Utility Steam Generating Units (EUSGUs) and Construction of Replacement EUSGUs.*

(I) Determination—Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an EUSGU or the construction of a replacement EUSGU, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of Ecology's determination along with a copy of the request.

(II) Determination—Baseline Actual Emissions [3]. Ecology is delegated the authority to act upon requests from sources to use a different time period than that specified in 40 CFR 52.21(b)(48)(i) to calculate baseline actual emissions. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(III) Reporting—Projected Actual Emissions. Ecology is delegated the authority to receive from sources the information required under 40 CFR 52.21(r)(6)(ii) to calculate an EUSGU's projected actual emissions at a stationary source.[4] Ecology

[1] Letter from Mary Sue Wilson, Assistant Attorney General, to Chuck Clarke, Regional Administrator, dated June 7, 1994, regarding Supplement to October 27, 1993 and December 30, 1993 Attorney General Opinion Letters for Washington State Department of Ecology.

[2] The reference to ''physical or operational changes to existing stationary sources'' covers both (a) any physical or operational change to an existing major stationary source and (b) any physical or operational change that would occur at a stationary source not otherwise qualifying under 40 CFR 52.21(b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

[3] Sources are required to obtain this determination from Ecology prior to beginning actual construction.

[4] EUSGUs opting to use the actual-to-projected-actual applicability test are required to submit this

will forward a copy of the information to EPA and the Title V permitting authority upon receipt of the information.

(IV) Reporting—Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report required under 40 CFR 52.21(r)(6)(iv) for an EUSGU at a stationary source.[5] Ecology will forward a copy of any emission report to EPA and the Title V permitting authority upon receipt of the report.

(B) *Applicability Test for Physical or Operational Changes to Existing Units (non-EUSGUs) and Construction of Replacement Units (non-EUSGUs).*[6]

(I) Determination—Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an emissions unit or the construction of a replacement emissions unit, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(II) Reporting—Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report under 40 CFR 52.21(r)(6)(v) for an emissions unit at a stationary source.[7] Ecology will forward a copy of the emissions report to EPA and the Title V permitting authority upon receipt of the report.

(ii) *Clean Units*

(A) *Clean Unit I—Units which Automatically Qualify as a Clean Unit.*

(I) Original Designation. The provisions of 40 CFR 52.21(x) for automatic Clean Unit designation are self-implementing for emissions units that have been issued a BACT determination in a federal or SIP-approved major new source review permit within the last 10 years.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required by 40 CFR 52.21(x)(6)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[8] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv).[9] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the final permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(x)(6)(i)–(vi) or 40 CFR 52.21(y)(8)(i)–(vi), as applicable, related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) or 40 CFR 52.21(y)(8)(ii) and (iii), as applicable, specifying the effective date and expiration date, respectively, of the Clean Unit designation.[10] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(B) *Clean Unit II—Units which Do Not Automatically Qualify as a Clean Unit.*

(I) Original Designation. Ecology is delegated the authority to act upon requests from sources to designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3).[11] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required by 40 CFR 52.21(y)(8)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[12] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3)(iv).[13] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(y)(8)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[14] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(iii) *Pollution Control Projects*

(A) *PCP I. Projects presumed to be environmentally beneficial.*

(I) The provisions of 40 CFR 52.21(z) for projects listed as PCPs under 40 CFR 52.21(b)(32)(i)–(vi) are self-implementing. Ecology is delegated authority to receive from sources the notices required by 40 CFR 52.21(z)(1) and to request additional information necessary to evaluate the suitability of the project for the PCP exemption as provided in 40 CFR 52.21(z)(4). Ecology will forward a copy of the notice to EPA and the Title V permitting authority upon receipt of the notice.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

(B) *PCP II. Projects not presumed to be environmentally beneficial.*

(I) For projects not listed as PCPs under 40 CFR 52.21(b)(32)(i)–(vi), Ecology is delegated the authority to act upon requests from sources for approval to use the PCP exclusion as provided in 40 CFR 52.21(z)(1) and (5).[15] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

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information to Ecology prior to beginning actual construction.

[5] EUSGUs opting to utilize the actual-to-projected-actual applicability test are required to submit this report to Ecology within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

[6] For a discussion regarding the treatment of replacement units, please refer to 67 FR 80194.

[7] Non-EUSGUs opting to utilize the actual-to-future-actual applicability test are required to submit this report to Ecology if annual emissions exceed baseline actual emissions by a significant amount and if such emissions differ from the preconstruction projection. The report is to be submitted within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

[8] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[9] Sources have the option of requesting Clean Status re-designation pursuant to the requirements of 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv). For requests seeking approval under 40 CFR 52.21(x)(3)(iii), Ecology intends to use its authority under WAC 173–400–141. For requests seeking approval under 40 CFR 52.21(y)(3)(iv), Ecology intends to use its authority under WAC 173–400–091.

[10] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[11] For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173–400–091.

[12] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[13] For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173–400–091.

[14] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[15] For requests seeking approval under 40 CFR 52.21(z)(5), Ecology intends to use its authority under WAC 173–400–091 and –110 as appropriate.

(iv) *Plantwide Applicability Limitations*

(A) Ecology PALs.

(I) Ecology is delegated the authority to act upon an application from a source for a PAL pursuant to 40 CFR 52.21(aa)(1)[16].

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(II) Ecology is delegated the authority to act upon an application from a source to renew a PAL pursuant to 40 CFR 52.21(aa)(10).[17]

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(III) Ecology is delegated the authority to reopen a PAL pursuant to 40 CFR 52.21(aa)(8).[18]

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(B) EPA PALs.

(I) Ecology is not delegated the authority to act upon an application from a source to increase a PAL pursuant to 40 CFR 52.21(aa)(11). Applications for PAL increases shall be submitted directly to EPA and EPA shall approve PAL increases through the issuance of a permit under the federal PSD regulations.

(a) Upon issuance of the final permit, EPA will provide to Ecology and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. EPA will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit are included in the Title V permit for the source.

3. Notwithstanding the provisions of subjection III.A.2., Ecology is not delegated authority for any change to a source that is a major modification to an existing stationary source under the federal PSD regulations but not under the State PSD regulations. All permit applications, notices, and reports relating to such changes received by Ecology shall be promptly forwarded to EPA or the applicant shall be directed to submit the application materials directly to EPA.

4. The parties acknowledge that under certain circumstances the State PSD regulations and federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.

B. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD program in Indian Country in Washington because Ecology did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust land within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this agreement applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, Ecology will implement and enforce the federal PSD requirements on these non-trust lands of the 1873 Survey Area as provided in this Delegation Agreement.

C. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities under the jurisdiction of the State of Washington Energy Facilities Site Evaluation Council (EFSEC).

D. The EPA Administrator has delegated to the Director of the Region 10 Office of Air Quality, the authority to delegate the federal PSD regulations to any State or local agency. The State or local agency that receives delegation from EPA Region 10 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

## IV. Requirements

A. The responsibility for conducting new source review for all regulated sources as provided by this Delegation Agreement, including those under the jurisdiction of the Industrial Section, the Nuclear and Mixed Waste Program, and local air authorities in the State of Washington, rests with Ecology's Air Quality Program. EPA is relying on the technical and programmatic expertise of the Technical, Information, and Engineering Section (TIES) of Ecology's Air Quality Program in the implementation of this Delegation Agreement on Ecology's behalf. The processing, issuance, and enforcement of PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and PALs shall be conducted in consultation and coordination with TIES. All applicability determinations under this Delegation Agreement will be made by the Manager of TIES or a higher level manager within Ecology. In no event will an applicability determination be made at a level lower than the Manager of TIES. Ecology will ensure that other Ecology offices and local air authorities are aware that all PSD applicability determinations under this Delegation Agreement must be made by the Manager of TIES or a higher level manager within Ecology.

B. Ecology will ensure that there are adequate resources and trained personnel within the TIES to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, Best Available Control Technology (BACT) determinations, air quality monitoring network design, and modeling procedures. EPA will provide PSD training for Ecology staff to meet needs identified by EPA or Ecology.

C. Where the rules or policies of Ecology are more stringent than the federal PSD program, Ecology may elect to include such requirements in the PSD permit along with the EPA requirements.

D. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.

E. Ecology will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD program as provided in this Delegation Agreement. EPA will provide Ecology with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation, Ecology shall consult with the EPA Office of Air Quality on its proposed interpretation of the EPA regulations.

F. Ecology will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.

G. Ecology shall consult with the appropriate State and local agency primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any preliminary or final determination under this Delegation Agreement.

H. In order to assist EPA in carrying out its responsibilities under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, and 50 CFR part 402, subpart B (''Consultation Procedures''), and with Section 305(b)(2) of the Magnuson-Stevens Fishery and Conservation Act (''Magnuson-Stevens Act''), 16 U.S.C. 1801 *et seq.*, and 50 CFR part 600, subpart K (''EFH Coordination, Consultation, and Recommendations''), for federal PSD permits, regarding essential fish habitat, Ecology shall:

1. Within 5 working days of receipt of a complete PSD permit application, notify the

[16] For requests seeking PALs, Ecology intends to use its authority under WAC 173–400–091, –110 and –141 as appropriate.

[17] For requests seeking PAL renewals, Ecology intends to use its authority under WAC 173–400–091, –110 and –141 as appropriate.

[18] Except for those PAL reopenings under 40 CFR 52.21(aa)(8)(ii)(a)(1), Ecology intends to reopen PALs using its authority under WAC 173–400–091 and –110 as appropriate.

U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, of the permit application, and to provide a copy of the permit application if requested.

2. Notify applicants of the potential need for consultation between EPA and FWS and/or NMFS if the project may affect an endangered species, or if the project may affect essential fish habitat.

3. Refrain from issuing a final PSD permit until EPA has notified Ecology that EPA has satisfied its obligations, if any, under the ESA and/or the Magnuson-Stevens Act.

**V. Permit Issuance, Modification, and Appeals**

A. All preliminary and final determinations issued by Ecology under this Delegation Agreement shall indicate that an appeal to the EPA Administrator is available pursuant to 40 CFR part 124.

B. The permit provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Administrator on PSD permits issued by Ecology under this Delegation Agreement, including those permits co-signed by EPA. For purposes of implementing the Federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a preliminary determination or proposed permit condition, the final permit issued by Ecology is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:

1. The effective date of the permit is 30 days after service of notice to the applicant and commentors of the final decision to issue, modify, or revoke and reissue the permit, unless review is requested on the permit under 40 CFR 124.19 within the 30 day period.

2. If an appeal is made to the EPA Administrator, the effective date of the permit is suspended until such time as the appeal is resolved.

C. A PSD permit (or a portion of a PSD permit) for a change to a facility that is a major modification under the State PSD regulations but not the federal PSD regulations shall be enforceable under State law only and shall not be appealable to the EPA Environmental Appeals Board.

D. Modifications to existing PSD permits, except for administrative amendments, shall be processed in accordance with all of the substantive and procedural requirements applicable to new permits.

E. Failure by Ecology to comply with the requirements of 40 CFR part 124 related to PSD permits and this Section V. of the Delegation Agreement shall render the subject permit invalid for federal PSD purposes.

**VI. Enforcement**

A. Ecology or the local air authority with jurisdiction over the source will have the primary responsibility for enforcing the federal PSD regulations for sources subject to this Delegation Agreement, provided, however, that:

1. In the case of any requirement of the federal PSD regulations that is not also a requirement of the State PSD regulations, EPA retains primary enforcement authority.

2. Ecology shall have the responsibility under this Delegation Agreement to enforce the federal PSD regulations in the event that a local air authority does not.

3. In all cases, EPA retains authority pursuant to section 113 of the Clean Air Act with respect to sources that are subject to the federal PSD requirements, including federal PSD permits issued by Ecology.

B. In delegated programs, the role of the State and local agencies is that of primary enforcer or ''front line'' agency in program implementation. This includes helping to define EPA's role in the regulated community for a given program. EPA's principal role is ''back up'' for the State/local program. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:

1. At the State or local air agency's request;

2. If a State or local air agency action is determined to be inadequate, or the State/local agency fails to carry out action in a timely or appropriate manner (in this situation, the parties will adhere to the ''no surprises'' principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*; and/or

3. As part of EPA's role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.

C. PSD enforcement actions under this Delegation Agreement will be undertaken by qualified inspectors or trained enforcement staff in Ecology's Regional Offices, the Ecology's Industrial Section, Ecology's Air Quality Program Headquarters, Ecology's Nuclear and Mixed Waste Program, or local air authorities.

D. Enforcement of the federal PSD regulations is subject to the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*, signed by both the State and local agencies. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Information Retrieval System/Aerometric Facility Subsystem (AIRS/AFS).

**VII. EPA and Ecology Communications**

A. Ecology shall submit to EPA copies of the following documents, within the timeframes indicated, for sources or activities subject to this Delegation Agreement:

| Action | Submittal to EPA | Timeframe |
|---|---|---|
| Written applicability determination that a proposed source or activity is subject to or exempt from federal PSD regulations. | Copy of request and final determination | Within five working days after signature. |
| Receipt of PSD permit application* | Copy of application and cover letter | Within five working days after receipt. |
| Completeness determination or letter of deficiencies*. | Copy of letter to applicant | Within five working days after signature. |
| Transmittal to Federal Land Manager (FLM) of PSD application*. | Copy of letter | Within five working days after signature. |
| Receipt of comments from FLM* | Copy of comment letter | Within five working days of receipt. |
| Preliminary determination, proposed PSD permit, public notice. | Copy of preliminary determination, proposed PSD permit, and public notice. | Within five working days after completion of preliminary determination. |
| Public notice of hearing (see 52.21(u)(2)(ii))* | Copy of notice | Prior to publication. |
| Receipt of comments from public* | Copy of public comment letter(s) | Within five working days of the close of the public comment period. |
| Final determination, PSD permit and transmittal letter. | Copy of final determination PSD permit and transmittal letter. | Within five working days after final signature on PSD permit. |
| BACT determination submittal to RACT/BACT/LAER Clearinghouse. | Electronic or paper submittal of required information. | Within 20 working days of final signature on PSD permit. |
| Receipt of EUSGU projected actual emissions information (see Section III.A.2(i)(A)(III)). | Copy of information | Within five working days after receipt. |
| Receipt of EUSGU actual annual emissions report (see Section III.A.2 (i)(A)(IV)). | Copy of report | Within five working days after receipt. |
| Receipt of non-EUSGU actual annual emissions report (see Section III.A.2 (i)(B)(II)). | Copy of report | Within five working days after receipt. |
| Issuance of Clean Unit I Re-designation through WAC 173–400–141 (see Section III.A.2 (ii)(A)(II)). | Copy of request and final action | Within five working days after issuance. |

| Action | Submittal to EPA | Timeframe |
|---|---|---|
| Issuance of Clean Unit II Designation or Re-designation (see Sections III.A.2 (ii)(A)(II), III.A.2(ii)(B)(I), III.A.2(ii)(B)(II)). | Copy of request and final action | Within five working days after issuance. |
| Receipt of notices for effective dates and expiration dates for Clean Unit I & II designation and re-designations (see Sections III.A.2(ii)(A)(I)(b), III.A.2(ii)(A)(II)(b), III.A.2(ii)(B)(I)(b), III.A.2(ii)(B)(II)(b). | Copy of notice | Within five working days after receipt. |
| Receipt of PCP I exclusion notice (see Section III.A.2 (iii)(A)(I)). | Copy of notice | Within five working days after receipt. |
| Issuance of PCP II exclusion (see Section III.A.2 (iii)(B)(I)). | Copy request and final action | Within five working days after issuance |
| Issuance of PAL permit (see Section III.A.2 (iv)(A)(I)). | Copy of request and final action | Within five working days after issuance. |
| Issuance of PAL permit (renewal) (see Section III.A.2 (iv)(A)(II)). | Copy of request and final action | Within five working days after issuance. |
| Issuance of PAL permit (reopening) (*see* Section III.A.2 (iv)(A)(III)). | Copy of final action | Within five working days after issuance. |

*Only required when one or more pollutants are subject to federal PSD requirements.

B. EPA shall submit to Ecology copies of the following documents within the timeframes indicated.

| EPA action | Submittal to Ecology | Timeframe |
|---|---|---|
| Issuance of PAL permit (increase) under 40 CFR 52.21(aa)(11)(*see* Section III.A.2 (iv)(B)(I)). | Copy of PAL permit | Within five working days after issuance. |

C. Ecology and EPA should communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by Ecology and are not identified in the Table in Section VII.A. above should be made available to EPA upon request.

D. Ecology will work with owners and operators of sources and activities subject to the federal PSD regulations to ensure all required information is submitted to Ecology. Ecology will ensure that the information set forth in paragraphs VII. A. and B. is provided to EPA as set forth in those paragraphs and that all other information is submitted to EPA upon request.

E. Ecology will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs) (attached), Ecology shall enter the following information or activities:

1. The Air Program Code for PSD;
2. The date the PSD permit is issued or modified;
3. The final effective date of the PSD permit (or modified permit);
4. The date that the new source or modification begins construction; and
5. The date that the new source or modification begins operation.

F. Correspondence from EPA to Ecology will be sent to: Alan Newman, Senior Engineer, Department of Ecology, Air Quality Program, PO Box 47600, Olympia, WA 98504–7600.

Correspondence from Ecology to EPA will be sent to: Dan Meyer, Office of Air Quality, Environmental Protection Agency, Region 10, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.

**VIII. Future EPA Regulation Revisions**

A. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations does not extend to revisions to 40 CFR 52.21 that occur, or have occurred, after March 3, 2003.

B. A new request for delegation will be required for any changes to 40 CFR Part 52.21 promulgated after March 3, 2003. Implementation and enforcement of new or revised requirements after March 3, 2003 will remain the sole responsibility of EPA until this Delegation Agreement is revised.

**IX. Administrative**

A. This delegation supersedes the previously delegated authority contained in the September 30, 1983 letter to Ecology from the EPA Regional Administrator and the February 7, 2002 and June 4, 1992 Agreements for Delegation.

B. If, after consultation with Ecology, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. As part of the consultation, the parties will adhere to the ''no surprises'' principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999).* Any such revocation shall be effective as of the date specified in a *Notice of Revocation.*

1. Ecology's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
2. Ecology is not adequately implementing or enforcing the federal PSD program; or
3. Ecology has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act.

C. In the event that Ecology is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, Ecology will immediately notify the Director of the Office of Air Quality. Failure to notify the Director of the Office of Air Quality does not preclude EPA from exercising its enforcement authority.

D. EPA may review the state PSD permitting program as part of the review of the Performance Partnership Agreement (PPA) or any other appropriate agreement. EPA may review State procedures and recommend changes as necessary. All recommendations will be in writing.

E. In the event that EPA or Ecology regulations or policies change, this delegation shall either be amended to ensure the continued implementation of EPA's PSD regulations or the delegation shall be revoked.

**X. Signatures**

On behalf of the Environmental Protection Agency, I grant partial delegation of the federal PSD program, 40 CFR 52.21, to the

Washington Department of Ecology pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act. Date: March 28, 2003. Betty A. Wiese, Director, Office of Air Quality, Environmental Protection Agency, Region 10.

On behalf of the State of Washington and the Department of Ecology, I accept partial delegation of the federal Prevention of Significant Deterioration program, 40 CFR 52.21, pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act. Date: March 28, 2003. Mary E. Burg, Manager, Air Quality Program, State of Washington, Department of Ecology.

## III. Conclusion

Subject to the conditions of the Partial Delegation Agreement, Ecology is delegated authority to implement and enforce the federal PSD regulations, as published on December 31, 2002, except for applications for PAL increases under 40 CFR 52.21(aa)(11) and except as otherwise provided in the Delegation Agreement. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), all applications and other information required pursuant to the federal PSD regulations at 40 CFR 52.21 from sources located or locating in the State of Washington,[19] shall continue to be submitted to the Ecology at the following address: Department of Ecology, Air Quality Program, PO Box 47600, Olympia, WA 98504–7600. Applications for PAL increases under 40 CFR 52.21(aa)(11) shall be submitted to EPA Region 10 at the following address: Office of Air Quality, Environmental Protection Agency, Region 10, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this information notice is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this information notice is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This information notice imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this information notice will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this information notice delegates pre-existing requirements under Federal law and does not impose any additional enforceable duty beyond that required by Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This information notice also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This information notice also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This information notice merely delegates the implementation of a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This information notice also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, EPA's role is to approve state capabilities, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request, to use VCS in place of a delegation request that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This information notice granting partial delegation of the Federal PSD program to Ecology is issued under the authority of sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7601).

Dated: May 1, 2003.

**Ronald Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 03–12029 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–P

[19] Except in Indian Country, as provided in paragraph III.B. of the Delegation Agreement, and sources subject to EFSEC's jurisdiction.

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0004; FRL–7305–6]**

## Access to Confidential Business Information by Solutions by Design II

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Solutions by Design II (SBD) of McLean, VA access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of This Document and Other Related Documents?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket,

the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. What Action Is the Agency Taking?

Under contract number GS35F–4717G, Solutions by Design II, of 1420 Spring Hill Road, Suite 325, McLean, Virginia, will assist EPA in designing and developing Lotus Notes PMN Development and Storage Applications. SBD will also assist in developing the TSCA Data Transmittal System to transmit PMNs and other TSCA data.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number GS35F–4717G, SBD will require access to CBI submitted to EPA under sections 5 and 8 of TSCA, to perform successfully the duties specified under the contract.

SBD personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA, that the Agency may provide SBD access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Chemical Abstracts Service's site located at 2540 Olentangy River Road, Columbus, Ohio.

SBD personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.* SBD's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Clearance for access to TSCA CBI under Contract number GS35F–4717G may continue until July 30, 2007.

### List of Subjects

Environmental protection, Confidential business information.

Dated: April 30, 2003.

**Robin L. Gonzalez,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 03–11906 Filed 5–13–03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7498–3]**

## Science Advisory Board; Advisory Council on Clean Air Compliance Analysis; Notification of an Upcoming Public Meeting and Three Planning Teleconferences

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Advisory Council on Clean Air Compliance Analysis (Council) is announcing a public meeting and a public planning teleconference. It is also announcing planning teleconferences for its two subcommittees, the Air Quality Modeling Subcommittee (AQMS) and the Health Effects Subcommittee (HES).

**DATES:**

*May 28, 2003:* The planning teleconference call meeting for the Council will be held from 12 to 2 p.m. (eastern time).

*May 29, 2003:* The planning teleconference call meeting for the HES will be held from 12 to 1:30 p.m. (eastern time).

*May 30, 2003:* The planning teleconference call meeting for the AQMS will be held from 2 to 3:30 p.m. (eastern time).

*June 11–13, 2003:* The public meeting for the Council will begin June 11, at 9 a.m. and adjourn on June 13, 2003, no later than 2 p.m. (eastern time) on that day. The meeting agenda will be posted on the SAB Web site, *http://www.epa.gov/sab/agendas.htm,* one week before the meeting.

**ADDRESSES:** The public meeting of the Council will be held in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa/sab.* For further information concerning the public meeting, please contact Dr. Angela Nugent, DFO (see contact information below). Participation in the teleconference call meetings will be by teleconference only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 564–4562 or via e-mail at *nugent.angela@epa.gov.* Members of the public who wish to obtain the call-in number and access code to participate in any of the teleconference meetings must contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526, via e-mail at: *Friedman.Sandra@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Summary:* Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Council will hold a public meeting to provide advice to the EPA on the Agency's plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and total benefits of programs implemented pursuant to the Clean Air Act, and that the Council and its two subcommittees will also hold public teleconferences to plan for the public meeting. The dates and times for both the meeting and teleconference are provided above.

*Background:* Background on the Council, its subcommittees, and on the advisory project that will be the focus of the meeting and teleconferences described in this notice was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

In forming the Health and Ecological Effects Subcommittee discussed in that **Federal Register** notice, the Science Advisory Board Staff Office received nominations for health effects experts. It has therefore decided to rename the Subcommittee as the ''Health Effects Subcommittee'' of the Council and to work with the Council to form a new subcommittee to focus on ecological effects or to develop another appropriate mechanism to consider and give due attention to ecological effects, including coordination with a new SAB

Committee on ''Valuing the Protection of Ecological Systems and Services.''

*Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 8, 2003.

**Robert Flaak,**

*Acting Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 03–12028 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0118; FRL–7301–3]**

## Fluroxypyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP– 2003–0118, must be received on or before June 13, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

You may be potentially affected by this action if you an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0118. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only on printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0118. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0118. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0118.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0118. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

## Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroSciences and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

**Dow AgroSciences**

*PP 9F6050*

EPA has received a pesticide petition (9F6050) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fluroxypyr in or on the raw agricultural commodities as follows: tolerances for residues of fluroxypyr 1-methylheptyl ester (MHE) in or on sweet corn are being proposed in support of this registration as follows: 0.02 parts per million (ppm) for kernels plus cob with husk removed, and 1.0 ppm for forage. Tolerances for residues of fluroxypyr MHE in or on field corn are being proposed in support of this registration as follows: 0.02 ppm for grain; 1.0 ppm for forage; and 0.5 ppm for stover. Tolerances for residues of fluroxypyr MHE in or on sorghum are being proposed as follows: Sorghum grain, 0.02 ppm; sorghum forage, 2.0 ppm; sorghum stover, 4.0 ppm. Tolerances for residues of fluroxypyr MHE in or on grasses are proposed as follows: grass forage, 120 ppm; grass hay, 160 ppm; and grass silage, 100 ppm. Based on the above tolerances and an animal feeding study, increased tolerances are also proposed for fluroxypyr MHE and fluroxypyr, expressed as combined residues of total fluroxypyr, in or on the following animal commodities: milk of cattle, goats, hogs, horses and sheep, 0.3 ppm; and kidney of cattle, goats, hogs, horses and sheep, 1.5 ppm. EPA previously received a pesticide petition (9F6050) for fluroxypyr and the Notice of Filing was published in the **Federal Register** on January 15, 2003. The notice of filing erroneously omitted tolerances proposed for residues of fluroxypyr on corn. Thus, this notice will supercede the previously published notice of filing.

*A. Residue Chemistry*

1. *Plant metabolism*. Fluroxypyr is a systemic herbicide that is readily translocated and rapidly converts to the acid form following absorption. Fluroxypyr moves readily throughout the plant via the phloem (nutrient transporting) system and to a lesser extent through the xylem (water transporting). Fluroxypyr is distributed throughout the entire plant, including the meristems and other developing plant parts.

2. *Analytical method*. There is a practical method gas chromatography (GC) with mass spectrometry detection (MSD) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for the proposed tolerances. Fluroxypyr has been tested through the Food and Drug Administration's (FDA's) Multi residue Methodology, Protocols C, D, and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues*. The metabolism of fluroxypyr MHE in plants and animals (goats and poultry) is adequately understood for the purposes of these tolerances. Magnitudes of residue studies were conducted for field corn, sweet corn, sorghum and grasses. A process products study was not conducted in field corn since residues of fluroxypyr MHE were not detected in corn grain at 5X the application rate. In addition, processing of sorghum was not conducted since residue data for flour are not required at this time, because sorghum flour is used exclusively in the United States as a component for drywall, and not as either a human food or a feedstuff. No residues of fluroxypyr are expected in root or leafy vegetable crops grown in rotation to fluroxypyr-treated field corn, sweet corn, sorghum, and grasses, after a 30–day plant-back interval at the maximum allowable label rate of 8 oz. active ingredient/Acre (a.i./A). Field corn, sweet corn, sorghum and grasses grown in rotation may contain low levels of fluroxypyr residues; however, the tolerance values proposed for these crops will adequately assure compliance with the labeled use patterns.

*B. Toxicological Profile*

1. *Acute toxicity*. Fluroxypyr MHE has low acute toxicity. The rat oral $LD_{50}$ is >5,000 milligrams/kilogram (mg/kg), the rabbit dermal $LD_{50}$ is >2,000 mg/kg, and the rat inhalation $LC_{50}$ is > 1.0 milligrams/per liter (mg/l) 1,000 mg/cubic meter. In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicty*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* chromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. These studies show a lack of genotoxicity. In addition, short term assays for genotoxicity consisting of an Ames metabolic activation test, possible induction of point mutations at the hypoxanthine guanine phophoribosyl transferase (HGPRT)-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. These studies also show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed adverse effect levels (NOAELs) of 300 mg/kg/day (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed NOAELs in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOAEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. These studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with *in utero* development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOAEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOAEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOAEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity*. Fluroxypyr MHE showed a NOAEL of 1,000 mg/kg/day in a 90–day rat dietary study and a 21–day rabbit dermal study. Ninety day feeding studies with fluroxypyr showed NOAELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1,342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4–week dietary, range finding study with fluroxypyr in dogs the NOAEL found was > 50 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOAEL found in the rat chronic test. NOAELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day

(mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism*. Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, per se, was extensively absorbed and rapidly excreted principally unchanged in the urine; 1-methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of 1-methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology*. Administration of fluroxypyr, as the acid or methylheptyl ester in a variety of toxicological studies, has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity is entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Endocrine disruption*. There is no evidence to suggest that fluroxypyr and fluroxypyr MHE have an effect on any endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. Tier I dietary risk assessments were conducted for acute, short-term, and chronic exposures. Very conservative assumptions were made in these risk assessments. The dietary exposure assessments were based on all commodities with tolerances for fluroxypyr established at 40 CFR 180.535 together with proposed tolerances for field corn, sweet corn, grain sorghum, and forage grass and hay, including revised tolerances for milk and meat. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. Potential dietary exposure and risk was estimated using DEEM™ software (Dietary Exposure Evaluation Model, Version 7.075, Novigen Sciences, Inc., Washington, DC).

Developmental toxicity was not observed in the absence of maternal toxicity and there was no indication of increased susceptibility in young animals to prenatal or postnatal exposure to fluroxypyr in the toxicology studies. Therefore, an additional Food Quality Protection Act (FQPA) safety factor for infants and children was not included in this assessment. Acute dietary risk was assessed using an acute RfD of 1.25 mg/kg/day, based on a maternal NOAEL of 125 mg/kg/day from a rat developmental toxicity study and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). EPA previously established the maternal NOAEL for this study at 125 mg/kg/day and it was used here for a very conservative assessment of potential developmental toxicity. Pregnant females are estimated to have acute dietary exposure of 0.006582 mg/kg/day, which occupies only 0.53% of the acute RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, acute dietary exposure and risk are well within acceptable levels.

Chronic dietary exposure estimates along with a short-term oral NOAEL were used to assess short-term dietary exposure and risk. The assessment of chronic dietary exposure and risk is discussed below. The chronic exposure values reported for the total U.S. population and for children 1–6 years old was used to estimate dietary exposure for adults and toddlers, respectively. A 90–day dietary study in rats with a NOAEL of 80 mg/kg/day was selected for establishing a short-term oral toxicity endpoint. A 90–day subchronic study was selected for evaluating risk from short-term oral exposure since the 90–day exposure interval is more appropriate than chronic exposure for assessing short-term risk. Of the 90–day subchronic studies conducted with fluroxypyr, the one selected provided the lowest NOAEL. The short-term oral NOAEL (80 mg/kg/day) was divided by the estimated dietary exposure for adults and toddlers to calculate the respective short-term margins of exposure (MOEs). A conservative Tier I estimate of chronic dietary exposure to fluroxypyr estimated exposure at 0.003160 mg/kg/day and 0.010321 mg/kg/day for the total U.S. population and for children 1–6 years old, respectively. A short-term dietary (food) MOE was calculated by dividing the short-term oral NOAEL (80 mg/kg/day) by the estimated exposure (0.003160 mg/kg/day). The resulting food MOE for adults and toddlers was calculated to be 25,316 and 7,751, respectively. Since the MOE is substantially greater than 100, risk is estimated to be well within acceptable levels.

Tolerances for fluroxypyr exist for several raw agricultural commodities and as discussed previously, tolerances for additional commodities have been proposed. Chronic dietary exposure to fluroxypyr is possible due to the potential presence of fluroxypyr residue in certain foods. Therefore, a chronic dietary risk assessment was conducted. The assessment used a chronic RfD of 0.8 mg/kg/day based on a NOAEL of 80 mg/kg/day from a combined chronic toxicity and carcinogenicity study in rats and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). A Tier I chronic dietary exposure and risk assessment was conducted. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. DEEM™ estimates dietary exposure and the percent of the chronic RfD that is occupied by the input residue values for several population subgroups in the United States. Chronic dietary exposure for the general U.S. population was estimated to be 0.003160 mg/kg/day, which occupies 0.4% of the RfD. Children 1–6 years old comprise the population subgroup predicted to have the highest potential level of dietary exposure. Children 1–6 years old are estimated to have a chronic dietary exposure of 0.010321 mg/kg/day, which occupies 1.3% of the RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, chronic dietary exposure and risk for both the general U.S. population and children 1–6 years old are well within acceptable levels.

ii. *Drinking water*. There are no established maximum contaminant levels for residues of fluroxypyr in drinking water and health advisory levels for fluroxypyr in drinking water have not been established. Guidance from EPA has indicated that Tier I screening level models, such as GENEEC and SCI-GROW, may be used to estimate upper-bound pesticide residues in surface water and ground water when assessing potential exposure through drinking water. Estimated concentrations of a pesticide in surface water or ground water are then compared to a drinking water level of comparison (DWLOC) as a surrogate estimate of exposure and risk. The DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light

of total aggregate exposure to that pesticide. Potential drinking water concentrations of fluroxypyr were estimated in ground water and surface water using the screening concentration in ground water (SCI-GROW) and the generic expected environmental concentration (GENEEC) models, respectively. Both SCI-GROW are Tier I screening level models that use conservative assumptions.

The estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 mg/L. EPA has indicated that peak concentrations of a pesticide in surface water should be used in an acute assessment for comparison with DWLOC values. The estimated peak concentration of fluroxypyr in surface water using GENEEC is 20.88 mg/L. The upperbound estimated fluroxypyr concentrations in ground water (0.16 mg/L) and surface water (20.88 mg/L) are substantially below the acute DWLOC of 37,303 mg/L for pregnant females. Therefore, even with the numerous conservative assumptions included in this assessment, aggregated acute fluroxypyr exposure for pregnant females resulting from dietary exposure and upper-bound drinking water exposure is well within acceptable limits of exposure and risk.

As indicated above, the estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 mg/L. EPA has indicated that the 56–day value from GENEEC should be divided by 3 for comparison to short-term, intermediate-term and chronic DWLOC values. The estimated 56–day concentration of fluroxypyr in surface water using GENEEC is 7.08 mg/L. Therefore, the surface water concentration used in this assessment is 2.36 mg/L (7.08 mg/L / 3). Potential residential exposure resulting from fluroxypyr use on turf was included along with potential dietary exposure when calculating the short-term DWLOC for adults and toddlers. The short-term DWLOC for toddlers and the general population of adults was calculated to be 7,843 mg/L and 27,450 mg/L, respectively. The DWLOCs are substantially greater than high-end estimated exposure from surface water or ground water, indicating risk from potential drinking water exposure is well within acceptable levels.

As indicated above with short-term exposure, Tier I screening level estimates of potential fluroxypyr concentrations in ground water and surface water are 0.16 mg/L and 2.36 mg/L, respectively. Chronic DWLOCs for children 1–6 years old and for the general population of adults are 7,896 mg/L and 27,889 mg/L, respectively. Since the chronic DWLOCs are substantially greater than potential exposure through ground water or surface water, risk from potential chronic exposure through drinking water is well within acceptable levels.

2. *Non-dietary exposure*. The proposed use of fluroxypyr on residential turf presents the potential for short-term residential exposure. Homeowners may have dermal and inhalation exposure to fluroxypyr during application to turf and also may have dermal exposure due to post-application activity on the treated turf. Toddlers may have dermal and oral exposure to fluroxypyr due to post-application activity on treated turf. Transferable residue of fluroxypyr from turf was found to range from 0.03 to 0.74% (used as a high end stimate) of the fluroxypyr applied and to dissipate with a half-life ranging from 1.4 to 2.5 days. Exposure was estimated based on equations and default values given in the Standard Operating Procedures (SOPs) for Residential Exposure Assessment. Risk from short-term dermal exposure was assessed using a NOAEL of 1,000 mg/kg/day from a 21–day rabbit dermal study. Short-term oral and inhalation exposure was assessed using a NOAEL of 80 mg/kg/day from a 90–day rat feeding study.

A high-end estimate of exposure for adults was developed by combining dermal exposure from application of fluroxypyr to turf with post-application dermal exposure also on the day of treatment (day 0). Homeowner exposure during the application of fluroxypyr to turf includes both dermal and inhalation exposure. Surrogate dermal and inhalation exposure data from Pesticide Handlers Exposure Data base (PHED V1.1) was used in estimating applicator exposure. The PHED surrogate data used to estimate exposure assumes residential applicator attire to include short pants, shortsleeve shirt, and no gloves. The applicator exposure estimate was based on a broadcast application using a garden hose end sprayer. Margin of exposure (MOE) values for dermal and inhalation exposures were calculated using the toxicity endpoints previously described. Based on these Tier I screening-level estimates, the general population of adults was estimated to have potential dermal and inhalation exposures resulting in MOE values of 8,635 and 2,666,667, respectively. These MOEs are substantially greater than 100, indicating that risk from these potential exposures is well within acceptable levels.

Toddlers may have exposure to fluroxypyr due to post-application activity on treated turf. When a pesticide in liquid formulation is applied to turfgrass toddlers may experience post-application exposure through dermal exposure and also, through oral exposure due to hand-to-mouth transfer of pesticide residue and ingestion of treated turfgrass from treated areas. Based on Tier I screening-level estimates, the MOE values for dermal exposure and oral exposures are 34,722 and 26,667, respectively. Even with conservative Tier I estimates the MOEs are well above 100, indicating that risk from these potential exposures is well within acceptable levels.

*D. Cumulative Effects*

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

*E. Safety Determination*

1. *U.S. population*. Acute dietary exposure for pregnant females to residues of fluroxypyr from current and proposed uses was estimated to occupy only 0.53% of the acute RfD, which is well below levels expected to pose any appreciable risk to human health. Additionally, the acute DWLOC was calculated to be over 1,700–fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models. Thus, aggregated acute exposure to fluroxypyr resulting from current and proposed uses is well within acceptable levels of risk.

Use of fluroxypyr on turf results in potential short-term residential exposure for adults. Potential short-term dietary and residential exposures were combined into an aggregate MOE. Potential exposure through drinking water was not included in the aggregate MOE, but was evaluated in aggregate through use of a DWLOC calculated for short-term exposure. The short-term aggregate MOE for the general population of adults was calculated to be 6,423. Additionally, the short-term DWLOC for the general population of adults was over 10,000-fold greater than potential fluroxypyr residues in drinking water predicted by conservative screening level models.

Therefore, aggregate short-term exposure and risk for adults is expected to be well within acceptable levels.

Using conservative exposure assumptions previously described, chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy only 0.4% of the RfD for the general U.S. population. The chronic DWLOC for adults was calculated to be over 10,000 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening-level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment it is concluded that there is a reasonable certainty that no harm will result to the general U.S. population, pregnant females, or developing young from acute, short-term, or chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

2. *Infants and children*. FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fluroxypyr MHE relative to prenatal and postnatal effects for children is complete. There were no indications of neurotoxicity and developmental toxicity was not observed in the absence of maternal toxicity. It is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional FQPA safety factor is not required.

The acute and short-term exposures were assessed for pregnant females to evaluate the risk for developmental toxicity and it was concluded that, there was reasonable certainty of no harm from aggregate exposures resulting from current and proposed uses of fluroxypyr.

Toddlers may experience short-term dermal and oral exposure to fluroxypyr as a result of postapplication activities on treated residential turf. Additionally, there is the potential for exposure to fluroxypyr through residue in food and drinking water. Tier I assessments were conducted to develop very conservative estimates of potential short-term exposure through residential, dietary and drinking water pathways. Potential dietary and residential exposures were combined into an aggregate MOE value. The aggregate MOE was 5,120, well above 100, indicating risk is well within acceptable levels. Additionally, the short-term DWLOC for toddlers was greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Based on a conservative Tier I assessment, chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy only 1.3% of the RfD for children 1–6 years old, the population subgroup predicted to be most highly exposed. Additionally, the DWLOC was calculated to be over 3,000–fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment it is concluded, that there is a reasonable certainty that no harm will result to infants and children from acute, short term, and chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

*F. International Tolerances*

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop.

[FR Doc. 03–11759 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–S

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Task Force on High End Computing; Notice of Request for Information

**AGENCY:** Office of Science and Technology Policy.

**ACTION:** Request for information.

**SUMMARY:** A task force on high end computing, through the National Coordination Office for Information Technology Research and Development under the National Science and Technology Council, invites the public to submit white papers relative to the task force's charge. The task force was established in March 2003 to implement planning activities in high end computing, as set forth in the President's 2004 budget. Additional information on the task force's charge is provided below. Details on the invitation to submit white papers on high end computing, can be found at: *http://www.itrd.gov/hecrtf-outreach/*.

**DATES:** Information must be received by May 21, 2003.

**ADDRESSES:** Responses to this request for information should be addressed to High End Computing Revitalization Task Force, National Coordination Office for Information Technology Research and Development, 4201 Wilson Blvd, Suite II–405, Arlington, VA 22230, PH: (703) 292-ITRD (4873), FAX: (703) 292–9097, *hecrtf-outreach@nitrd.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dave Nelson at (703) 292–4873.

**SUPPLEMENTARY INFORMATION:** The High Computing Revitalization Task Force (HECRTF) was established in March 2003 to perform the tasks described in the following text that appears on page 177 in the Research and Development chapter of the FY 2004 Budget of the U.S. Government Analytical Perspectives:

''Due to its impact on a wide range of federal agency missions ranging from national security and defense to basic science, high end computing—or supercomputing—capability is becoming increasingly critical. Through the course of 2003, agencies involved in developing or using high end computing will be engaged in planning activities to guide future investments in this area, coordinated through the NSTC. The activities will include the development of interagency R&D roadmap for high-end computing core technologies, a federal high-end computing capacity and accessibility improvement plan, and a discussion of issues (along with recommendations where applicable) relating to federal procurement of high-end computing systems. The knowledge gained for this process will be used to guide future investments in this area. Research and software to support high end computing will provide a foundation for future federal R&D by improving the effectiveness of core technologies on which next-generation high-end computing systems will rely.''

**Stanley S. Sokul,**

*Counsel, Office of Science and Technology Policy.*

[FR Doc. 03–12177 Filed 5–13–03; 8:45 am]

BILLING CODE 3170–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notice

**DATE AND TIME:** Tuesday, May 20, 2003 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 03–12143 Filed 5–12–03; 12:24 pm]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011737–010.

*Title:* The MCA Agreement.

*Parties:* Atlantic Container Line AB; Alianca Navegacao e Logistica LTDA; A.P. Moller-Maersk Sealand; Antillean Marine Shipping Corporation; Bernuth Lines; CMA CGM, S.A.; Companhia Libra De Navegacao; Compania Sud Americana De Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Hamburg-Sud; Dole Ocean Cargo Express, Inc.; Great White Fleet (US) Ltd.; Hapag-Lloyd Container Linie GmbH; Italia Di Navegazione S.P.A. King Ocean Central America S.A.; King Ocean Service De Colombia S.A.; King Ocean Service De Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; and Wallenius Wilhelmsen Lines AS.

*Synopsis:* The amendment modifies the membership of the agreement by adding Bernuth Lines, Ltd and Italia Di Navegazione S.P.A. and deleting Network Shipping Ltd. and Nippon Yusen Kaisha.

*Agreement No.:* 011799–001.

*Title:* Evergreen/Lloyd Triestino/Hatsu Marine Alliance—TSA Bridging Agreement.

*Parties:* Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; American President Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); A.P. Moller-Maersk Sealand; CMA CGM S.A.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

*Synopsis:* The proposed amendment would extend the duration of the agreement through June 15, 2004. The parties request expedited review because the agreement is due to expire on June 8, 2003.

*Agreement No.:* 011802–002.

*Title:* Evergreen/Lloyd Triestino/Hatsu Marine Alliance—WTSA Bridging Agreement.

*Parties:* Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; American President Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); China Shipping Container Lines Co., Ltd.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

*Synopsis:* The proposed amendment would extend the duration of the agreement through June 15, 2004. The parties request expedited review because the agreement is due to expire on June 15, 2003.

*Agreement No.:* 011853.

*Title:* CCNI/Lykes/Maruba Transpacific Vessel Sharing Agreement.

*Parties:* Maruba S.C.A., Lykes Lines Limited, LLC, Compania Chilena de Navegacion Interoceanica.

*Synopsis:* The agreement authorizes the parties to operate a weekly container liner service between Long Beach, California, and the PRC and sets forth the allocation of space and other matters related to the service. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: May 9, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–12032 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 2724NF.

*Name:* Air 7 Seas Transport Logistics, Inc.

*Address:* 1815 Houret Court, Milpitas, CA 95035–6823.

*Date Revoked:* April 23, 2003.

*Reason:* Failed to maintain valid bonds.

*License Number:* 7399N.

*Name:* Air Van Lines International Inc.

*Address:* 1230 116th Avenue, NE., Bellevue, WA 98004.

*Date Revoked:* April 7, 2003.

*Reason:* Surrendered license voluntarily.

*License Number:* 4607F.

*Name:* Jolaco Maritime Services, Inc.

*Address:* 3620 Willowbend, Suite 1120, Houston, TX 77054.

*Date Revoked:* April 21, 2003.

*Reason:* Failed to maintain a valid bond.

*License Number:* 16974N.

*Name:* Sea-Logix, Inc.

*Address:* Metro Office Park, Compaq Bldg-400, San Juan, Puerto Rico 00936.

*Date Revoked:* February 21, 2003.

*Reason:* Surrendered license voluntarily.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–12033 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not

receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Global Ocean Agency Lines, L.L.C., 258 Fawn Drive, Sedona, AZ 86336, Officer: Timothy J. Cummings, Managing Director, (Qualifying Individual).

Amerasia Line, Inc., 28815 King Arthur Court, Rancho Palos Verdes, CA 90275, Officers: Shally Liang, President/CEO, (Qualifying Individual), Victor Lin, Secretary.

K & S Freight Systems Inc., 17099 SW 54 Court, Miramar, FL 33027, Officer: Nelson Solano, President, (Qualifying Individual).

Select Air Cargo Services, Inc. dba PAC, International Logistics Company, 12801 South Figueroa Street, Officers: Thomas W. Young, Vice President, (Qualifying Individual), Chee Tao Tsui, President/CEO.

Express Freight International, Inc., 7833 NW 72nd Avenue, Miami, FL 33166, Officer: Roberto Lopez, President, (Qualifying Individual).

Laufer Air Inc. dba Laufer Air Line Inc., SO International Unlimited, 20 Vessey Street S. 601, New York, NY 10007, Officer: Mark Laufer, President, (Qualifying Individual).

Omni Logistics, Inc., 3340 Greens Road Bldg., C #450, Houston, TX 77032, Officers: Mark Andrew McDowell, Treasurer, (Qualifying Individual), Jason Smith, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

GII International, Inc., 47 West 34th Street, Suite 412, New York, NY 10001, Officers: Juanita Geronimo, President, (Qualifying Individual), May Soriano, Vice President.

Meyer's Van Lines, 370 Concord Avenue, Bronx, NY 10454, Officers: Yorah Eshel,Vice President, (Qualifying Individual), Ofer Prori, CEO.

Bates, Inc. dba Bates Shipping and Trading, 399 Koscluszko Street, Suite 10, Brooklyn, NY 11221, Officer: Donna Bates, President, (Qualifing Individual).

Asain Link Logistics LLC dba A.L.L., 829 Graves Street, Kernersville, NC 27284, Officer: David W. Reich, Jr., Member Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

New England Household Moving & Storage, Inc., 104 Bartzak Drive, Holliston, MA 01746, Officer: Jeanine Patricia Kelly-Coburn, President, (Qualifying Individual).

ABS–CBN International dba The Filipino Channel, 859 Cowan Road, Burlingame, CA 94010, Officers: Enrico Gatchalian, Manager, (Qualifying Individual), Eugenio L. Lopez, III, Chairman.

Global U.S.A., Inc., 32 Broadway, Suite 1718, New York, NY 10004, Officers: Mei Li, Vice President, (Qualifying Individual), Malvern Kaye, President.

Odyssey International, Inc., 39 Old Ridgebury Road, Danbury, CT 06817, Officers: Robert H. Shellman, CEO, (Qualifying Individual), Douglas A. Johnston, Director.

Dated: May 9, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–12034 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/Address | Date reissued |
|---|---|---|
| 1803N | Blue Sky Blue Sea, Inc. dba American Export Lines dba International Shipping Company, 12919 S. Figueroa Street, Los Angeles, CA 90061. | March 29, 2003. |
| 17663N | Data Cargo Co., Inc., 8757 NW 35th Lane, Miami, FL 33172 | December 8, 2002. |
| 4622N | E & M International L.L.C. dba Worldwide Transport, 5304 W. 135th Street, Hawthorne, CA 90250. | March 23, 2003. |
| 11296N | Master Air Cargo, Inc., 8030 NW 29th Street, Miami, FL 33122 | March 27, 2003. |
| 16887F | Promax Automotive, Inc., 6722 Orangethorpe Avenue, Suite 175, Buena Park, CA 90622 | April 9, 2003. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–12035 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[Program Announcement 03059]**

### Cooperative Agreement for a Research Program on Exposure-Dose Reconstruction Notice of Availability of Funds

*Application Deadline:* June 30, 2003.

**A. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 104(i)(1)(E) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(1)(E)) and section 3019 of the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) (42 U.S.C. 6939a(b) and (c)). The Catalog of Federal Domestic Assistance number is 93.161.

**B. Purpose**

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement research program for exposure-dose reconstruction. This program addresses the ''Healthy People 2010'' focus area of Environmental Health.

The purpose of the program is to develop and evaluate methods to reconstruct, estimate, predict, and evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying emission characteristics that can be found at National Priorities List (NPL) sites, Resource Conservation and Recovery

Act (RCRA) facilities, and other sites or facilities where a hazardous substance has been released into the environment. The program will advance the development, evaluation, application, and maintenance of computational methodologies and decision support systems for estimating exposure-dose relations from contaminated environmental media and hazardous substances.

A critical aspect of assessing human health effects associated with hazardous waste sites is the evaluation of past, current, and future human exposures to hazardous substances. In order to accurately and meaningfully evaluate such exposures, more sensitive, media specific, and integrated methods must be developed through a program of research coordinated across multiple relevant, intra-related environmental, geochemical, and biomedical disciplines. No human subjects are involved.

Hazardous waste sites present a number of unique circumstances and problems for ATSDR's public health assessment process. Chief among these is the widespread occurrence of a number of hazardous chemicals and mixed hazardous chemical compounds. In addition, some of the more complex hazardous waste sites may contain multiple waste disposal areas within a single site. Thus, the health assessor may be confronted with the need to evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying geochemical and toxicological characteristics. More novel, reliable, and expedient exposure-dose assessment methods must be developed in order to adequately address site-specific issues.

Measurable outcomes of the program will be in alignment with the following performance goal for ATSDR: evaluate the human health risk from toxic sites and releases.

## C. Eligible Applicants

Applications may be submitted by:

- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of states (in consultation with states), which may include state universities, state colleges, and state research institutions.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

## D. Funding

*Availability of Funds*

Approximately $300,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Use of Funds*

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the awardee, as the direct and primary recipient of ATSDR cooperative agreement funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. If contractors are proposed, justification must be provided along with the following: (1) Name of contractor; (2) method of selection; (3) period of performance; (4) detailed budget; (5) justification for use of contractor; and (6) assurance of non-conflict of interest.

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) A justification for the need to acquire the equipment; (2) the description of the equipment; (3) the intended use of the equipment; and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the following conditions: (1) ATSDR retains the right to request return of all equipment purchased (in operable condition) with cooperative agreement funds at the conclusion of the project period, and (2) equipment purchased must be compatible with CDC/ATSDR hardware.

*Recipient Financial Participation*

Matching funds are not required for this program.

## E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

*1. Recipient Activities*

a. Identify, pursue, and enhance where appropriate, emerging technical advances in exposure-dose reconstruction to encompass reconstruction of exposure histories and determination of biologically effective doses. These advances should include, but are not limited to, assessment of methods such as: (1) Environmental multi-media exposure (including such pathways as groundwater, surface water, air, soil, and biota); (2) assessment of exposure and dose through bioavailability, accumulation, and transformation; (3) delivery of past, current, or potential future exposure and related dose through water-distribution systems; (4) kinetic networks; (5) genetic algorithms; (6) dose reconstruction; and (7) spatial analysis techniques integrated with (1) through (6) above, as a means to bridge the gap between the release of hazardous substances into the environment, potential dose (exposure), and resulting health effects.

b. Reconstruct exposure and potential dose histories and determine potential for future exposure resulting from hazardous substances in the environment for populations in the environs around hazardous waste sites by use of methodology driven environmental assessment tools. These tools must include, at a minimum, simulators such as: (a) Analytical contaminant transport analysis system (ACTS); (b) steady flow in layered aquifer media and spatial analysis interface (SLAM–GIS); (c) contaminant transport in layered aquifer media and spatial analysis interface (CLAM–GIS); and (d) water distribution system network hydraulic and water-quality simulators integrated with spatial analysis interface and progressive optimality genetic algorithm (POGA) optimization. These tools must be compatible with the desktop computing devices and operating systems currently in use by the agency and its exposure-dose reconstruction computational laboratory. The generalized description of the theory of these assessment tools can be found in the public domain literature.

c. Identify, characterize, and integrate uncertainty analysis techniques, such as

Monte Carlo simulation into environmental assessment simulator tools, so that environmental exposures and health-based risk assessment analyses can be conducted. This combined deterministic-probabilistic computational methodology must include a user-friendly interface and should not rely on third-party or proprietary software programs or licensing to accomplish this task.

d. Serve as a leading technical resource that provides information and assists in developing methodologies and setting the standard for use of methods for incorporating fuzzy system mathematics and modeling in the area of exposure assessment and exposure-dose reconstruction.

e. Provide technical consultation and assistance in the development of a user friendly decision support system that considers, but is not limited to, the following:

(1) Site characterization and exposure scenario data.

(2) Environmental-media fate and transport computations.

(3) Exposure-route analysis and computations.

(4) Chemical-compound intake and exposure-dose computations.

(5) Probability distributions and uncertainty analyses.

(6) Spatial analysis computations and a geographic information systems interface.

(7) Access to the decision support system by means of desktop computational devices available throughout the agency and in its exposure-dose reconstruction computational laboratory.

f. Provide technical consultation and assistance in applying innovative and emerging exposure-dose reconstruction methodologies and computational analyses, described above, to areas characterized by contaminated environmental media that may pose potential health risks to the public.

g. Provide information on development of methodologies related to exposure-dose reconstruction by submitting, as progress warrants, manuscripts to symposia, conferences, and peer-reviewed scientific journals on the developments and methodology describing aspects of the research on exposure-dose reconstruction.

h. Organize and conduct workshops, conferences, or symposia to publicize and promote benefits of methodologies developed and to transfer technology as part of the research program on exposure-dose reconstruction.

i. When the project is completed, recipient will summarize activities in a written report that includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

*2. ATSDR Activities*

a. Collaborate with and assist in the development of plausible exposure-dose methodologies, relations, and criteria for the selection and application of computational tools, and define appropriate assumptions.

b. Serve as a direct conduit for accessing environmental and exposure data and hazardous waste site information that would be of value to recipient organization to test and validate the acceptability of the environmental assessment simulator tools developed as part of the exposure-dose reconstruction research program.

c. Collaborate with and assist recipient organization with benchmarking, testing, and evaluation of methodology driven exposure-dose reconstruction assessment computational tools by providing recipient organization with results derived from application of methodology driven exposure-dose reconstruction assessment computational tools when applied to hazardous waste sites.

d. Collaborate with and assist recipient with identifying and pursuing emerging disciplines related to advances in assessment of exposure to hazardous chemicals and mixed wastes typically associated with hazardous waste sites.

e. Provide technical assistance to recipient organization to extend the appropriate use of novel exposure characterization and dose relations protocols to hazard characterization and communication efforts.

f. Assist recipient organization in communicating information on development of methodologies related to exposure-dose reconstruction by submitting, as progress warrants, manuscripts to symposia, conferences, and peer-reviewed scientific journals on the developments and methodology describing aspects of the research on exposure-dose reconstruction.

g. Assist in the development and dissemination of advances in the areas of exposure-dose reconstruction methodologies to all relevant scientific and technical groups and communities including state and local governments and the public.

h. Assist in the planning, organization, and conduct of workshops, conferences, or symposia to publicize and promote benefits of methodologies developed; and assist with the transfer of technology, as part of the research program on exposure-dose reconstruction.

i. Collaborate with recipient to summarize program activities in a written report that includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

**F. Content**

*Applications*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages, single spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The objectives must include a project schedule for the entire five-year project. (See evaluation criteria 1.d.) The application must include a 200-word or less abstract of the proposal. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included.

**G. Submission and Deadline**

*Application Forms*

Submit the signed original and two copies of PHS 398 (OMB number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC web site) for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

*Submission Date, Time, and Address*

The application must be received by 4 p.m. Eastern Time on June 30, 2003. Submit the application to: Technical Information Management-PA #03059, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

*CDC Acknowledgement of Application Receipt*

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

*Deadline*

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

**H. Evaluation Criteria**

*Application*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Scientific and Technical Review Criteria of Application

a. Methods (45 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) Experience in methods of reconstruction of exposure histories through the identification and pursuit of technical advances such as environmental multi-media exposure, kinetic networks, progressive optimality genetic algorithm (POGA) optimization and water-distribution system operations, uncertainty analysis, fuzzy mathematics, dose reconstruction, and spatial analysis techniques (20 percent); (2) the familiarity, qualifications, knowledge, and experience of the principal investigator in his/her ability to utilize and apply methodology driven environmental assessment tools to reconstruct exposure histories (10 percent); (3) the ability of the principal investigator to modify these tools in order to meet the program objective as described in the Purpose section of this announcement (5 percent); and (4) the demonstrated ability of the principal investigator to integrate the aforementioned computational tools into existing computational tools and platforms so as to develop, maintain, or enhance a decision support system in order to support ATSDR's public health assessment process (10 percent).

b. Evaluation (25 percent total). The extent to which the applicant has fully and adequately described how it will demonstrate its effectiveness in meeting all objectives in the evaluation of its work plan, including: (1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership (10 percent); (2) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project (5 percent); and (3) the adequacy and commitment of institutional resources to administer the program and the adequacy of facilities, such as the availability of a multimedia environmental simulations laboratory, as they impact on performance of the proposed project (10 percent).

c. Proposed Plan (20 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) the development and implementation of methods designed to characterize exposure-dose relations associated with hazardous waste sites (10 percent); and (2) the applicant's experience and past performance in assisting ATSDR in methods development, conducting exposure assessments, and exposure-dose reconstruction analyses (10 percent).

d. Objectives (10 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured: (5 percent); and (2) experience and past performance in meeting project objectives (5 percent).

e. Program Budget (Reviewed, but not scored). The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. If applicant's proposed budget exceeds the availability of funds, their application will be funded at the level of availability of funds.

f. Performance goals (Reviewed, but not scored). The extent to which the applicant's proposal adequately addresses the following performance goal for ATSDR: evaluate the human health risk from toxic sites and releases.

2. Continuation Awards Within the Project Period Will Be Made on the Basis of the Following Criteria

a. Satisfactory progress has been made in meeting project objectives.

b. Objectives for the new budget period are realistic, specific, and measurable.

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives.

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Additional Requirements*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC website.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

**J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Edna Green, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2743, E-mail address: *EGreen@cdc.gov*.

For business management and budget assistance in the territories, contact: Julie Grace, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2782, E-mail: *amn3@cdc.gov*.

For program technical assistance, contact: Morris L. Maslia, P.E., Project Officer, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Room 3094, Mail Stop E–32, Atlanta, Georgia 30345, Telephone number: (404) 498–0415, E-mail address: *mmaslia@cdc.gov*.

Dated: May 8, 2003.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–11975 Filed 5–13–03; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Advisory Committee on Children and Terrorism: Conference Call Meeting and Advisory Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

*Name:* National Advisory Committee on Children and Terrorism (NACCT).

*Time and Date:* 10:30 a.m.–12 p.m., May 16, 2003.

*Place:* The conference call will originate at the Office of Terrorism Preparedness and Emergency Response (OTPER), in Atlanta, Georgia. Please *see* **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

*Status:* Open to the public, limited only by the availability of telephone ports.

*Purpose:* The committee is charged with advising the Secretary, Health and Human Services, on (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

*Matters to be Discussed:* The National Advisory Committee on Children and Terrorism will convene by conference call to discuss the draft report to the Secretary.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the meeting.

**SUPPLEMENTARY INFORMATION:** This conference call is scheduled to begin at 10:30 a.m., Eastern Standard Time. To participate in the conference call, please dial (404) 639–3277 or (800) 311–3437 and enter conference code 864530. You will then be automatically connected to the call.

*Contact Person for More Information:* Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE., (D–44), Atlanta, Georgia 30333, telephone (404) 639–7428, fax (404) 639–7977.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

*Name:* National Advisory Committee on Children and Terrorism, HHS, CDC.

*Time and Date:* 8 a.m.–5 p.m., May 21, 2003.

*Place:* Doubletree Hotel National Airport, 300 Army Navy Drive, Arlington, Virginia 22202 telephone: 1–800–222–TREE.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* The committee will make recommendations to the Secretary of HHS on matters related to bioterrorism and its impact on children.

*Matters to be Discussed:* Agenda items will include from the chairperson of the committee an introduction of committee members and discussion of the Secretary priorities with discussions of recommendations regarding, (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE., (D–44), Atlanta, Georgia 30333, telephone (404) 639–7428, fax (404) 639–7977.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2003.

**Diane Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–11872 Filed 5–13–03; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0486]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the information collection provisions by June 13, 2003.

**ADDRESSES:** The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *sshapiro@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

## Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR Part 3 (OMB Control Number 0910–0435)—Extension

The Food and Drug Administration (FDA) is requesting OMB approval under the Paperwork Reduction Act (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk of counterfeit, adulterated, misbranded, subpotent, or expired drugs being sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING REQUIREMENTS

| 21 CFR Section | Reporting and Recordkeeping Requirements |
|---|---|
| 203.11 | Applications for re-importation to provide emergency medical care. |
| 203.30(a)(1) and (b) | Drug sample requests for drug samples distributed by mail or common carrier. |
| 203.30(a)(3), (a)(4), and (c) | Drug sample receipts for drug samples distributed by mail or common carrier. |
| 203.31(a)(1) and (b) | Drug sample requests for drug samples distributed by means other than the mail or a common carrier. |
| 203.31(a)(3), (a)(4), and (c) | Drug sample receipts for drug samples distributed by means other than the mail or a common carrier. |
| 203.37(a) | Investigation of falsification of drug sample records. |
| 203.37(b) | Investigation of a significant loss or known theft of drug samples. |
| 203.37(c) | Notification that a representative has been convicted of certain offenses involving drug samples. |
| 203.37(d) | Notification of the individual responsible for responding to a request for information about drug samples. |
| 203.38(a) | Printing lot or control numbers on the drug sample unit label. |
| 203.39(g) | Preparation by a charitable institution of a reconciliation report for donated drug samples. |
| 203.50(a) | Drug origin statement. |
| 203.23(a) and (b) | Credit memorandom for returned drugs. |
| 203.23(c) | Documentation of proper storage, handling, and shipping conditions of returned drugs. |
| 203.30(a)(2) and 203.31(a)(2) | Verification that a practitioner requesting a drug sample is licensed or authorized to prescribe the product. |
| 203.31(d)(4) | Investigation of apparent discrepancies and significant losses revealed through the reconciliation report. |
| 203.31(e) | Lists of manufacturers' and distributors' representatives. |
| 203.34 | Written policies and procedures describing administrative systems. |
| 203.37(a) | Report of investigation of falsification of drug sample records. |
| 203.37(b) | Report of investigation of significant loss or known theft of drug samples. |
| 203.38(b) | Records of drug sample distribution identifying lot or control numbers of samples distributed. |
| 203.39(d) | Records of drug samples destroyed or returned by a charitable institution. |

TABLE 1.—REPORTING REQUIREMENTS—Continued

| 21 CFR Section | Reporting and Recordkeeping Requirements |
|---|---|
| 203.39(e) | Record of drug samples donated to a charitable institution. |
| 203.39(f) | Records of donation and distribution or other disposition of donated drug samples. |
| 203.39(g) | Inventory and reconciliation of drug samples donated to charitable institutions. |
| 203.50(a) | Drug origin statement. |
| 203.50(b) | Retention of drug origin statement for 3 years. |
| 203.50(d) | List of authorized distributors of record. |

The reporting and recordkeeping requirements are intended to help achieve the following goals:

1. To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;
2. To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample;
3. To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;
4. To require licensed or authorized practitioners to request samples in writing;
5. To mandate storage, handling, and recordkeeping requirements for drug samples;
6. To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;
7. To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of December 2, 2002 (67 FR 71572), FDA requested comments on the proposed collection of information. FDA received one comment requesting that it be deemed an ''other health care entity'' and be permitted to receive and dispense samples to its patients. This comment does not pertain to the information collection estimates in the December 2, 2002, notice, and has been forwarded to the appropriate office in FDA that reviews these types of requests.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 203.11 | 12 | 1 | 12 | .5 | 6 |
| 203.30(a)(1) and (b) | 61,961 | 12 | 743,532 | .06 | 44,612 |
| 203.30(a)(3), (a)(4), and (c) | 61,961 | 12 | 743,532 | .06 | 44,612 |
| 203.31(a)(1) and (b) | 232,355 | 135 | 31,367,925 | .04 | 1,254,717 |
| 203.31(a)(3), (a)(4) and (c) | 232,355 | 135 | 31,367,925 | .03 | 941,038 |
| 203.37(a) | 25 | 1 | 25 | 6.00 | 150 |
| 203.37(b) | 200 | 1 | 200 | 6.00 | 1,200 |
| 203.37(c) | 50 | 1 | 50 | 1.00 | 50 |
| 203.37(d) | 2,208 | 1 | 2,208 | .08 | 177 |
| 203.38(a) | 2,208 | 1 | 2,208 | 3.00 | 6,624 |
| 203.39(g) | 3,221 | 1 | 3,221 | 2.00 | 6,442 |
| 203.50(a) | 125 | 100 | 12,500 | .08 | 1,000 |
| Total Reporting Burden Hours | | | | | 2,300,628 |

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 203.23(a) and (b) | 31,676 | 5 | 158,380 | .25 | 39,595 |
| 203.23(c) | 31,676 | 5 | 158,380 | .08 | 12,670 |
| 203.30(a)(2) and 203.31(a)(2) | 2,208 | 100 | 220,800 | .50 | 110,400 |
| 203.31(d)(1) and (d)(2) | 2,208 | 1 | 2,208 | 40.00 | 88,320 |
| 203.31(d)(4) | 442 | 1 | 442 | 24.00 | 10,608 |
| 203.31(e) | 2,208 | 1 | 2,208 | 1.00 | 2,208 |
| 203.34 | 2,208 | 1 | 2,208 | 40.00 | 88,320 |
| 203.37(a) | 25 | 1 | 25 | 18.00 | 450 |
| 203.37(b) | 200 | 1 | 200 | 18.00 | 3,600 |
| 203.38(b) | 2,208 | 14,543 | 32,111,457 | .02 | 642,229 |
| 203.39(d) | 65 | 1 | 65 | 1.00 | 65 |
| 203.39(e) | 3,221 | 1 | 3,221 | .50 | 1,610 |
| 203.39(f) | 3,221 | 1 | 3,221 | 8.00 | 25,768 |

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 203.39(g) | 3,221 | 1 | 3,221 | 8.00 | 25,768 |
| 203.50(a) | 125 | 100 | 12,500 | .17 | 2,125 |
| 203.50(b) | 125 | 100 | 12,500 | .50 | 6,250 |
| 203.50(d) | 691 | 1 | 691 | 2.00 | 1,382 |
| Total Recordkeeping Burden Hours | | | | | 1,061,368 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 2, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11925 Filed 5–13–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–5435]**

### Guidance for Industry on Photosafety Testing; Availability; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of May 7, 2003 (68 FR 24487). The document announced the availability of a guidance for industry entitled ''Photosafety Testing.'' The document was published with an inadvertent error. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03–11216, appearing on page 24487 in the **Federal Register** of Wednesday, May 7, 2003, the following correction is made:

1. On page 24487, in the first column, in the heading of the document, ''[Docket No. 99D–5453]'' is corrected to read ''[Docket No. 99D–5435]''.

Dated: May 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11924 Filed 5–13–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02D–0467]**

### ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection;'' Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection'' dated May 2003. The guidance provides our revisions to the guidance of the same title dated October 2002 in which FDA provided its recommendations for assessing donor suitability and product safety for donors with proven recent West Nile Virus (WNV) infections or with illness potentially due to WNV. The guidance is intended to recommend deferral of donors infected or potentially infected with WNV, and to recommend quarantine of blood and blood products previously collected from such donors. These measures are intended to reduce the possibility of WNV transmission by blood and blood products and are for immediate implementation. This guidance supersedes the guidance of the same title dated October 2002.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written or electronic requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800 or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

**FOR FURTHER INFORMATION CONTACT:** Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection'' dated May 2003. The guidance document provides information related to the possible risk of WNV transmission by blood or blood products. The presence of WNV in blood components and transfusion transmission from blood components has been documented. FDA developed this guidance in consultation with other Public Health Service agencies of the Department of Health and Human Services. The guidance supersedes the guidance of the same title dated October 2002.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic.

It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**II. Comments**

The agency is soliciting public comment, and is recommending the implementation of the guidance by June 1, 2003, because of public health concerns related to the possible risk of transfusion transmitted WNV.

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**III. Electronic Access**

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: May 6, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11980 Filed 5–13–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG 2003–15096]**

## Collection of Information under Review by Office of Management and Budget (OMB): OMB Control Numbers 1625–0046 and 1625–0071

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Financial Responsibility for Water Pollution (Vessels), and (2) Boat Owner's Report, Possible Safety Defect. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

**DATES:** Comments must reach the Coast Guard on or before July 14, 2003.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2003–15096] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–15096], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

**Information Collection Requests**

1. *Title:* Financial Responsibility for Water Pollution (Vessels).

*OMB Control Number:* 1625–0046.

*Summary:* The collection of information requires operators of vessels over 300 gross tons to submit to the U.S. Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of a spill of either oil or hazardous substances.

*Need:* Under 33 U.S.C. 2716 and 42 U.S.C. 9608, the Coast Guard has the authority to ensure that those persons directly subject to these rules are in compliance with the provisions.

*Respondents:* Operators or owners of vessels over 300 gross tons.

*Frequency:* On occasion.

*Burden:* The estimated burden is 2,162 hours a year.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

*OMB Control Number:* 1625–0071.

*Summary:* The collection of information provides a form for consumers who believe their recreational boats or designated associated equipment either contains substantial-risk defects or fails to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

*Need:* 46 U.S.C. 4310 gives the Coast Guard the authority to require manufacturers of recreational boats and certain items of designated associated equipment to notify owners and remedy (1) defects that create a substantial risk of personal injury to the public and (2) failures to comply with applicable Federal safety standards.

*Respondents:* Owners and users of recreational boats and of items of designated associated equipment.

*Frequency:* One time.

*Burden:* The estimated burden is 10 hours a year.

Dated: May 5 2003.

**Nathaniel S. Heiner,**

*Acting Director of Information & Technology.*

[FR Doc. 03–11985 Filed 5–13–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG 2002–13191]**

### Review of Great Lakes Pilotage Bridge-Hour Standards for American Pilots on the Great Lakes

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Coast Guard announces the availability of, and seeks public comments on, the Review of Bridge-Hour Standards for American pilots on the Great Lakes dated March 4, 2003. The Review asks, as it states, ''how much pilotage work needs to be done, and how many pilots we need to do the work.'' In particular, it arrives at establishing the number of pilots we need to do that work ''*safely, reliably, and efficiently* (italics in original).''

**DATES:** Comments and related material must reach the Docket Management Facility on or before July 14, 2003.

**ADDRESSES:** Please identify your comments and related material by the docket number of this notice (USCG 2002–13191). Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and related material received from the public, as well as documents mentioned in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

The Review is available on the Internet at *http://dms.dot.gov.* It is also available from Mr. Tom Lawler, Chief Economist, Great Lakes Pilotage, Commandant (G–MW–1), U.S. Coast Guard Headquarters, telephone 202–267–1241.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Notice or on the Review of Bridge-Hour Standards for American pilots on the Great Lakes, write or call Mr. Tom Lawler where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

#### What Action Is the Coast Guard Taking?

The current Bridge-Hour Standards for American pilots on the Great Lakes appear at 46 Code of Federal Regulations (CFR) part 404, Appendix A. These standards help determine the number of pilots necessary to guide commercial vessels engaged in foreign trade through the American waters of the Great Lakes system in a safe, reliable, and efficient manner. Elaborate and rigid though they seem, they only constitute ''guidance'' to the Director, Great Lakes Pilotage. They are a component of the pilotage program's ratemaking process and, as such, are part of the equation used in determining the annual rate that owners and operators of vessels must pay for pilotage in each area of the Great Lakes. They also help determine the number of hours of work a pilot must perform to earn target compensation. Under them, a pilot in designated waters must work 1000 hours during the season to make target compensation while a pilot in undesignated waters must work 1800 hours to make target compensation.

At the requests of Representative James L. Oberstar and the St. Lawrence Seaway Pilots' Association, the Coast Guard chartered a study to determine whether the Bridge-Hour Standards are reasonable for each area of the Great Lakes and, if not, seeking recommendations for change. The study in the form of the Review now made available was completed on March 4, 2003. The Coast Guard has placed the Review in the Public Docket (USCG 2002–13191). It seeks public comments on the Review and on its recommendations.

#### Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to obtain the benefit of public comment before determining which, if any, of the recommendations of the Review it will approve. It will incorporate any recommendations it does approve in a revision to the current rules on ratemaking, at a future date.

#### How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the Review of Bridge-Hour Standards for American pilots on the Great Lakes. If you submit written comments please include—

- Your name and address;
- The docket number for this notice (USCG 2002–13191);
- The specific section of the Review to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we may publish an NPRM amending the standards used to determine the number of American pilots needed to guide foreign-flag vessels through the Great Lakes system in a safe, reliable, and efficient manner.

Dated: May 2, 2003.

**L.L. Hereth,**

*Rear Admiral, Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.*

[FR Doc. 03–11984 Filed 5–13–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Open Meeting of the Federal Interagency Committee on Emergency Medical Services

**AGENCY:** Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice of open meeting.

*Summary:* FEMA announces the following open meeting.

*Name:* Federal Interagency Committee on Emergency Medical Services (FICEMS).

*Date of Meeting:* June 5, 2003.

*Place:* Building J, Room 107, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

*Time:* 10:30 a.m.

*Proposed Agenda:* Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public with limited seating available on a first-come, first-served basis. *See* the Response and Security Procedures below.

*Response Procedures:* Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, June 3, 2003, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

*Security Procedures:* Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass, which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

*Conference Call Capabilities:* If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''10.'' If you plan to call in, you should just enter the number ''10''—no need to hit any other buttons, such as the star or pound keys.

*FICEMS Meeting Minutes:* Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on September 5, 2003. The minutes will also be posted on the United States Fire Administration website at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the September 5, 2003 FICEMS Committee Meeting.

Dated: May 7, 2003.

**R. David Paulison,**

*Director, Preparedness Division.*

[FR Doc. 03–12003 Filed 5–13–03; 8:45 am]

BILLING CODE 6718–08–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Emergency Exemption: Issuance of Permit for Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of emergency issuance of permit for endangered species.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** On April 17, 2003, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–070221) to the Cincinnati Zoo, Cincinnati, Ohio, to import biological samples collected from bonobos (*Pan paniscus*) from Lola ya Bonobo sanctuary in the Democratic Republic of Congo, for the purpose of scientific research. The 30-day comment period required under the Endangered Species Act was waived pursuant to 16 U.S.C. 1539(c). The Service determined that an emergency affecting the health and life of the remaining bonobos sanctuary population existed, and that no reasonable alternative was available to the applicant for several reasons.

The Cincinnati Zoo requested a permit to import multiple blood samples, tracheal washings, gastric washings, urine, feces, hair and tissues samples from all animals housed at the Lola ya Bonobo sanctuary in the Democratic Republic of Congo for emergency and ongoing health/disease evaluation purposes. Samples will be utilized exclusively for diagnostic and scientific purposes. The specimens will be used to run diagnostics tests to determine the cause of the death of several animals that have died during an ongoing disease outbreak at the sanctuary within the past several weeks. The necessary diagnostic testing is not available in Africa. The results of health and disease testing from these bonobos may result in a secondary benefit by providing important clues to disease threats to the wild bonobo population.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 18, 2003.

**Timothy J. Van Norman,**

*Chief, Branch of Permits—International Division of Management Authority.*

[FR Doc. 03–11945 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for marine mammals.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** On March 3, 2003, a notice was published in the **Federal Register** (68 FR 10026), that an application had been filed with the Fish and Wildlife Service by Ricky H. Jackson for a permit (PRT–067142) to import one polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population, Canada, prior to April 30, 1994, for personal use.

Notice is hereby given that on April 17, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and

Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: April 25, 2003.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03–11944 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–072–03–1220–HB]**

## Notice of Temporary Area Closure of Approximately 40 Acres by the Bureau of Land Management (BLM) Butte Field Office to All Public Uses of the Holter Lake, Log Gulch and Departure Point Recreation Sites Located on Holter Lake Within Lewis and Clark County, Montana While Reconstruction Is Underway

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that all public lands and roadways within the Holter Lake Recreation Site between April 28 and June 30, 2003, and all public lands and roadways within Log Gulch and Departure Point Recreation Sites between July 15 and October 31, 2003 are closed to all public uses for reconstruction. Closure signs will be posted at main entry points to these locations. Maps of the closure area and information on the reconstruction plans may be obtained from the Butte Field Office.

Reasons for this closure are to provide for the safety of the public, expedite construction work, and protect construction equipment and materials. Authority for this closure is cited under 43 CFR, Subpart 8364.

*Prohibited Act:* Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule within the area known as Holter Lake Recreation Area: The public is not allowed within the area for any purpose. The public lands affected by this closure are administered by the BLM in T. 14 N., R. 3 W., Sec. 4, 14, and 23 P.M.M.

**DATES:** This closure will take effect May 14, 2003.

**ADDRESSES:** Closure area maps may be obtained from the Butte Field Office, 106 N. Parkmont, Butte, MT 59701.

**FOR FURTHER INFORMATION CONTACT:** Brad Rixford, Butte Field Office, telephone (406) 533–7600.

**SUPPLEMENTARY INFORMATION:**

*Exemptions:* Persons who are exempt from these rules include any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, construction and contract workers, and any person authorized in writing by the Bureau of Land Management.

*Penalties:* The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: April 14, 2003.

**Steven Hartmann,**

*Assistant Field Manager.*

[FR Doc. 03–12060 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ES–930–5420–M082]**

## Notice of Application for Disclaimer of Interest, Iowa

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposal to issue a disclaimer.

**SUMMARY:** Jeffrey L. Poulson has filed an application on behalf of Fairview Farms, A Partnership, claiming title to the lands hereinafter described, for a recordable disclaimer of interest from the United States pursuant to the authority of Section 315 of the Federal Land Management Act of 1976 (43 U.S.C. 1745).

**FOR FURTHER INFORMATION CONTACT:** Regina Berry, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1547.

**SUPPLEMENTARY INFORMATION:** Bureau of Land Management has tentatively determined that the United States does not have any interest in the following described land. The land is described according to a private land survey, dated September 6, 1969, filed in the Office of the Clerk, County of Monona, State of Iowa.

Tax Lot ''C'' of Section Twenty Six (26); Tax Lot ''E'' of Section Twenty Seven (27); Tax Lot ''D'' of Section Thirty Three (33); The North Half of the Northeast Quarter (N½NE¼), The Southeast Quarter of the Northwest Quarter (SE¼NW¼), The Southwest Quarter of the Northeast Quarter (SW¼NE¼); Tax Lot ''E'' Except for the West 700 Feet, Tax Lots ''F and H, Except for the West 700 Feet of Section Thirty Four (34); and Tax Lot ''B'' of Section Thirty Five (35), All in Township Eighty Five (85) North, Range Forty Seven (47) West of the 5th P.M., containing 472.77 acres in Monona County, Iowa.

The above described acreage was formed by accretion to land after the land was selected by the State of Iowa as swamplands and conveyed by the United States to that State, in accordance with the Act of September 28, 1850, by the patent number 2, dated January 10, 1860 and patent number 7, dated February 15, 1869. Accretion is the gradual deposit of soil and other materials along the bank of a body of water adding to the riparian owner's land. If issued the proposed recordable disclaimer of interest will remove a cloud on the title to the accreted land and will state that the United States does not have a valid interest in the accreted land. For a period of 90 days from the **Federal Register** publication date of this notice, persons who wish to comment or present an objection in connection with the pending application and the proposed disclaimer may do so by writing Ida V. Doup, Chief, Branch of Use Authorization, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. If no objections are received, the disclaimer will be issued after 90-day period.

Dated: May 6, 2003.

**Walter Rewinski,**

*Acting State Director.*

[FR Doc. 03–12059 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–75–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT010–1060–JJ]**

**[WY930–1060–JJ]**

## Notice of Public Hearing on the Use of Helicopters and Motor Vehicles To Gather Wild Horses From Public Lands in Montana and Wyoming.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing date inviting comment on the use of helicopters and motor vehicles to gather and remove excess wild horses from public lands administered by the

Bureau of Land Management in Montana and Wyoming.

**SUMMARY:** The Bureau of Land Management (BLM) will conduct a public hearing on the use of helicopters and motor vehicles to gather wild horses from BLM-administered lands in the Pryor Mountain Wild Horse Range, Montana. The hearing will be held at the Bighorn Canyon National Recreation Area Visitor Center, in Lovell, Wyoming, on Thursday, June 26, 2003, from 7 p.m. to 9 p.m. The Montana Billings Field Office has scheduled wild horse gathering operations to begin no earlier than July 7, 2003, and may continue through September 30, 2003. Concurrently, the Wyoming State Office will conduct a public hearing on the use of helicopters and motor vehicles to gather wild horses from all the BLM Wyoming's Herd Management Areas (HMAs).

The Wyoming BLM proposes to conduct gather operations using helicopters and motorized vehicles during the period starting July 15, 2003, through April 15, 2004. The 2003 schedule of Wyoming gathers has not been set, but will be scheduled based on priority needs. The Wyoming BLM will notify the public in advance of the gathering dates for its HMAs as they are determined.

The Wild, Free Roaming Horse and Burro Act (Act), as amended (Pub. L. 92–195) provides for the removal of excess wild horses from public land; and for the use of aircraft and motor vehicles by the BLM in all phases of the administration of the Act. The Code of Federal Regulations at 43 CFR 4740.1 requires the BLM authorized officer to conduct a public hearing in the area where such use of helicopters and motorized vehicles is to be made. The June 26, 2003, meeting in Lovell, Wyoming, will serve as the BLM's required hearing addressing all HMAs in the entire State.

**ADDRESSES:** Bureau of Land Management, Billings Field Office, Linda Coates-Markle, PO Box 36800, 5001 Southgate Drive, Billings, Montana 59107–6800 and Bureau of Land Management, Wyoming State Office, Alan Shepherd, PO Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003–1828.

**FOR FURTHER INFORMATION CONTACT:** Linda Coates-Markle, Montana BLM State Wild Horse and Burro Specialist, telephone (406) 896–5013. Alan Shepherd, Wyoming BLM State Wild Horse and Burro Program Lead, telephone (307) 775–6097.

**SUPPLEMENTARY INFORMATION:** The Montana BLM completed the Pryor Mountain Wild Horse Range Environmental Assessment (EA) and Wild Horse Gather and Removal Plan on April 16, 2003. The Prior Mountain Wild Horse Range EA and associated Plan are available for public review. Copies may be obtained from the above address or by accessing the BLM–MT Web site at *http://www.mt.blm.gov/bifo/whb/doc2.html.*

The Wyoming BLM has completed the following EAs and Wild Horse Gather and Removal Plans:

- EA for Wild Horse Gathering Inside and Outside Wild Horse Herd Management Areas and approved in the Decision Record and Finding of No Significant Impact for Wild Horse Gathering Inside and Outside Wild Horse Herd Management Areas, July 14, 1999, (WY–040–EA9–041). Also in the EA for Late Winter Gathering of Wild Horses in the Rock Springs Field Office Area and approved in the Decision Record and Finding of No Significant Impact for the Late Winter Gathering of Wild Horses in the Rock Springs Field Office Area. February 16, 2001, (WY–040–01–EA–019), Rock Springs Field Office, Rock Springs, Wyoming; (307) 352–0256.
- Maintaining Viable Populations of Wild Horses on Healthy Rangelands in the Adobe Town HMA in the Rawlins Field Office Jurisdiction (EA No. WY–030–02–EA–007). January 2002, Rawlins Field Office, Rawlins, Wyoming; (307) 328–4200.

Copies of these EAs are available by request from the Field Office that prepared the EA and plan or by accessing the BLM–WY Web site at *http://www.wy.blm.gov/wildhorses/docs.html.*

Dated: May 7, 2003.

**Michael Madrid,**

*Acting State Director.*

Dated: May 8, 2003.

**Eddie Bateson,**

*Assistant Field Manager.*

[FR Doc. 03–11976 Filed 5–13–03; 8:45 am]

**BILLING CODE 4310–DN–P; 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0135).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 208—Surety Requirements. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled ''30 CFR 208.11 (a), (b), (d), and (e)—Surety Requirements (Forms MMS–4071 and MMS–4072).''

**DATES:** Submit written comments on or before June 13, 2003.

**ADDRESSES:** Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0035), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 208.11(a), (b), (d), and (e)—Surety Requirements.

*OMB Control Number:* 1010–0135.

*Bureau Form Numbers:* Forms MMS–4071 and MMS–4072.

*Abstract:* The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian

lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments are submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil may be required to provide a surety instrument with their bid package. This surety instrument may be a Letter of Credit (Form MMS–4071) or a Royalty In Kind Contract Surety Bond (Form MMS–4072), or other acceptable commercial surety.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties. Without the surety protection, the government can lose money if a refiner does not pay for oil he has received. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* 10 purchasers.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 10 burden hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

| 30 CFR section | Reporting requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| 208.11(a), (b), (d), and (e) | The eligible purchaser, prior to execution of the contract, shall furnish an ''MMS-specified surety instrument,'' in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date * * * The ''MMS-specified surety instrument'' shall be in the form specified by MMS instructions or approved by MMS. All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests. | 1 | 10 | 10 |
| Total | | | 10 | 10 |

*Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden:* We have identified no ''non-hour'' cost burdens.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on December 3, 2002 (67 FR 71979), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 13, 2003.

*Public Comment Policy.* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: April 10, 2003.

**Cathy J. Hamilton,**

*Acting Associate Director for Minerals Revenue Management.*

[FR Doc. 03–11948 Filed 5–13–03; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010–0154).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements under the Endangered Species Act Biological Opinions, issued by the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and is titled: ''Notices to Lessees and Operators Numbers 2002–G07, 2003–G06, and 2003–G07.''

**DATE:** Submit written comments by July 14, 2003.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference ''Information Collection 1010–0154'' in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the Notices to Lessees that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* Notices to Lessees and Operators Numbers 2002–G07, 2003–G06, and 2003–G07.

*OMB Control Number:* 1010–0154.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The Department of the Interior, MMS, as a Federal agency, has a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the FWS and NOAA Fisheries before engaging in a discretionary action that may affect a protected species.

The MMS follows these procedural requirements by conducting formal consultations with FWS and NOAA Fisheries prior to lease sales. Consultations on OCS lease sales 181, 184, and the 5-year multisale (2002–2007) program in the Central and Western Planning Areas of the Gulf of Mexico resulted in no-jeopardy biological opinions from the FWS and NOAA Fisheries. In their biological opinions, NOAA Fisheries determined that some activities associated with the proposed action (lease sale and related exploration, development, and production activities) may adversely affect (harm) sperm whales and sea turtles in the action area and that certain reasonable and prudent measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA (which prohibits taking listed species), MMS must implement and enforce nondiscretionary terms and conditions. The ESA also requires monitoring and reporting. Monitoring programs resulting from ESA interagency consultations are designed to (1) detect adverse effects resulting from a proposed action, (2) assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion, (3) detect when the level of anticipated take is exceeded, and (4) determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements. To implement the nondiscretionary terms and conditions of these biological opinions, the MMS issued three NTLs:

- NTL 2002–G07 (Addendum 1)—Implementation of Seismic Survey Mitigation Measures
- NTL 2003–G06—Marine Trash and Debris Awareness and Elimination
- NTL 2003–G07—Vessel Strike Avoidance and Injured/Dead Protected Species Reporting

The MMS will use the information collected to report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3). The MMS engineers, geologists, geophysicists, environmental scientists, and other Federal agencies (FWS, NOAA Fisheries, etc.) also will analyze the information and data collected under these NTLs to better evaluate the potential impacts to listed species and to plan operations in a manner that will further reduce and/or avoid adverse impacts to protected species in the OCS.

On March 26, 2003, the OMB approved our request under emergency processing procedures to collect the information required by these NTLs and assigned OMB Control Number 1010–0154. Emergency processing permits the collection of information for 180 days. This notice announces our intention to request a 3-year extension for this information collection. As the programs in these NTLs develop further, MMS acknowledges there may be some revisions to the collection of information. MMS is now more fully developing the observer training and reporting programs associated with NTL 2002–G07 (Addendum 1), Implementation of Seismic Survey Mitigation Measures, and with NTL 2003–G07, Vessel Strike Avoidance and Injured/Dead Protected Species Reporting. MMS is currently working

with NOAA Fisheries to develop a training and network reporting program indicated in NTL 2003–G07. Therefore, with this submission, we are requesting an extension of the approved collections and noting that we are revising details of the observer training programs and we are adding an experimental (voluntary) passive acoustic monitoring program. Consequently, these NTLs may be reissued.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

*Frequency:* On occasion and on the 1st and 15th of each month for the marine mammal observation reports.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS lessees and operators.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The currently approved annual reporting burden for this collection is 310 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| NTL number and name | Reporting, posting, and recordkeeping requirement | Hour burden |
|---|---|---|
| 2002–G07 (Addendum 1) Seismic Survey Mitigation Measures. | Marine mammal observation/reports (including observer, survey, sighting, shutdown, and passive acoustic monitoring reports). | 1 hour/report. |
| 2003–G06 Marine Trash and Debris ..... | *Training certification recordkeeping* ..... | ½ hour/record. |
| | Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the ''Surgeon General's Warning'' exemption.). | 0. |
| 2003–G07 Vessel Strikes ..... | Injured/dead protected species report ..... | ½ hour/report. |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no cost burdens for this collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: May 5, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–11965 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Noticed Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on April 4, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Foryou General Electronics Co., Ltd., Guangdong, People's Republic of China; Futic Electronics Ltd., Hong Kong, Hong Kong-China; GZ Digital Media, A.S., Lodenice, Czech Republic; Jiangsu

Syber Electronic Co., Ltd., Jiangsu, People's Republic of China; Matrix Technology S.p.A., Peschiera Borromeo, Italy; Mirai Audio & Video Co., Ltd., Seoul, Republic of Korea; Shenzhen Paragon Industries (China) Incorporation, Guangdong, People's Republic of China; Stebbing Recording Centre Ltd., Auckland, New Zealand; Taijin Media Co., Ltd., Seoul, Republic of Korea; Tanashin Denki Co., Ltd., Tokyo, Japan; and UL Tran Technology & Service Co., Taipei Hsien, Taiwan have been added as parties to this venture.

Also, Jaton Computer Co., Ltd., Bangkok, Thailand has been dropped as a party to this venture. In addition, Nippon Columbia Co., Ltd. has changed its name to Columbia Music Entertainment, Tokyo, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on January 6, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 11, 2003 (68 FR 6946).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–11954 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—the National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, St. Louis, MO; Endicott Interconnect Technologies, Inc., Endicott, NY; Four Rivers Associates, LLC, Mequon, WI; and General Electric Co., Cincinnati, OH have been added as parties to this venture. Also, CoCreate Software, Inc., Ft. Collins, CO; Concurrent Technologies Corporation, Johnstown, PA; Defense Modeling & Simulation, Alexandria, VA; Ferro Corporation, Washington, PA; Johnson Controls, Plymouth, MI; Kestrel Aircraft Company, Norman, OK; Laser Fare, Narragansett, RI; Masco Machine, Inc., Cleveland, OH; Perceptron, Plymouth, MI; Precision Optical Manufacturing, Auburn Hills, MI; Sandia National Laboratory, Albuquerque, NM; SeeBeyond Technology Corporation, Monrovia, CA; Star Cutter Company, Farmington, MI; Sulzer Metco (US) Inc., Lawrence, MI; WebEx Inc., San Jose, CA; and West Virginia University, Morgantown, WV have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, The National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 27, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 27, 2002 (67 FR 79150).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–11955 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere Systems, Inc., Allentown, PA; ControlNet, Inc., Campbell, CA; M-Techno Structure IT-Solution GmbH, Vienna, Austria; NewLogic Technologies AG, Lustenau, Austria; Sanyo LSI Technology, India PVT. Ltd., Bangalore, India; TaraCom Integrated Products, Inc., Sunnyvale, CA; True Circuits, Inc., Los Altos, CA; UMC, Hsin-Chu, Taiwan; and Kurt Woodland (individual member), Morgan Hill, CA have been added as parties to this venture.

Also, Arasan Chip Systems, San Jose, CA; Axeon Ltd, Aberdeen, Scotland, United Kingdom; Conexant Spinco, Inc., Newport Beach, CA; Lateral Sands, West Perth, Western Australia, Australia; Timothy O'Donnell (individual member), Los Gatos, CA; Robert Bosch GmbH, Reutlingen, Germany; Siroyan, Ltd., Reading, United Kingdom; Thales Group, Gennevilliers, France; TriMedia Technologies, Milpitas, CA; and WIS Technologies, San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on January 13, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 11, 2003 (68 FR 6947).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–11956 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection Return A-Monthly Return of Offenses Known to the Police and Supplement to Return A-Monthly Return of Offenses Known to the Police.

The Department of Justice (DOJ), FBI, Criminal Justice Information Services Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gregory E. Scarbro, Unit Chief, FBI, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–4830 or facsimile (304) 625–3566.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Return A-Monthly Return of Offenses Known to the Police and Supplement to Return A-Monthly Return of Offenses Known to the Police.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 4–927A and 4–919; Criminal Justice Services Division, FBI, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect data regarding criminal offenses and their respective clearances throughout the United States. Data is tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 16,971 agencies with 407,304 responses (including zero reports) at an average of 21 minutes a month devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 142,556 hours annual burden associated with this information collection.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 2, 2003.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 03–11928 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–02–M

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Board of Directors

**TIME AND DATE:** The Board of Directors of the Legal Services Corporation will meet on May 19, 2003 via conference call. The meeting will begin at 1 p.m. and continue until conclusion of the Board's agenda.

**LOCATION:** 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the agenda.
2. Consider and act on Board of Directors' Semi-Annual Report to Congress for the period of October 1, 2002–March 31, 2003.
3. Consider and act on whether to dissolve or reconstitute the working group established on April 26, 2003 to study and report back to the Board on how to proceed with the selection of a new LSC President and Inspector General.
4. Consider and act on resolutions thanking former Board members for their service.
5. Consider and act on other business.
6. Public comment.

**FOR MORE INFORMATION CONTACT:** Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: May 12, 2003.

**Victor M. Fortuno,**

*Vice President for Legal Affairs, General Counsel and Corporate Secretary.*

[FR Doc. 03–12208 Filed 5–12–03; 3:23 pm]

BILLING CODE 7050–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–261]**

### Carolina Power and Light Company; H. B. Robinson Steam Electric Plant, Unit 2; Notice of Availability of the Draft Supplement 13 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of H. B. Robinson Steam Electric Plant, Unit 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license DPR–23 for an additional 20 years of operation at H. B. Robinson

Steam Electric Plant, Unit 2. H. B. Robinson Steam Electric Plant, Unit 2 is located in Darlington County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Hartsville Memorial Library, located at 147 West College Avenue, Hartsville, South Carolina has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by July 30, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *RobinsonEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of NRC's ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on June 25, 2003, at Coker College in Davidson Hall, 300 East College Avenue, Hartsville, South Carolina. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Richard L. Emch, Jr. by telephone at 1–800–368–5642, extension 1590, or by e-mail at *rle@nrc.gov* no later than June 20, 2003. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Emch's attention no later than June 20, 2003, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

*For Further Information Contact:* Mr. Richard L. Emch, Jr., License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Emch may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 5th day of May, 2003.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–11958 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations meeting on June 10, 2003, Region I, 475 Allendale Road, King of Prussia, Pennsylvania.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, June 10, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will hear presentations by and hold discussion with representatives of the NRC Region I staff and other interested persons regarding matters related to plant and region operations. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contract the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 8, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03–11961 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### West Valley Citizen Task Force; Notice of Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Representatives from the U.S. Nuclear Regulatory Commission (NRC), U.S. Environmental Protection Agency (EPA), and New York State Department

of Environmental Conservation (NYSDEC) will present information relating to the decommissioning of the West Valley site to the West Valley Citizen Task Force (CTF). This meeting is sponsored by the CTF. The meeting is open to the public and all interested parties may attend.

**DATES:** May 22, 2003, from 7 p.m. to 9:30 p.m.

**ADDRESSES:** Ashford Office Complex, 9030 Route 219, Ashford Hollow, New York.

**FOR FURTHER INFORMATION CONTACT:** Chad Glenn, Mail Stop T7–F32, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–6722; FAX: (301) 415–5398; Internet: *CJG1@NRC.GOV.*

Dated in Rockville, Maryland, this 7th day of May, 2003.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Chief, Facilities Decommissioning Section, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–11959 Filed 5–13–03; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

## Proposed Generic Communication; Requirements for Steam Generator Tube Inspections

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to (1) advise all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, that the NRC's interpretation of technical specification (TS) requirements in conjunction with Appendix B to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50) raises questions as to whether steam generator (SG) tube inspection practices ensure compliance with these requirements, (2) request that addressees submit a description of the tube inspections performed at their plants, including an assessment of whether these inspections ensure compliance with the requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B, (3) request that addressees propose plans for coming into compliance with these requirements if they conclude they are not in compliance, and (4) request that addressees submit a safety assessment addressing any differences from the NRC's position regarding these requirements. The NRC is seeking comment from interested parties on the clarity and utility of the proposed GL under the **SUPPLEMENTARY INFORMATION** heading. The NRC will consider the comments received in its final evaluation of the proposed GL.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML031270171.

**DATES:** Comment period expires July 14, 2003. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Paul Klein at (301) 415–4030 or by E-mail to *pak@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### NRC Generic Letter 2003–XX: Requirements for Steam Generator Tube Inspections

*Addressees*

All holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

*Purpose*

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to

(1) Advise addressees that the NRC's interpretation of the technical specification (TS) requirements in conjunction with 10 CFR part 50, Appendix B, raises questions whether certain licensee steam generator (SG) tube inspection practices ensure compliance with these requirements,

(2) Request that addressees submit a description of the tube inspections performed at their plants, including an assessment of whether these inspections ensure compliance with the requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B,

(3) Request that addressees that conclude they are not in compliance with the SG tube inspection requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B, propose plans for coming into compliance with these requirements, and

(4) Request that addressees submit a safety assessment that addresses any differences from the NRC's position regarding the requirements of the TS in conjunction with 10 CFR part 50, Appendix B.

*Background*

Steam generator tubes function as an integral part of the reactor coolant pressure boundary (RCPB) and, in addition, serve to isolate radiological fission products in the primary coolant from the secondary coolant and the environment. For the purposes of this generic letter, tube integrity means that the tubes are capable of performing these functions in accordance with the plant licensing basis, including applicable regulatory requirements.

Title 10 of the Code of Federal Regulations (10 CFR) establishes the fundamental regulatory requirements with respect to the integrity of the SG tubing. Specifically, the general design criteria (GDC) in Appendix A to 10 CFR part 50 state that the RCPB shall be ''designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage * * * and of gross rupture'' (GDC 14), ''designed, fabricated, erected, and tested to the highest quality standards practical'' (GDC 30), and ''designed to permit periodic inspection and testing * * * to assess * * * structural and leaktight integrity'' (GDC 32). (There are similar requirements in the licensing basis for plants licensed prior to 10 CFR part 50, Appendix A.)

Given the importance of SG tube integrity, all current PWR licensees have TS governing the surveillance of SG tubes. These TS typically do not prescribe non-destructive test methods for conducting tube inspections or specify where a particular methodology should be used. For example, current TS may employ the following or similar nonspecific language:

> Tube inspection for tubes selected in accordance with Table [xxxx] means an inspection of the steam generator tube from the point of entry (hot leg side) completely around the U-bend to the top support of the cold leg, excluding sleeved areas.

The surveillance requirements do, however, specify acceptance limits for SG tubes (often called plugging or repair limits). The surveillance requirements seek to ensure that enough information is obtained about imperfections (flaws) in the tubes to determine if TS plugging limits are being met. Tube imperfections are defined in the TS and include circumferential and axial cracks.

SG tube inspections are also subject to the quality assurance requirements of 10 CFR part 50, Appendix B. Specifically, SG tube inspections must be performed in accordance with Criterion IX of 10 CFR part 50, Appendix B, which requires that ''measures shall be established to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.''

Licensees currently employ an eddy current test bobbin probe, at least, to inspect the entire length of tubing required by the TS. The bobbin probe is a high-speed probe which the industry has demonstrated to be qualified for and capable of detecting volumetric flaws and axially oriented cracks in the absence of significant masking signals. Masking signals may be produced by tube geometry variations or irregularities along the tube axis (such as small-radius U-bends, dents and dings, and expansion transitions) or by tube surface irregularities. Masking signals can also be produced by deposits on the tube surface, adjacent support structures (such as the tubesheet), probe wobble, cold working, permeability variations, or electrical noise.

While the bobbin probe generally provides an effective means of SG tube inspection over much of the tube length, experience has shown that the bobbin probe may not be effective at locations where significant masking signals are present. In addition, the bobbin probe generally cannot detect circumferential cracks. Circumferential cracks can occur at locations of high axial stress (*e.g.*, small-radius U-bends and the tubesheet expansion region).

Plant TS for virtually all PWRs require inspection of the entire length of hot leg tubing within the tubesheet. With some exceptions where specified in the plant TS, the acceptance limits (plugging limits) for these inspections apply to all imperfections along the full length of the tube in the tubesheet on the hot leg side, including axial and circumferential cracks. Criterion IX, ''Control of Special Processes,'' of 10 CFR part 50, Appendix B, requires in part that nondestructive testing is to be accomplished by qualified personnel using qualified procedures in accordance with applicable criteria. The bobbin probe has not been qualified for and is not capable of reliably detecting axial or circumferential cracks in the expanded region of tubing inside the tubesheet; however, specialized probes are available which have been qualified for this application.

As a result of these limitations, the industry practice is to supplement the bobbin probe inspection with inspections by specialized probes, such as the rotating pancake coil or plus point probe, that are qualified for and capable of detecting degradation that is not detectable with the bobbin probe. However, inspecting tubes with these specialized probes is slower than with the bobbin probe. Therefore, these slow-speed probes are typically not applied over the entire length of a tube that is subject to inspection, but only at tube locations where degradation which cannot be detected with the bobbin probe (*e.g.*, circumferential cracks, axial cracks in U-bends and expansion transitions) is known to be present or considered to have a potential to occur. This practice involves a degree of engineering judgment to determine the locations in which potential degradation mechanisms may exist that could lead to degradation that is not detectable using a bobbin probe. The EPRI Steam Generator Examination Guidelines provide guidance on assessing the potential for degradation to occur at various locations.

In 2002, the staff learned of several instances in which licensees were not fully implementing inspection methods capable of detecting circumferentially oriented cracks at all locations where the potential for such cracks exists and where, based on available evidence, there is reason to believe such cracks may be present. These licensees were conducting full-length bobbin probe inspections of the tubes, and were performing additional inspections using specialized probes to inspect for axial and circumferential cracks at certain locations, including the tube expansion transitions near the top of the tubesheet. The licensees conducted the specialized probe inspections at the tube expansion transitions in an area that extended from 2 inches above the top of the tubesheet to about 5 inches below the top of the tubesheet. At several facilities, circumferential cracks were identified at tube expansion transitions, as well as below the transitions near the bottom of the zone being inspected. These results indicate a potential for circumferential cracks to exist in the tubing below the zone inspected with the specialized probe. However, each licensee also performed an analysis indicating that circumferential cracks below the zone being inspected would not be detrimental to tube structural and leakage integrity. These licensees concluded, therefore, that inspections for circumferential cracks with the specialized probe were unnecessary below the zone already inspected with the probe. These analyses had not been provided to the NRC staff.

The staff became aware of these activities during the licensees' SG inspections conducted during refueling outages and asked the licensees to submit TS amendment requests or safety analyses to obtain NRC approval of their inspection approaches. The staff reviewed the resulting submittals on a one-cycle basis before the plants restarted. Subsequent to these plant-specific actions, the staff evaluated the appropriate method to interact with licensees on this issue. Given the potentially generic nature of the issue, the staff decided to communicate this issue to addressees through issuance of this generic letter.

**Discussion**

In the aforementioned instances, tube inspections with a specialized probe near the top of the tubesheet clearly indicated the potential for circumferential cracks to occur deeper into the tubesheet beyond the region inspected with the specialized probes. In each instance the licensee was aware of the potential for such cracks to exist deeper into the tubesheet, but the licensee did not employ techniques qualified for detecting such cracks based on the licensee's analysis that such cracks did not have safety implications.

The staff acknowledges that there may be circumstances under which certain flaws at certain locations may not pose a safety concern. However, it is the staff's position that pending the submission of a license amendment request clarifying the acceptability of a more limited inspection approach, licensees are required under existing requirements (TS in conjunction with 10 CFR part 50, Appendix B) to employ inspection techniques capable of detecting all flaw types which may potentially be present at locations which are required to be inspected pursuant to the TS. The staff is concerned that in instances similar to those cited above, failure to expand the scope of the specialized probe inspection deeper into the tubesheet to detect cracks likely to be present poses a potential compliance issue with

respect to the plant TS in conjunction with 10 CFR part 50, Appendix B.

In addition, the staff notes that not inspecting for cracks with qualified procedures in the lower regions of the tubesheet would allow any such cracks to remain in place. However, most plant TS state that only tubes with imperfections less than 40 percent of the nominal tube wall thickness are acceptable for continued service (there are exceptions specified in some plant TS). While it is not known whether any such cracks actually exist, the staff notes that the acceptance or plugging limit for SG tube inspections is a specific technical specification limit that can only be changed through the license amendment process.

Also, for the instances cited above, the safety basis developed by the licensees for not expanding the scope of the specialized probe inspection beyond a specific distance (x-inches) into the tubesheet was that any cracks below that distance were not detrimental to tube integrity. This was based on analyses indicating that tubes only needed a minimum embedment of x-inches into the tubesheet to exhibit acceptable structural and accident leakage integrity. These analyses have been performed to demonstrate that cracks below this embedment distance do not impair SG tube integrity, even if these cracks cause complete severance of the tube. According to plant final safety analysis reports (FSARs), the SGs were designed in accordance with section III of the American Society of Mechanical Engineers (ASME) Code. In accordance with section III of the Code, the original design basis pressure boundary for the tube-to-tubesheet joint included the tube and tubesheet extending down to and including the tube-to-tubesheet weld. The criteria of section III of the ASME Code constitute the ''method of evaluation'' for the design basis. In the event licensees are using a different ''method of evaluation'' for assessing the steam generator pressure boundary, an evaluation under 10 CFR 50.59 would determine whether a license amendment is required in these cases.

In summary, for the cases discussed above, the TS required a tube inspection for the full length of the tube within the tubesheet (scope), and the findings from this inspection were required to be evaluated against a repair (plugging) criteria. Neither the scope nor the repair criteria in the TS contained provisions for limiting the inspections through a licensee controlled analysis.

Based on these instances, the NRC cannot conclude that addressees that are using such an approach remain in compliance with their TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B with regard to the inspections they are performing. This concern stems, in part, from the experience with some addressees relying on licensee controlled analyses to limit the scope and therefore the repair or plugging of defective SG tubes contrary to the requirements in the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, which contains no provisions for limiting the inspections in this manner. It is the staff's position that pending a license amendment clarifying the inspection approach to be followed, licensees are required to employ inspection methods capable of detecting all flaw types which may potentially be present at locations which are required to be inspected pursuant to the TS, as set forth above.

Based on these staff concerns, the NRC is issuing this generic letter, consistent with the requirements in 10 CFR 50.54(f) to obtain information necessary for the staff to determine if addressees are in compliance with the technical specifications in conjunction with 10 CFR part 50, Appendix B. In addition, licensees who have not been implementing inspections consistent with the staff's position should submit a safety assessment that demonstrates their ability to ensure continued safe operation and addresses any differences relative to the staff's position.

For licensees that cannot demonstrate continued compliance with the TS in conjunction with 10 CFR part 50, Appendix B, owners group involvement in the development of standard or generic approaches to this issue, including TS and associated Bases wording, could be helpful from the standpoint of minimizing resource impacts for both licensees and the staff.

*Requested Information*

Within 30 days of the date of this generic letter, addressees are requested to provide to the NRC the following information:

1. Addressees should provide a description of the SG tube inspections performed at their plant during the last inspection. In addition, addressees should provide an assessment of how the tube inspections performed at their plant meet the requirements of the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, if they are not using SG tube inspection methods with capabilities consistent with the NRC's position. This assessment should also address whether the tube inspection practices ensured that the tube plugging or repair limits were implemented for the entire length of tubing required to be inspected per the TS (*i.e.*, discuss whether the techniques employed during the tube inspections ensured flaws could be detected such that the plugging or repair limits could be implemented).

2. If addresses conclude that full compliance with the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, requires corrective actions to be taken, they should discuss their proposed corrective actions (*e.g.*, changing inspection practices consistent with the NRC's position, or submitting a TS amendment request with the associated safety basis for limiting the inspections). If addressees choose to change their TS, the staff has included in Attachment 1 suggested changes to the TS definitions for a tube inspection and for plugging limits to show what may be acceptable to the staff in cases where the extent of the inspection in the tubesheet region is limited.

3. For plants where SG tube inspections have not been or are not being performed consistent with the NRC's position on the requirements contained in the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, the licensee should submit a safety assessment that addresses any differences relative to the NRC's position (*i.e.*, submit the safety basis for not employing inspection methods capable of detecting specific flaw types at specific locations where these flaw types may potentially occur and where a tube inspection is required by the TS), and include an evaluation of whether this safety assessment constitutes a change to the ''method of evaluation'' (as defined in 10 CFR 50.59) for establishing the structural and leakage integrity of the joint. Licensees should also determine whether a license amendment is necessary pursuant to 10 CFR 50.59.

*Required Response*

In accordance with 10 CFR 50.54(f), addressees are required to submit written responses to this generic letter. Two options are available:

(a) Addressees may choose to submit written responses providing the information requested above within the requested time period.

(b) Addressees who cannot meet the requested completion date are required to notify the NRC in writing as soon as possible but no later than 30 days from the date of this generic letter. The responses must address any alternative course of action proposed, including the basis for the acceptability of the proposed alternative course of action, the basis for finding that the SGs remain

operable, and the schedule when the requested information will be submitted.

The required written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy of the response to the appropriate regional administrator.

*Reasons for Requested Information*

This generic letter requests that addressees submit information. The requested information will enable the NRC staff to make a determination as to whether licensees are implementing SG tube inspections in accordance with applicable requirements. In cases where licensees are not implementing inspections in such a manner, the requested information will allow the staff to make a determination as to the adequacy of the licensee's inspection program and compliance of the licensee's program relative to existing requirements (the plant TS in conjunction with 10 CFR part 50, Appendix B).

*Backfit Discussion*

Under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with applicable existing requirements. Specifically, the requested information will enable the NRC staff to determine whether applicable requirements (plant TS in conjunction with 10 CFR part 50, Appendix B) are being met. No backfit is either intended or approved in the context of issuance of this generic letter. Therefore, the staff has not performed a backfit analysis.

***Federal Register*** *Notification*

To be done after the public comment period.

*Paperwork Reduction Act Statement*

This generic letter contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget (OMB), control number 3150–0011, which expires on January 31, 2004.

The burden to the public for these information collections is estimated to average 60 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the generic letter and on the following issues:

(1) Is the proposed collection of information necessary for the proper performance of the functions of the NRC, and will the information have practical utility?

(2) Is the estimate of burden accurate?

(3) Is there a way to enhance the quality, utility, and clarity of the information to be collected?

(4) How can the burden of the collection of information be minimized? Can automated collection techniques be used?

Send comments regarding this burden estimate or on any other aspect of these information collections, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

If you have any questions about this matter, please contact one of the persons listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

**Attachments: 1. Sample Changes to the TS for Plants Limiting Inspections in the Tubesheet Region**

Attachment 1

Sample Changes to the TS for Plants Limiting Inspections in the Tubesheet Region

*Plugging Limit* means the imperfection depth at or beyond which the tube shall be removed from service and is equal to 40% of the nominal tube wall thickness. All tubes with degradation in the portion of the tube from x-inches below the bottom of the expansion transition or the top of the tubesheet to the bottom of the expansion transition or the top of the tubesheet, whichever is lower, shall be removed from service.

*Tube Inspection* means an inspection of the steam generator tube from x-inches below the hot-leg expansion transition or the top of tubesheet, whichever is lower, completely around the U-bend to the top support of the cold leg.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 8th day of May, 2003.

For the Nuclear Regulatory Commission.

**William D. Beckner,**

*Program Director, Operating Reactor Improvements, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–11960 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Existing Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*

Rule 11a–3 [17 CFR 270.11a–3] SEC File No. 270–321 OMB Control No. 3235–0358.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee

imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

There are approximately 3,075 funds registered with the Commission as of December 31, 2002. The staff estimates that one-quarter of these funds imposes a non-nominal administrative fee on exchange transactions, and that the recordkeeping requirement of the rule requires approximately one hour annually of clerical time (at an estimated $16 per hour) per fund, for a total of 768.75 hours for all funds (at a total annual cost of $12,300). The staff estimates that one-quarter of the 3,075 funds terminates an exchange offer or makes a material change to its terms once each year, and that the notice requirement of the rule requires approximately one hour of professional time (at an estimated $60 per hour) and two hours of clerical time (at an estimated $16 per hour) per fund, for a total of approximately 2306.25 hours for all funds (at a total annual cost of $70,725). The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549.

Dated: May 7, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11993 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*

Regulation C; OMB Control No. 3235–0074; SEC File No. 270–068.

Form SB–1; OMB Control No. 3235–0423; SEC File No. 270–374.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Regulation C provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Small Business issuers use Form SB–1, as defined in Rule 405 of the Securities Act of 1933 (''Securities Act'') to register up to $10 million of securities to be sold for cash, if they have not registered more than $10 million in securities offerings in any continuous 12-month period, including the transaction being registered. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. Approximately 17 respondents filed Form SB–1 during the last fiscal year at an estimated 177 hours per response for a total annual burden of 12,036 hours. It is estimated that 25% of the total burden (3,009 hours) is prepared by the company.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549.

Dated: May 7, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11997 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27676]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 8, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 2, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 2, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**UniSource Energy Corporation (70–10116)**

UniSource Energy Corporation (''UniSource Energy''), One South Church Avenue, Suite 100, Tucson, Arizona 85701, an Arizona corporation and a public utility holding company claiming exemption from registration under section 3(a)(1) of the Act under rule 2 and from all other provisions of the Act except section 9(a)(2), has filed an application (''Application'') for an order under sections 9(a)(2) and 10 of the Act authorizing the proposed acquisition of the operating electric and gas utility properties (''Assets'') of Citizens Communications Company (''Citizens'') that are located in Arizona (the ''Transaction''). UniSource also requests an order under section 3(a)(1) of the Act declaring it exempt it from all provisions of the Act, except section 9(a)(2), following the consummation of the proposed Transaction.

UniSource proposes alternative structures for the acquisition of the Assets. UniSource may combine the Assets in one new utility company or keep the Assets separate in two different utility companies (''New Utility Companies''). The New Utility Companies will be incorporated under Arizona law. UniSource will either acquire and hold the common stock of the New Utility Companies directly, or alternatively, as direct subsidiaries of a newly formed Arizona corporation (''HoldCo'') that will be a direct subsidiary of UniSource (referred to as the ''HoldCo Structure''). In the event that the HoldCo Structure is employed, it is requested that HoldCo be deemed to be an additional applicant in this proceeding and that the Commission's order granting UniSource an exemption under section 3(a)(1) of the Act also grant HoldCo an exemption.

UniSource Energy owns substantially all of the issued and outstanding common stock of Tucson Electric Power Company (''TEP''), an Arizona corporation, which provides electric utility service to over 355,000 customers in a 1,155 square-mile area of southeastern Arizona having a population of approximately 891,000, and two direct nonutility subsidiaries, Millennium Energy Holdings, Inc. (''Millennium'') and UniSource Energy Development Company (''UED''). In 2002, TEP, UniSource's predominant subsidiary, accounted for approximately 94% of UniSource Energy's total consolidated assets and more than 99% of UniSource Energy's operating revenues. TEP's retail service area includes the City of Tucson and adjoining areas of Pima County. TEP also supplies the power requirements of a military base that is located in Cochise County, to the east of Tucson, and sells electricity at wholesale to other utilities and power marketing entities in the western U.S. UniSource Energy states that in the three-year period of 2000 through 2002, not more than 4% of TEP's total operating revenues were derived from wholesale sales outside of Arizona. As of December 31, 2002, TEP owned or leased 2,002 MW of net generating capability. UniSource Energy itself does not engage in any business activities or have any material assets, other than the stock of its subsidiaries.

TEP has five direct, wholly-owned, nonutility subsidiaries, as follows: Escavada Company, which is engaged in the business of maintaining miscellaneous assets and property; San Carlos Resources, Inc., which holds legal title to Unit No. 2 of the Springerville Generating Station, and is the lessee, jointly and severally with TEP, of an undivided one-half interest in certain facilities shared in common between Unit No. 1 and Unit No. 2 of the Springerville Generating Station; Sierrita Resources, Inc., which holds investments in financial assets; Tucson Resources, Inc., which also holds investments in financial assets; and Tucsonel Inc., which holds an undivided interest in the Springerville Generating Station coal-handling facility. TEP also holds minority interests in entities that provide demand side and energy management services and engage in development activities relating to technologies that provide pricing and other related services to consumers for a wide variety of products, including utility services.

TEP is subject to regulation by the Arizona Corporation Commission (''ACC'') with respect to retail electric rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters and by the Federal Energy Regulatory Commission (''FERC'') with respect to wholesale electric rates and electric transmission service.

For the twelve months ended December 31, 2002, UniSource Energy reported consolidated operating revenues of $856 million, more than 98% of which were derived from retail and wholesale sales of electricity and related transmission and distribution services. At December 31, 2002, UniSource Energy had $2.7 billion in total assets, including total net utility plant of $1.7 billion.

As of March 4, 2003, UniSource Energy had issued and outstanding 33,583,182 shares of common stock, no par value, which are listed and traded on the New York Stock Exchange and the Pacific Exchange. TEP has issued and outstanding 32,139,555 shares of common stock, no par value, of which 32,139,434 are held by UniSource Energy.

Citizens, a Delaware corporation, operates as an electric and gas utility in Arizona through two operating divisions. Through its Arizona Electric Division, Citizens provides electric service to approximately 77,500 customers in most of Mohave County in northwest Arizona and in all of Santa Cruz County in southeast Arizona between TEP's service area and the U.S.-Mexico border. Through its Arizona Gas Division, Citizens provides natural gas service to approximately 125,000 customers in most of northern Arizona, including portions of Mohave, Yavapai, Coconino, Navajo, Greenlee, and Apache Counties, as well as Santa Cruz County in southeast Arizona. Citizens owns generating units in Arizona having a total capacity of about 47 MW. Citizens' Arizona electric transmission and distribution system consists of approximately 56 circuit-miles of 115 kV transmission lines, 229 circuit-miles of 69 kV transmission lines, and 3,116 circuit-miles of underground and overhead distribution lines. Citizens also owns 38 substations having a total installed transformer capacity of 1,077,300 kVA. Citizens' Arizona gas transmission and distribution system consists of approximately 168 miles of steel transmission mains, 2,459 miles of

steel and plastic distribution mains, and 127,015 customer service lines.

Citizens is subject to regulation in Arizona by the ACC with respect to retail electric and gas rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters and by the FERC with respect to wholesale power sales and interstate transmission service.

Citizens and UniSource Energy have entered into separate Asset Purchase Agreements, each dated October 29, 2002, relating to the purchase of Citizens' electric and gas utility businesses in Arizona. Under the terms of the Asset Purchase Agreement relating to Citizens' electric utility business, Citizens has agreed to sell and UniSource Energy has agreed to purchase all of the assets (subject to certain stated exceptions) used by Citizens in connection with or otherwise necessary for the conduct of its electric utility business in Arizona (the ''Electric Assets''). Under the terms of the Asset Purchase Agreement relating to Citizens' gas utility business, Citizens has agreed to sell and UniSource Energy has agreed to purchase all of the assets (subject to certain stated exceptions) used by Citizens in connection with or otherwise necessary for the conduct of its gas utility business in Arizona (the ''Gas Assets'').

UniSource Energy has agreed to pay Citizens $92 million in cash for the Electric Assets and $138 million in cash for the Gas Assets, subject in each case to adjustment based on the date on which the Transaction closes and on the amount of certain assets and liabilities associated with the Assets at the time of closing. In addition, the base price for the Electric Assets and the Gas Assets will be reduced by $10 million in the aggregate if the Transaction closes by July 28, 2003. However, whether or not the Transaction closes by July 28, 2003, UniSource Energy has agreed to reduce rate base for the Gas Assets by $10 million. UniSource Energy will not assume Citizens' obligations under existing industrial development revenue bonds that were issued to finance portions of the purchased assets. Citizens will remain liable on these obligations.

Under the Asset Purchase Agreements, UniSource Energy and Citizens also agreed to coordinate the overall development of the positions to be taken and the regulatory actions to be requested regarding the two utility rate cases that Citizens has pending before the ACC. As part of the Joint Application of Citizens Communications Company and UniSource Energy Corporation to the Arizona Corporation Commission (''Joint Application''), UniSource Energy is seeking approval for a reduced level of rate increases. On April 1, 2003, UniSource Energy, Citizens, TEP and the staff of the Utilities Division of the ACC entered into a Settlement Agreement (''Settlement''), which sets forth the agreement and understanding of the parties with respect to the settlement of all issues arising under the Joint Application, the amount of the reduction in Citizens' proposed gas rate increase, UniSource Energy's forfeiture of any right to seek recovery of the under-collected balance under Citizens' purchase power and fuel adjustment clause, and other matters.[1] The proposed Settlement is subject to approval by the ACC. UniSource Energy states that under the proposed Settlement Citizens' electric and gas customers would save a total of about $29 million per year, as compared to the amount of rate increases proposed in Citizens' pending applications. The proposed Settlement also contains the agreement of the parties with respect to UniSource Energy's plan for financing the Transaction, as described below.

UniSource Energy states that the Transaction is subject to, among other conditions precedent, receipt by the parties of required approvals by the ACC, the FERC and this Commission, and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and expiration or early termination of the statutory waiting period. The boards of directors of UniSource Energy and Citizens have each approved the proposed Transaction. The Transaction does not require shareholder approval by either company.

UniSource Energy states that it intends to fund the purchase price under the Asset Purchase Agreements using a combination of several sources, including: (1) Available cash at UniSource Energy; (2) possibly the issuance of new equity by UniSource Energy; (3) a loan from TEP; and (4) debt issued by the New Utility Companies or HoldCo (if the HoldCo Structure is utilized), which will be repaid either directly or indirectly from the cash flows of the New Utility Companies. The issuance of new debt securities by the New Utility Companies and the loan from TEP are subject to approval by the ACC.

More specifically, in the Joint Application, UniSource Energy is requesting the authorization of the ACC for the New Utility Companies to: (1) Issue or guarantee up to $175 million of debt securities for the purpose of funding a portion of the purchase price and initial working capital requirements of the New Utility Companies; (2) issue or guarantee additional debt securities from time to time under the terms of a new revolving credit agreement that will provide ongoing liquidity support to the New Utility Companies; (3) enter into indentures or security agreements which grant liens on some or all of the properties held by such companies to secure the debt obligations of such companies; and (4) issue common stock to UniSource Energy (or to HoldCo if the HoldCo Structure is used). Additionally, UniSource Energy and TEP are seeking authority from the ACC to allow TEP to fund up to $50 million of the aggregate purchase price through a loan to UniSource Energy. Authorization of this loan from TEP would provide financing flexibility to UniSource Energy in the event that, at the time of the consummation of the Transaction, UniSource Energy is unable to issue common stock on reasonable terms in order to fund the purchase price.

Under the proposed Settlement filed with the ACC, the New Utility Companies are expected to have an initial capital structure of about 40% common equity and 60% long-term debt. UniSource Energy's objective is to capitalize the New Utility Companies at a level that is consistent with an investment grade rating, in accordance with current ratings criteria published by the principal rating agencies. UniSource Energy has agreed that, until common equity as a percentage of total capitalization (*i.e.*, common and preferred equity and long-term debt, including current portion) of each of the New Utility Companies equals 40%, such company will not pay dividends to UniSource or HoldCo, as the case may be, in an amount exceeding 75% of such company's earnings. The $50 million loan from TEP would have a maturity not to exceed four years, would be secured by a pledge of 100% of the common stock of the New Utility Companies or HoldCo (if the HoldCo Structure is used), and would bear interest at 383 basis points above the yield-to-maturity of an equivalent four-year U.S. Treasury security as determined on the date of the loan. The

[1] Under the proposed Settlement, UniSource Energy has agreed to seek an increase in rates of the new gas utility of approximately 20.9%, versus the 28.9% increase requested by Citizens. In addition, UniSource Energy has agreed to forfeit its right to seek recovery of the under-collected balance under Citizens' electric purchase power and fuel adjuster clause (estimated to be at least $135 million as of July 28, 2003). As a result, electric rates of the new electric utility would increase by 22%, rather than the 45% increase proposed by Citizens.

Settlement further specifies that 264 basis points of the interest income earned by TEP on the TEP loan will be recorded as a deferred credit and used to offset rates in the future, and that the balance of the interest income will be used to build the equity capitalization of TEP.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11991 Filed 5–13–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47811; File No. SR–CHX–2002–20]**

## Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders

May 7, 2003.

### I. Introduction

On July 11, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow a specialist to limit his aggregate auto-execution exposure.[3] On August 13, 2002, the Exchange submitted Amendment No. 1 to the proposal.[4] On August 27, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5]

The proposed rule change was published for comment in the **Federal Register** on September 6, 2002.[6] No comments were received on this aspect of the proposal.[7] On April 25, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[8] This order partially approves the proposed rule change.

### II. Description of the Proposal

The CHX Rules provide for automatic execution of orders, *i.e.*, without manual intervention by the CHX specialist, if certain conditions are met.[9] Under the CHX Rules, each CHX specialist designates an ''auto-execution threshold'' for each issue.[10] The auto-execution threshold is a number of shares, greater than 99 shares that the specialist is willing to execute automatically. If a specialist receives an order that exceeds his designated auto-execution threshold, the order is automatically directed into the specialist's book for manual execution, unless the order-sending firm has elected to receive partial automatic executions, in which case a portion of the order will automatically execute, up to the size of the auto-execution threshold, and the balance of the order will be placed in the specialist's book for manual execution.

Under the current version of the CHX Rules, a CHX specialist has unlimited (and the CHX believes unwarranted) auto-execution exposure, because a rapid succession of orders entered into the MAX system at or below the specialist's auto-execution threshold are due an automatic fill at the prevailing National Best Bid or Offer (''NBBO'') price. Therefore, the CHX believes that specialists may be required to provide more liquidity than they intend to through automatic executions.

To resolve this issue, the Exchange has proposed to amend CHX Article XX, Rule 37(b)(1) to limit a specialist's unintended automatic execution liability by incorporating an Aggregate Share Threshold into the specialist's designated auto-execution parameters. The specialist can enable the Aggregate Share Threshold on an issue-by-issue basis. The functionality is entirely optional, however, and a specialist can still elect to provide additional liquidity guarantees.

Under this voluntary system enhancement, the specialist would agree to provide automatic execution (at the NBBO) of an aggregate number of shares (the ''Aggregate Share Threshold''). Once an aggregate number of shares equal to the Aggregate Share Threshold was automatically executed, whether as a result of one order or numerous orders, subsequent orders would be directed into the specialist's book for manual execution. Under the proposed rule change, a specialist would then be obligated to either execute the order at a price and size equal to or better than the NBBO price and size at the time the order was received, or act as agent for the order to obtain the best available price on a marketplace other than the Exchange.

The Aggregate Share Threshold would reset after a prescribed amount of time designated by a specialist[11] and could never be set at a level less than the shares included in the specialist's own bid or offer.

The Exchange also proposes to relocate Article XX, Rule 43(d) to Rule 37(a), rendering the provisions of Rule 43(d) applicable to both over-the-counter and listed securities. This provision states that with respect to any market or marketable limit order not executed automatically, a specialist shall be obligated to either (a) manually execute such order at a price and size equal to or better than the NBBO price and size at the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate.

### III. Discussion

After careful review, the Commission finds that the proposed changes to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d) described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the proposed rule change, the Exchange also proposed a modified definition of the ''BBO Price'' and corresponding changes to the BEST Rule that would reflect the modified definition. The Commission is not approving those proposed changes in this order.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 9, 2002 (''Amendment No. 1'').

[5] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 23, 2002 (''Amendment No. 2'').

[6] *See* Securities Exchange Act Release No. 46436 (August 29, 2002), 67 FR 57048.

[7] The Commission received one comment addressing the Exchange's proposed change to the definition of ''BBO price.''

[8] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 24, 2003 (''Amendment No. 3''). In Amendment No. 3, the Exchange withdrew its request that the proposed rule change be approved on a pilot basis. Further, the Exchange made changes to the proposed definition of BBO price and requested partial approval of the portion of the proposed rule change dealing with issues other than the definition of BBO price. Because the only substantive changes contained in Amendment No. 3 involve this definition of BBO price, which the Commission is not approving in this order, the Commission similarly is not approving Amendment No. 3 at this time.

[9] *See* CHX Article XX, Rule 37(b)(6)(automatic execution of orders in listed securities); CHX Article XX, Rule 37(b)(7)(automatic execution of orders in OTC securities).

[10] *See* CHX Article XX, Rule 37(b)(1).

[11] A specialist choosing to enable the Aggregate Share Threshold functionality would be required to provide CHX staff with the designated time increment for each issue. The time increment would commence (and restart) upon any change in the NBBO.

securities exchange.[12] Specifically, the Commission finds that these proposed changes are consistent with the requirements of Section 6(b)(5) of the Act[13] because they are designed to facilitate transactions in securities; to remove impediments to and to perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[14]

The Commission believes that the proposed changes to CHX Article XX, Rule 37(a)(2) providing for an Aggregate Share Threshold achieve an appropriate balance between providing customers with efficient and prompt executions of orders and limiting the risk that specialists are exposed to by guaranteeing automatic executions. The Commission further finds that the proposed changes to CHX Article XX, Rule 37(b)(1) dealing with a specialist's obligations for manually handling market and marketable limit orders are consistent with the Act and the manner in which specialists currently handle orders for listed securities.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the portion of proposed rule change (SR–CHX–2002–20) relating to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d), as discussed above, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11992 Filed 5–13–03; 8:45 am]

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[12] In approving this portion of the rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it is not approving proposed Interpretation .01 to CHX Rule 37, nor the corresponding modifications to Rule 37 that would accompany this interpretation.

[15] 15 U.S.C. 78f(b)(2).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47814; File No. SR–MSRB–2002–12]**

## Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G–37, on Political Contributions and Prohibitions on Municipal Securities Business, G–8, on Books and Records, Revisions to Form G–37/G–38 and the Withdrawal of Certain Rule G–37 Questions and Answers

May 8, 2003.

## I. Introduction

On September 26, 2002, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), and rule 19b–4 thereunder,[1] a proposed rule change to amend rule G–37, on political contributions and prohibitions on municipal securities business, G–8, on books and records, revisions to Form G–37/G–38 and the withdrawal of certain rule G–37 Questions and Answers. On March 26, 2003, the MSRB amended the proposal. The proposed rule change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on April 8, 2003.[2]

The Commission received two comment letters on the proposed rule change.[3] This order approves the proposed rule change as modified by Amendment No. 1.

## II. Summary of Comments

The Commission received two comment letters on the proposed rule change, both support the proposal.

The TBMA letter expresses support for the proposal because the TBMA believes that the changes will help reduce some of the burdens associated with rule G–37. According to the TBMA letter, the proposed rule change, ''will not undercut [rule G–37's] goal of maintaining the integrity of the municipal underwriting process.''[4] Furthermore, TBMA believes that the changes are long overdue and urges the Commission to quickly adopt the proposal.[5] Similar to the TBMA letter, the ABA/ABASA letter provides support for the proposed rule change as a means to limit the costs and burdens associated with regulatory compliance. On the amended definition of municipal finance professional, the ABA/ABASA letter expressed that the changes will limit the ''unintended consequences of preventing dealer firms from hiring otherwise qualified employees.''[6] Additionally, the more flexible exemption process will provide some relief for ''inadvertent violations'' on rule G–37's ban on contributions.[7]

## III. Discussion and Commission Findings

Section 19(b) of the Exchange Act[8] requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. After careful review of the proposed rule change and comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, which govern the MSRB.[9] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The Commission acknowledges the MSRB Long-Range Plan, to assess rule G–37's requirements and resulting

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[2] *See* Release No. 34–47609 (April 1, 2003), 67 FR 17122.

[3] April 25, 2003, letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association to Jonathan G. Katz, Secretary, Commission (''TBMA letter''); April 29, 2003, letter from Sarah Miller, American Bankers Association and ABA Securities Association to Jonathan G. Katz, Secretary, Commission (''ABA/ABASA letter'').

[4] *See* TBMA letter at 1.

[5] *Id.* at 2.

[6] *See* ABA/ABASA letter at 2.

[7] *Id.*

[8] 15 U.S.C. 78s(b).

[9] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 1015 U.S.C. 78o–4(b)(2)(C).

compliance concerns. Both the Commission and the MSRB believe that rule G–37 is essential to diminish pay-to-play practices in the municipal securities market. The rule has provided substantial benefit to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

The comment letters welcome the amendments proposed as a means to reduce industry costs and burdens. The Commission does not believe that the proposed rule change will threaten the purpose and efficacy of the pay-to-play restrictions. The Commission believes that the proposed rule change adequately provides essential protections in the exemption process and the revised definition of municipal finance professional. Furthermore, proposed revision of the look back and look forward periods to better correlate with the municipal finance professionals' role and business activity will continue to safeguard against the potential link between obtaining municipal securities business and contributions.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (File No. SR–MSRB–2002–12) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47815; File No. SR–MSRB–2003–03]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Marketing of 529 College Savings Plans in the Workplace

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and rule 19b–4 thereunder,[1] notice is hereby given that on April 29, 2003, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change (File No. SR–MSRB–2003–03) (the ''proposed rule change'') described in items, I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of an interpretive notice on marketing by brokers, dealers and municipal securities dealers (''dealers'') of 529 college savings plans in the workplace. The entire text of the proposed rule change appears at the end of this notice.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The MSRB has received a number of requests for guidance on dealer responsibilities under MSRB rules with respect to the marketing of 529 college savings plans (a type of state program that issues municipal fund securities) through the workplace to employees. Such workplace marketing programs raise unique interpretive issues under MSRB rules. The MSRB has determined to provide interpretive guidance on the application of rule G–8, on recordkeeping, rule G–17, on fair dealing, rule G–19, on suitability, rule G–27, on supervision, and rule G–32, on disclosure, in the context of workplace marketing programs relating to 529 college savings plans.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change will provide guidance to dealers engaged in workplace marketing programs for 529 college savings plans as to how to comply with MSRB rules in a manner that ensures that the investor protection objectives of the rules are met.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers involved in workplace marketing programs for 529 college savings plans.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

On November 18, 2002, the MSRB published for comment draft interpretive notice on marketing of 529 college savings plan employee payroll deduction programs. The MSRB received six comment letters.[2] After reviewing these comments, the MSRB approved the draft interpretive notice, with certain modifications, for filing with the SEC.[3] The comments and the MSRB's responses are discussed below.

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] Letter from Robert W. Berta, Jr., Vice President—Compliance, Countrywide Investment Services, Inc. (''Countrywide''), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2002; letter from M. Shawn Dreffein, President, National Planning Corporation (''NPC''), to Ernesto A. Lanza, dated January 7, 2003; letter from Natalie A. Kavanaugh, Legal Specialist, Fidelity Investments (''Fidelity''), to Ernesto A. Lanza, dated January 9, 2003; letter from Diana F. Cantor, Chair, College Savings Plan Network (''CSPN'') and Executive Director, Virginia College Savings Plan, to Ernesto A. Lanza, dated January 10, 2003; letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association (''SIA''), to Ernesto A. Lanza, dated January 10, 2003; and letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), to Ernesto A. Lanza, dated January 10, 2003.

[3] After reviewing the comments, the MSRB modified the draft interpretive guidance to: (i) Change the term ''introducing broker'' to ''selling broker;'' (ii) reflect the existence of other scenarios in which 529 college savings plans are marketed in

NPC fully supported the draft interpretive notice, stating that it ''clearly sets out the rationale for providing guidance in this area * * * [and] will make it possible for our Representatives to assist companies in offering 529 college savings plans to their employees.'' CSPN, Fidelity, ICI and SIA all generally supported the draft interpretive notice, although each requested that the MSRB further broaden and/or clarify the guidance in various respects.[4]

Fidelity, ICI and SIA requested that the MSRB substitute the term ''selling broker'' or ''selling dealer'' for the term ''introducing broker'' used in the draft interpretive notice. They stated that the term ''introducing broker'' is used with different meanings under the federal securities laws applicable to other types of securities and may cause some confusion. In addition, SIA recommended that, for purposes of the interpretation, the term ''selling broker'' also encompass the primary distributor where it directly establishes the relationship with the employer. SIA stated, ''In addition to recognizing that a selling broker rarely, if ever, has a suitability obligation in the context of a payroll deduction program, the notice should clarify that a primary distributor who makes 529 Plan investments available through a third-party broker would not have a suitability obligation under rule G–19, as it too makes no recommendation to an employee.'' The MSRB has changed the term ''introducing broker'' to ''selling broker'' in the revised interpretive notice. Contrary to SIA's statement that the interpretive notice recognizes ''that a selling broker rarely, if ever, has a suitability obligation,'' the notice does not assess the likelihood or frequency of recommendations being made by selling brokers. The notice does provide some guidance regarding the factors to consider when determining whether a recommendation has occurred. The MSRB believes that no further guidance in this area is necessary.

CSPN, Fidelity, ICI and SIA each noted that the scenario described in the draft interpretive notice is not the only form in which dealers may seek to market 529 college savings plans through employers. In addition to arrangements where selling brokers having a contractual relationship with the primary distributor to market through employers, with the employees making investments directly through the primary distributor (as described in the draft interpretive notice), these commentators noted that: (1) Primary distributors may themselves market 529 college savings plans through employers; (2) selling brokers sometimes have contractual relationships with the issuer rather than the primary distributor; (3) selling brokers may handle employee investments and maintain long-term relationships with employees, rather than merely introducing employees to the primary distributor; (4) transfer agents may undertake significant responsibilities in connection with employees' investments; and (5) employees may in some instances use a dealer other than the selling broker or primary distributor to make an investment that may still be considered part of the employer-sponsored program. These commentators requested that the MSRB address some or all of these additional scenarios. In addition, CSPN suggested that the MSRB make clear that the scenarios addressed in the draft interpretive notice are illustrative and that other models may be implemented.

The MSRB has made significant modifications to the initial paragraphs of the notice to reflect the existence of these other scenarios. No significant change in interpretation results from a primary distributor acting in the role of a selling broker. The identity of the selling broker's counterparty on the selling agreement also does not significantly change its regulatory obligations. Selling brokers that make recommendations remain fully obligated under MSRB rules and remain ultimately responsible where the primary distributor has not affirmatively undertaken regulatory obligations on behalf of the selling broker (as discussed below). The guidance provided by the notice is primarily intended for dealers that are formally involved in a workplace marketing program; thus, the notice is of limited applicability to dealers that do not have a formal role in such a program.

Fidelity observed that the draft interpretive notice referred to on-line enrollment with the primary distributor and noted that in many circumstances enrollment and investments continue to be handled by mail. Also, Fidelity, ICI and SIA noted that other forms of payment, such as ACH (automated clearing house) bank transfers, may be used in addition to traditional employee payroll deductions. These commentators requested that the MSRB recognize these variants in its final notice. The revised interpretive notice now more clearly acknowledges these different processes.

CSPN, Fidelity, ICI and SIA sought further clarification on the circumstances under which selling brokers may rely on other parties to meet their regulatory obligations. CSPN and SIA stated that dealers should be able to rely on issuers to distribute official statements to customers. CSPN noted its concern that customers may be confused by the receipt of redundant (and possibly out-dated) disclosure documents if dealers must deliver official statements regardless of whether the issuer has sent them to customers. SIA suggested that the ability of the selling broker to rely on the primary distributor for delivery of the official statement as provided in the draft interpretive notice be extended to the ability to rely on other parties, such as other dealers, employers and issuers.

The revised interpretive notice permits a selling broker to conclusively rely on the primary distributor to meet its disclosure obligations and certain supervisory obligations (described below) only under the limited circumstances in which employee orders are not accepted without actual delivery of the official statement and the primary distributor has affirmatively agreed to undertake such regulatory obligations on behalf of the selling broker. In such circumstances, the primary distributor will be responsible for fulfilling such obligations. In all other circumstances, the notice clarifies that a selling broker may agree with another party to take certain actions on its behalf but that if such other party fails to take such actions, the selling broker remains responsible for fulfilling its regulatory obligation.

ICI suggested that the MSRB should permit selling brokers to enter into arrangements with the primary distributor to meet their supervisory obligations to review and approve customer accounts and transactions based upon having procedures in place that provide assurances to the selling brokers that such review and approval is being undertaken by the primary distributor. SIA questioned the value of requiring a selling broker to review customer accounts and transactions well after the transaction is executed, especially if the transaction was not recommended. In addition, SIA questioned why a requirement for such review and related recordkeeping would be dependent upon whether the selling broker receives compensation for a transaction.

the workplace; (iii) provide more guidance as to when dealers may rely on others to fulfill regulatory responsibilities; and (iv) clarify certain recordkeeping obligations. These revisions are described in greater detail below.

[4] Countrywide did not state its position regarding the draft interpretive notice but merely noted a possible grammatical correction.

The revised interpretive notice clarifies that, where a selling broker does not make a recommendation and the primary distributor affirmatively agrees to take on both the disclosure responsibilities and the supervisory responsibilities with regard to opening of accounts and approval of transactions, the regulatory obligation may be shifted to the primary distributor. However, supervisory responsibility remains with the selling broker so long as the selling broker retains any affirmative duties to employees. The MSRB believes that the limited recordkeeping obligations imposed on all selling brokers in the notice are appropriate. The revised interpretive notice makes clear that the limited recordkeeping requirements that remain for subsequent transactions effected by the primary distributor where compensation is paid to the selling broker applies only when such compensation is transaction based since, depending on the facts and circumstances, this information may be necessary to determine compliance with MSRB's fair pricing and fair commission requirements.

With respect to transfer agents, SIA noted that many plans provide for applications and customer orders to be sent directly to a transfer agent, with the primary distributor's activities ''limited to managing the overall marketing of the program and the production of marketing and promotional materials.'' SIA stated that, ''only the transfer agent maintains any investor records and these records are the plan's investor records. Thus, in this model, the primary distributor's regulatory responsibilities are limited primarily to compliance with applicable rules governing marketing materials but not those rules mandating customer account related procedures.'' SIA sought assurance that primary distributors did not retain residual customer protection obligations under MSRB rules in the scenario where applications and orders are submitted directly to the transfer agent.

The MSRB notes that transfer agents generally are viewed under the Exchange Act as working on behalf of the issuer but that, in the 529 college savings plan market, transfer agents also sometimes contractually agree to act on behalf of the primary distributor. In the revised interpretive notice, where transactions are effected through a transfer agent without the direct involvement of the primary distributor or the selling broker, the selling broker is permitted to conclusively rely on the primary distributor to fulfill certain of the selling broker's regulatory obligations only if the transfer agent has contractually agreed to act on behalf of the primary distributor. Otherwise, the transfer agent is effectively treated as an agent of the issuer and the dealer that enlisted the corresponding employer to participate in the workplace marketing plan remains ultimately responsible for compliance with MSRB rules.

SIA asked why a selling broker would have a fair dealing obligation under rule G–17 to an employer since the employer is not the dealer's client. SIA also sought guidance regarding the nature of information that a dealer would be obligated to provide to the employer under the rule G–17 disclosure obligation. ICI and SIA also questioned the need for the selling broker to maintain a record of the name and address of an employer that the dealer solicited, as well as for principal review of such solicitation. CSPN sought assurances that the fair dealing obligation toward the employer would not give rise to any inference that the issuer has any Federal securities law obligation to employers under the scenario described in the draft interpretive notice.

The fair dealing requirement of rule G–17 applies, on its face, to all persons, not just customers. The MSRB believes that it appropriately applies to the selling broker's relationship with employers, particularly since the selling broker is inducing the employer to create a captive audience of investors and the employer's agreement to participate in the program may lead employees to believe that the employer endorses investment under the program. Under these circumstances, it is important that selling brokers provide adequate information regarding the program to the employer so that it can make an informed decision with regard to enrollment in the program. The limited recordkeeping regarding the employer required by the notice is important in the context of documenting the ability of a selling broker to rely on the guidance provided in the notice with respect to particular transactions. The revised interpretive notice provides assurances that a dealer's fair dealing obligation to the employer is not intended to imply that the issuer has a similar legal obligation to the employer.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2003–03 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

## Interpretive Notice on Marketing of 529 College Savings Plans in the Workplace

The Municipal Securities Rulemaking Board (''MSRB'') has received a number of requests for interpretive guidance on the responsibilities of brokers, dealers and municipal securities dealers (''dealers'') under MSRB rules with respect to the marketing of 529 college savings plans through the workplace to employees (''workplace marketing programs''). Workplace marketing programs have been described to the MSRB as being offered through a variety of means.[1] In many cases, a dealer (''selling broker'') that has signed a selling agreement with the primary

[5] 17 CFR 200.30–3(a)(12).

[1] The description of certain characteristics of workplace marketing programs in this notice is intended to illustrate the application of MSRB rules and is not intended to imply that workplace marketing programs having different characteristics are not permitted under MSRB rules.

distributor of a 529 college savings plan makes available to employers the opportunity to initiate a workplace marketing program for those employees who choose to enroll and make contributions under the 529 college savings plan.[2] The selling broker typically meets with the employer's human resources/benefits representatives, who then may agree to have the employer participate in the workplace marketing program. One form of workplace marketing program provides for the employer to utilize its existing payroll direct deposit process for after-tax contributions by employees. In other cases, employee contributions may be effected by means of ACH (automated clearing house) bank transfers or other means, whether electronically or by check.

After the employer has agreed to participate in a workplace marketing program, its employees can establish an account in a variety of manners, depending upon the specific 529 college savings plan. For example, many workplace marketing programs provide for the employee to establish an account with the primary distributor by completing an online or paper account application and participation agreement, which is submitted directly to the primary distributor. In other cases, applications may be submitted to a transfer agent[3] or the issuer, or may be handled by the selling broker itself. Typically, the selling broker provides the employer with materials for distribution to interested employees describing the particular 529 college savings plan, including but not limited to the program disclosure document that meets the definition of ''official statement'' under Exchange Act rule 15c2–12. Further, the selling broker may, but does not always, hold informational meetings with employees, either in groups or individually. However, in many workplace marketing programs, once the employer has agreed to participate, employees can enroll in the program and make contributions directly through the primary distributor, transfer agent or issuer without any further involvement of the selling broker.

When an employee enrolls in the workplace marketing program, certain information regarding the employee's enrollment is made available to the parties who are involved in the processing of the enrollment and contributions. Typically, however, the selling broker will receive notification of an account opening and any transactions effected for an individual employee only after the fact, either on a transaction-by-transaction basis or in periodic *summaries* of trade activities.[4] Thus, unless the selling broker itself handles the enrollment and contribution functions for employees, the selling broker may not learn the identity of individual employees actually making investments in the 529 college savings plan until well after the time of trade and settlement on such transactions. The selling broker generally receives commissions on an individual participant basis for those employees who enroll and invest in the 529 college savings plan.

The MSRB has established a number of rules designed to protect customers purchasing municipal securities (including investments in 529 college savings plans) from or through dealers. In particular, under rule G–19, a dealer that recommends a 529 college savings plan transaction to a customer must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer or otherwise and the facts disclosed by or otherwise known about the customer. To assure that a dealer effecting a recommended transaction with a non-institutional customer has the information needed about the customer to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation. In addition, the dealer has certain disclosure-related obligations to the customer, regardless of whether the dealer has recommended a particular transaction to the customer. For example, under rule G–32, the dealer is obligated to deliver an official statement to the customer by settlement of the transaction.[5]

Further, under rule G–17, each dealer, in the conduct of its municipal securities activities, must deal fairly with all persons and must not engage in any deceptive, dishonest or unfair practice. This rule has been interpreted to require a dealer to disclose to its customer, at or before the time of trade, all material facts concerning the transaction known by the dealer, as well as material facts about the security when such facts are reasonably accessible to the market.[6] This rule G–17 disclosure obligation applies regardless of whether the dealer has made a recommendation to the customer. If the customer is investing in an out-of-state 529 college savings plan, the dealer also is obligated to inform the customer that, depending upon the laws of the customer's home state, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a plan offered by the customer's home state.[7] Further, rule G–17 prohibits the dealer from misleading customers regarding facts material to the transaction, including but not limited to the availability of state tax benefits in connection with an investment in a 529 college savings plan.[8]

A dealer is obligated under rule G–17 to deal fairly not only with customers but with all persons in connection with the conduct of its municipal securities activities. Thus, in addition to dealing fairly with employees that have agreed to participate in a workplace marketing program, a selling broker that enters into a formal or informal agreement with an employer to undertake a workplace marketing program also is obligated under rule G–17 to deal fairly with the employer itself.[9] Whether a dealer has

[2] In some cases, the primary distributor itself, rather than a separate dealer, may initiate a workplace marketing program and undertake the various functions of a selling broker described in this notice. In other cases, the selling broker may have a contractual relationship with the issuer rather than with, or in addition to, the primary distributor.

[3] Third-party transfer agents are generally considered, under section 3(a)(25) of the Exchange Act, to be providing services on behalf of the issuer of securities. The MSRB understands that, in the 529 college savings plan market, transfer agents may sometimes be engaged by the primary distributor to handle certain recordkeeping and processing functions on behalf of the primary distributor.

[4] Where the primary distributor itself serves in the role of selling broker, it will obtain information concerning the transaction on a timely basis where enrollment and contributions are effected directly with the primary distributor and, where enrollment and contributions are effected with a transfer agent that has a direct contractual relationship with the primary distributor, the transfer agent will obtain such information on a timely basis on behalf of the primary distributor.

[5] In the case of a repeat purchaser who has already received the official statement, dealers generally are required to deliver any amendments or supplements to the official statement in connection with subsequent investments in the 529 college savings plan.

[6] *See* rule G–17 Interpretation—Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts, March 20, 2002, *MSRB Rule Book.*

[7] *See* rule G–21 Interpretation—Application of Fair Practice and Advertising Rules to Municipal Fund Securities, May 14, 2002, *MSRB Rule Book.*

[8] *Id.*

[9] Under section 15B(c)(1) of the Exchange Act, any dealer that attempts to induce the purchase of municipal securities must do so in compliance with MSRB rules. This would include an attempt by a selling broker (or a primary distributor acting in the role of a selling broker) to induce employees to invest in a 529 college savings plan through an employer participating in a workplace marketing program. Thus, the selling broker generally will become obligated to comply with the duties

Continued

dealt fairly with an employer is dependent upon the facts and circumstances. However, the MSRB believes that, under these circumstances, rule G–17 obligates the selling broker to disclose to the employer all material facts known by the selling broker concerning the transactions it is attempting to induce, as well as material facts about the security when such facts are reasonably accessible to the market. If the selling broker knows or has reason to know that one or more employees may not be resident in the state of the 529 college savings plan being offered under the workplace marketing program, rule G–17 requires the selling broker to disclose to the employer that, depending upon the laws of the state of residence of an employee, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a 529 college savings plan offered by the employee's home state. These are the same disclosures that a dealer effecting a transaction with individual customers is required to make under rule G–17.

Where a selling broker has recommended a transaction in a 529 college savings plan to an employee through a workplace marketing program, the selling broker is fully obligated to make a suitability determination under rule G–19.[10] The selling broker would be responsible for obtaining and maintaining the information required under rule G–19(b) in connection with such suitability determination and the additional information required under rule G–8(a)(xi), as well as for maintaining proper supervision.[11] The MSRB has previously stated that whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances.[12] Among the facts and circumstances that generally would be relevant in this context is the nature of the statements made by the selling broker if it conducts any informational meetings with employees. If, for example, the selling broker conducts an employee informational meeting at which it states that the particular 529 college savings plan is appropriate for most or all employees, or at which it advises individual employees that the plan or specific investment options within the plan are appropriate for such individuals, the introducing broker most likely has made a recommendation. If, however, the selling broker provides, at most, only generalized recommendations about the 529 college savings plan accompanied by clear statements that enrollment in this particular 529 college savings plan or investment in any particular investment option within the plan may not be appropriate for all employees, the selling broker must have reasonable grounds for the generalized recommendation in light of the information about the security but need not make a determination that the investment is suitable for each employee in attendance.[13] A selling broker making a recommendation to a particular employee also is fully responsible for providing the required disclosure information under rules G–17 and G–32.

If a selling broker does not make a recommendation in connection with a transaction in a 529 college savings plan by an employee through a workplace marketing program, it has no suitability obligation under rule G–19. Although the selling broker still would be obligated to provide the required disclosures under rules G–17 and G–32, if all employee transactions under the workplace marketing program are handled by the primary distributor or a transfer agent that has contractually agreed to act on behalf of the primary distributor, the selling broker's responsibilities will be conclusively fulfilled if the placing of an order in that manner is conditioned upon actual receipt of the official statement and the primary distributor has formally agreed to be responsible for such delivery.[14] For example, if employees make investments directly through the primary distributor's Web site and the Web site requires that investors first view or download the official statement before being allowed to complete transactions, then the selling broker would be able to conclusively rely on this method of delivery for purposes of fulfilling its disclosure requirements.[15] However, if the primary distributor does not provide assurances that necessary disclosures will be made to employees, the selling broker will be required to provide such disclosures.[16] The selling broker must put in place appropriate supervisory procedures to ensure that required disclosures are provided in a satisfactory manner where it is not entitled to conclusively rely on the primary distributor as described above.

In addition, where a selling broker is entitled to conclusively rely on disclosures provided by the primary distributor or transfer agent (as described in the preceding paragraph) and the transaction is not recommended, the selling broker may conclusively rely on the primary distributor to fulfill the selling broker's supervisory obligation to review and approve customer accounts and transactions under rule G–27(c)(iii) and (vii) for such accounts and transactions if the primary distributor has formally agreed to be responsible for such

established under rule G–17 with respect to the employer in connection with the procurement of the employer's agreement to participate in the workplace marketing program, even if there is no assurance that any employee ultimately will enroll. This obligation would not apply to an issuer if its own personnel or agents of the issuer were to initiate a workplace marketing program with an employer, as MSRB rules do not apply to issuers.

[10] A selling broker that recommends a transaction to an employee cannot avoid its suitability obligations and related duties simply because the employee places its order directly with the primary distributor, transfer agent or issuer. In addition, a primary distributor acting in the role of a selling broker that recommends a transaction to an employee cannot avoid its suitability obligations and related duties simply because the employee places its order directly with the issuer or transfer agent.

[11] Rule G–27 requires an appropriate principal to review the opening of each customer account and of each transaction for such customer. In addition, rules G–8 and G–9 require dealers to create and preserve certain records in connection with such accounts and transactions.

[12] *See* rule G–19 Interpretive Letter—Recommendations, February 17, 1998, *MSRB Rule Book.* The MSRB also has provided guidance on recommendations in the context of on-line communications in rule G–19 Interpretation—Notice Regarding Application of Rule G–19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, *MSRB Rule Book.*

[13] *See* rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements, May 7, 1985, *MSRB Rule Book.*

[14] Under these circumstances, the primary distributor could be held responsible for any failures to meet the disclosure requirements of rules G–17 and G–32. In addition, the primary distributor should note that, if the official statement omits material information that it would be obligated to provide under rule G–17, the primary distributor would be responsible for providing such omitted information.

[15] The MSRB has provided guidance on electronic delivery of required disclosure information in rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *MSRB Rule Book.* Arrangements assuring actual delivery of the official statement to employees may also be possible in circumstances where paper applications and participation agreements are mailed directly to the primary distributor or its transfer agent.

[16] Selling brokers would be advised, for example, to provide official statements to the employer's human resource/employee benefits department and at any employee informational meetings that it attends. The selling broker may enter into contractual arrangements whereby the primary distributor, transfer agent, issuer or other party agrees to provide the required disclosures to employees. However, except as described above, the selling broker will be responsible for any failure by such third party to meet its contractual delivery obligation.

supervision.[17] Under circumstances where such conclusive reliance is not available to the selling broker, the selling broker may fulfill these supervisory obligations by reviewing and approving individual account openings and transactions as information becomes available from the primary distributor, transfer agent or other relevant party. In all cases of non-recommended transactions, the selling broker must undertake prompt reviews and approvals of agreements obtained from employers to participate in a workplace marketing program and for recording account information under rule G–8(a)(ii) and customer specific information for each enrolled employee required under rule G–8(a)(xi) (of which only information under items (A), (C), (E) and (H) thereunder shall be required) as it becomes available. A selling broker wishing to rely on the guidance provided in this notice also is required to record the name and principal business address of any employer agreeing to participate in a workplace marketing program, together with the signature of an appropriate principal approving such agreement. Selling brokers are reminded that the conclusive reliance permitted by this paragraph and the preceding paragraph is not available in the case of recommended transactions, in which case the selling broker retains the primary obligation to fulfill all customer protection, disclosure, supervisory and recordkeeping duties.

Dealers should note that none of the foregoing obviates the need for primary distributors to fulfill all of their customer protection obligations under MSRB rules where a selling broker is not otherwise required to fulfill such obligations. Furthermore, if transactions subsequent to the initial enrollment of an employee in a workplace marketing program are effected directly between the employee and the primary distributor, the primary distributor generally will have sole responsibility with respect to compliance with MSRB rules in connection with such subsequent transactions, provided that the selling broker will be required to record information regarding subsequent transactions as required under rule G–8(a)(ii) to the extent that it receives transaction-based compensation for such transactions. Dealers also should note that, if employees make their purchases directly from the governmental issuer (whether through the issuer's own employees or any non-dealer agent of the issuer), the selling broker or primary distributor that enlists an employer to participate in a workplace marketing program is ultimately responsible for fulfilling all of its obligations under MSRB rules. Thus, for example, although an issuer may undertake to provide disclosure materials to investors, the dealer remains responsible under MSRB rules should the issuer fail to deliver the required disclosures to an employee who enrolls in a 529 college savings plan through a workplace marketing program promoted by the dealer acting as a selling broker, or if such disclosure information is not delivered in a timely manner.

[FR Doc. 03–11998 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

[17] Under these circumstances, the primary distributor could be held responsible for any failures to meet such supervisory obligations.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47813; File No. SR–NYSE–2003–11]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to NYSE Broker Volume Web Service

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its NYSE Broker Volume Web Service, a new service that allows subscribers to view reports of broker share volume information that the NYSE produces from the NYSE Broker Volume Database. The text of the proposed rule change is below. Proposed new language is in italics.

NYSE 2003 PRICE LIST

* * * * *

MARKET DATA FEES

* * * * *

Schedule of Monthly Charges (excluding applicable taxes)

* * * * *

NYSE Broker Volume

*NYSE Broker Volume Web Service—per user—$300.00**

NYSE Broker Volume Database access fee—$3,000.00

NYSE Broker Volume Device Fee—per terminal—$100.00

(Maximum monthly device fee per subscriber—$2,500.00)

** Applies for web access to reports directly from NYSE. Persons that subscribe on or prior to October 1, 2003, receive a 30-day waiver of the NYSE Broker Volume Web Service fee.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish fees to make NYSE Broker Volume information available via a new Web-based service (the ''NYSE Broker Volume Web Service''). Subscribers to this new service will be able to log-on to the NYSE Web site (*www.nysedata.com*) (''Web site'') and receive formatted displays containing aggregate broker-dealer volume rankings in NYSE-traded securities. NYSE produces these displays from NYSE's electronic database of raw share volume information. NYSE creates that database from trades in NYSE-listed securities that participating NYSE members execute on NYSE (the ''NYSE Broker Volume Database''). NYSE developed the NYSE Broker Volume Database to respond to requests from broker-dealers and others.

Vendors currently make broker volume reports available without the use of the NYSE Broker Volume

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Database. They produce those services from volume data that broker-dealers voluntarily provide. NYSE constituents have told NYSE that they do not find those reports sufficient and have asked NYSE to distribute broker volume information that reflects members' actual trading activity as reported to NYSE. In response, NYSE created the NYSE Broker Volume Database and made that database available to vendors as an alternative to the databases that vendors are creating for themselves. On November 12, 2002, NYSE filed a proposed rule change [3] to establish fees for vendor access to the NYSE Broker Volume Database and for vendor distribution to subscribers of Broker Volume Reports that vendors generate from the NYSE Broker Volume Database (the ''2002 Filing''). The 2002 Filing imposes a per-device subscriber fee that is subject to a per-subscriber monthly maximum that is reached when a subscriber has 25 devices.

Pursuant to the 2002 Filing, vendors may redistribute information from the NYSE Broker Volume Database in the form of controlled displays of broker volume reports. Vendors may display the reports according to their own preferences and styles and in the manner that they consider most useful to their subscribers. However, to date, no vendors have taken advantage of the opportunity to access the NYSE Broker Volume Database or to make reports generated from that database available to subscribers. Yet, NYSE continues to receive requests for broker volume information from its members and investors.

Accordingly, the Exchange proposes to provide a NYSE Broker Volume Web Service, which will allow market participants to gain access to NYSE Broker Volume displays that NYSE creates from the NYSE Broker Volume Database. NYSE will provide the NYSE Broker Volume Web Service on a controlled display directly to subscribers over the Web site.

The Exchange proposes to charge subscribers $300 per month for each user that has access to the NYSE Broker Volume Web Service. NYSE has established a secure information display and retrieval system through the combined use of user IDs and passwords. Persons with access to NYSE Broker Volume displays through the NYSE Broker Volume Web Service will not be able to manipulate the information contained in the displays or to redistribute the displays to others. The Exchange will require each subscriber to execute a suitable subscriber agreement with the Exchange. The Exchange will not cap the NYSE Broker Volume Web Service fees payable in respect of a subscriber, as it does in respect of subscribers that receive broker volume reports from a vendor.

For any individual that first subscribes to the NYSE Broker Volume Web Service on or prior to October 1, 2003, NYSE will waive the NYSE Broker Volume Web Service fee for 30 days (the ''Free Trial Period''). The Free Trial Period will be applied on a rolling basis, determined by the date on which NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker Volume Web Service. A specific individual subscriber may only receive this fee waiver one time.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(4) of the Act [4] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE–2003–11 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11994 Filed 5–13–03; 8:45 am]

**BILLING CODE 8010–01–P**

[3] Securities Exchange Act Release No. 46847 (November 19, 2002), 67 FR 70799 (November 26, 2002)(SR–NYSE–2002–61).

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47819; File No. SR-Phlx-2002–17]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment Nos. 4, 5, 6, and 7 Thereto Relating to Crossing, Facilitation, and Solicited Orders

May 8, 2003.

## I. Introduction

On March 18, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to crossing, facilitation, and solicited orders. On May 2, 2002, July 24, 2002, and August 20, 2002, Phlx submitted Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.[3] On May 2, 2002, notice of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, was published in the **Federal Register**.[4] The Commission received no comments on the proposed rule change. On November 6, 2002, February 25, 2003, March 19, 2003, and April 23, 2003, Phlx submitted Amendment Nos. 4, 5, 6, and 7 to the proposed rule change, respectively.[5] This notice and order solicits comment on Amendment Nos. 4, 5, 6, and 7 and approves the proposed rule change, as amended, on an accelerated basis.

## II. Description of Proposal

The proposed rule change would amend Phlx Rule 1064, ''Crossing, Facilitation and Solicited Orders,'' which governs the crossing of equity option orders by floor brokers. Rule 1064, among other things, sets forth the procedures by which a floor broker who holds a customer order (''original order'') may cross such order with either another customer order or orders from the same originating firm, or with a contra side order provided by the originating firm from its own proprietary account.[6]

As explained by the Phlx, under the current rule, a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he or she holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the registered options traders (''ROTs'') in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The Phlx proposes to adopt new Commentary .02 to Rule 1064 to entitle the floor broker, under certain conditions, to cross a specified percentage of an original order with another customer order or orders, or with an order of the originating firm, before ROTs in the crowd can participate in the transaction. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the floor broker's initial request, or at an improved price.

Where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part in some or all of the order at the improved price, the floor broker would be entitled to cross 40% of the contracts.[7] Where the trade takes place at the market provided by the crowd, the floor broker would be entitled to cross 20% of the contracts. These entitlements would apply only with respect to any portion of the original order that remained after all public customer orders in the limit order book and represented in the trading crowd at the time the market was established were satisfied.

The proposed rule change would apply to transactions in equity options and would initially apply to customer orders of a minimum size of 500 contracts. The Exchange's Options Committee would be authorized to determine, on an option by option basis, the eligible size for an order that could be transacted pursuant to the proposal. However, the eligible order size could not be less than 500 contracts. In the case of a complex order, such as a spread or a straddle, the proposed rule change would require that at least one leg of such an order, standing alone, would need to meet the eligible size requirement.

The proposed rule change also provides that if the same member organization of the Exchange is both the originating firm and the specialist for the option in which the transaction takes place, and the floor broker acting on behalf of the originating firm crosses or facilitates under the proposed rule, the specialist would not be entitled to any Enhanced Specialist Participation pursuant to Phlx Rule 1014(g)[8] with respect to the particular cross transaction.

If the specialist is not the same member organization as the originating firm, and the trade takes at the specialist's disseminated bid or offer when the specialist is on parity with one or more controlled accounts, the specialist may be entitled to an Enhanced Specialist Participation, but in no case would the specialist be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order after relevant public customer orders have been satisfied.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 1, 2002 (''Amendment No. 1''); and to Ira Brandriss, Special Counsel, Division, Commission, dated July 23, 2002 (''Amendment No. 2''), and August 19, 2002 (''Amendment No. 3'').

[4] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144 (''Notice'').

[5] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Ira Brandriss, Special Counsel, Division, Commission, dated November 5, 2002 (''Amendment No. 4''), February 24, 2003 (''Amendment No. 5''), March 18, 2003 (''Amendment No. 6''), and April 22, 2003 (''Amendment No. 7'').

Amendment No. 4 replaced the text of the proposed rule change with new text that made revisions to proposed Commentary .03. The text of proposed Commentary .03 was further amended by Amendment Nos. 5, 6, and 7. As discussed *infra*, the final text of proposed Commentary .03 as set forth in Amendment No. 7 is intended to clarify that the provision would apply to any transaction in which a floor broker is crossing a public customer order with an order that is not a public customer order.

In Amendment No. 6, Phlx also amended proposed Commentary .02(i) to Phlx Rule 1064, as discussed *infra*, to reflect that the proposed provision to entitle a floor broker to cross a certain percentage of a customer order with a facilitation order from the originating firm would apply only to *public* customer orders, not all customer orders.

[6] When the contra side is provided by the originating firm from its own proprietary account, the transaction is known as a ''facilitation.''

[7] After the floor broker proposed to cross the order, he or she would be required again to give the crowd a reasonable opportunity to bid or offer for the order. Telephone conversation between Richard S. Rudolph, Director and Counsel, and Dawn Kelly Reim, Market Surveillance Investigator, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on October 21, 2002. If the crowd improved upon the floor broker's price, and the floor broker then proposed to match the crowd's price, the floor broker would be entitled to cross 20% of the contracts. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on November 21, 2002.

[8] The Enhanced Specialist Participation programs in Phlx Rule 1014(g) allocate to the specialist, in certain options classes, a greater than equal share of the portion of the order that is divided among the specialist and any ''controlled accounts'' that are on parity. A ''controlled account'' is an account controlled by or under common control with a broker-dealer.

Other provisions of the proposed rule change are patterned after similar rules on other exchanges.[9]

Amendment No. 6 to the proposed rule change specifies that the provisions of Commentary .02 to permit the floor broker to cross a specified percentage of an original order with a facilitation order of the originating firm would apply where the original order is a *public* customer order.

The Exchange further proposes to adopt Commentary .03 to Phlx Rule 1064. As set forth in Amendment No. 7 to the proposed rule change, Commentary .03 would state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing a reasonable opportunity for the trading crowd to participate in the transaction, must disclose the public customer order that is subject to crossing prior to the execution of the order.

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(5) of the Act [10] that the rules of an exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

The Commission believes that Phlx's proposal to grant crossing guarantees and participation rights to member firms seeking to execute crosses on the Exchange, under the proposed conditions, is reasonable. As noted above, other options exchanges have similar rules, and the proposed rule change should enable Phlx to compete with these exchanges in attracting order flow of broker-dealer firms seeking to cross or facilitate customer orders.

The Commission notes that, in approving member firm participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant or participants to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.[12] The Commission has raised concerns, on the other hand, about participation guarantees that ''lock up'' a larger percentage of an order, and thereby reduce the number of contracts for which the trading crowd can compete.[13] The proposed rule change guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the proposal includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Phlx seeks approval is consistent with the Commission's position with respect to participation guarantees.

The Commission finds good cause for granting accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change. Amendment No. 4 restated the text of the proposed rule change as set forth in the Notice, and made revisions only to Commentary .03. Amendment Nos. 5 and 6 also revised proposed Commentary .03. To the extent that the revisions made by these amendments were retained in the final version of proposed Commentary .03 set forth in Amendment No. 7, they are discussed below.

Amendment No. 6 also amended proposed Commentary .02 to establish that the member firm participation guarantee would apply only when the floor broker is seeking to cross a facilitation order from the member firm with a *public* customer order. The Commission notes that Phlx Rule 1064(b), governing facilitation crosses, refers specifically to transactions in which a floor broker is holding an options order for a *public* customer that he or she is seeking to cross with a contra side order. The text of proposed new Commentary .02 as originally submitted also referred to the facilitation of a public customer order. Although in an earlier amendment the Exchange deleted the word ''public'' from proposed Commentary .02,[14] the Exchange has now determined to restore the term. The Commission believes that this change is reasonable and also eliminates a possible inconsistency between Phlx Rule 1064(b) and proposed Commentary .02.

The Commission also finds good cause for accelerating approval of Amendment No. 7 to the proposed rule change. Amendment No. 7 would amend the text of proposed Commentary .03 to state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order. As discussed in the Notice, the Phlx believes that ''[i]f the customer order is disclosed first, the trading crowd may be more likely to bid or offer competitively as contra side to that customer's order, thus benefiting the customer.'' As originally proposed, Commentary .03, referred only to facilitation orders. Amendment No. 7 establishes that the provision would apply to all crossing transactions in which the floor broker is crossing a public customer order with an order that is not a public customer order.[15] The Commission believes that it is appropriate to accelerate approval of Amendment No. 7.

Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[16] to grant accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4, 5, 6 and 7, including whether Amendment Nos. 4, 5, 6 and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 4, 5, 6, and 7 that are filed with the Commission, and all written communications relating to these amendments between the Commission and any person, other than those that may be withheld from the public in

[9] *See* Notice.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[13] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

[14] *See* Amendment No. 2.

[15] Commentary .03 also was amended by the Phlx to distinguish the disclosure requirement of proposed Commentary .03 from the provision of proposed Commentary .02(iv) requiring the floor broker to disclose all components of the customer order initially, before requesting that the trading crowd provide its market.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–17 and should be submitted by June 4, 2003.

**V. Conclusion**

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–Phlx–2002–17), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11996 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 4347]**

## Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 12, 2003, in the Bureau of Administration Conference Room 6320, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting will take place from 9:30 a.m. to 12 p.m. and is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a progress report on projects selected for the annual Program of Educational Assistance, and a presentation on the Council's project to develop a video tape for U.S. corporations on the Council's activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 2, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 7, 2003.

**Keith D. Miller,**

*Executive Secretary, Overseas Schools Advisory Council, Department of State.*

[FR Doc. 03–12006 Filed 5–13–03; 8:45 am]

BILLING CODE 4710–24–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–277]**

## WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Threat of Material Injury in the Investigation Concerning Certain Softwood Lumber From Canada

**AGENCY:** Office of the United States International Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States International Trade Representative (''USTR'') is providing notice of the request by the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') to examine the International Trade Commission (''ITC'') final determination of threat of material injury with respect to certain softwood lumber from Canada.

The request for the establishment of a panel alleges that the ITC's determination is inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), the Agreement on Implementation of Article VI of GATT 1994 (''Anti-dumping Agreement''), and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Athough USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30, 2003 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *fr0062@ustr.gov,* Attn: ''Lumber Injury Dispute'' in the subject line, or (ii) by fax, to Sandy KcKinzy at (202) 395–3640, with a confirmation copy sent electronically to the e-mail address above.

**FOR FURTHER INFORMATION CONTACT:** Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), USTR is providing notice that on April 3, 2003, the Government of Canada submitted a request for establishment of a dispute settlement panel to examine the U.S. International Trade Commission (''ITC'') final determination that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada determined by the U.S. Department of Commerce to have been subsidized and sold in the United States at less than fair value.

**Major Issues Raised and Legal Basis of the Complaint**

In its determination of May 16, 2002, published in the **Federal Register** on May 22, 2002, the ITC found that imports of softwood lumber from Canada that the U.S. Department of Commerce found to be subsidized and sold at less than fair value threatened an industry in the United States with material injury. The reasons for the ITC's determination are set forth in USITC Publication No. 3509 (May 2002).

By letter dated December 20, 2002, Canada requested consultations with the United States under the WTO Dispute Settlement Understanding regarding the ITC's determination. Consultations were held on January 22, 2003.

In its request for the establishment of a panel, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994; Articles 1, 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 12.2, 12.2.2, and 18.1 of the Anti-dumping Agreement; and Articles 10, 15.1, 15.2, 15.4, 15.5, 15.7, 15.8, 22.3, 22.5 and 32.1 of the SCM

Agreement. Canada alleges that these violations stem from certain errors in the ITC's determination. In particular, Canada claims that the ITC:

1. Failed to objectively evaluate the volume of dumped and subsidized imports from Canada, their impact on prices in the United States, and their impact on the U.S. industry;
2. Failed to objectively evaluate injury or threat of injury to the U.S. industry caused by factors other than dumped and subsidized imports, and to ensure that the impact of those factors was not attributed to dumped and subsidized imports;
3. Improperly determined that increased dumped and subsidized imports were imminent and were likely to exacerbate price pressure, which would materially injure the U.S. industry;
4. Failed to properly evaluate a variety of factors that it should have evaluated in reaching a conclusion of threatened material injury;
5. Failed to accord ''special care'' to its determination of threatened material injury;
6. Failed to set forth sufficient detail in its report regarding its findings and conclusions, including all relevant information and all considerations relevant to its threatened material injury determination; and
7. Failed to satisfy the requirements of Article 3 of the Anti-dumping Agreement and Article 15 of the SCM Agreement.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in Canada's request for consultations. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *fr0062@ustr.gov*, with ''Lumber Injury Dispute'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel E. Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 03–12036 Filed 5–13–03; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–250]**

## WTO Dispute Settlement Proceeding Regarding United States—Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice of the request by the Government of the Federative Republic of Brazil for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') to examine the equalizing excise tax imposed by Florida on processed orange and processed grapefruit products pursuant to Section 601.155 of the Florida Statutes. Brazil alleges that Florida's equalizing excise tax is inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade 1994 (''GATT 1994''). USTR invites written comment from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 1, 2003 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *FR0077@ustr.gov,* with ''DS250'' in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: DS250 Dispute, with a confirmation copy sent electronically to the e-mail address above or by fax to (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Stanford K. McCoy, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3581.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on August 19, 2002, the United States received a request from the Government of the Federative Republic of Brazil for the establishment of a WTO dispute settlement panel to examine the

equalizing excise tax imposed by Florida on processed orange and processed grapefruit products pursuant to Section 601.155 of the Florida Statutes. The panel was established on October 1, 2002. Chile, the European Communities (''EC''), Mexico, and Paraguay have notified the WTO of their intention to participate as third parties.

**Major Issues Raised and Legal Basis of the Complaint**

Brazil alleges that the equalizing excise tax imposed by the State of Florida pursuant to Section 601.155 of the Florida Statutes, as amended effective July 1, 2002, is inconsistent with certain obligations of the United States under GATT 1994. Brazil asserts that Section 601.155 levies an excise tax on the privilege of processing, reprocessing, blending, or mixing processed orange products or processed grapefruit products into retail or instituted size containers in Florida. Products on which an equivalent tax is levied pursuant to § 601.15 of the Florida Statutes are exempt from the tax imposed by § 601.155. Brazil asserts that the Florida equalizing excise tax is inconsistent with United States obligations under Articles III:1, III:2 and III:4 of GATT 1994.

Specifically, Brazil alleges, inter alia, that the equalizing excise tax (a) is applied to the Brazilian product so as to afford production; (b) exceeds internal taxes and charges applied to like domestic products; and (c) accords Brazilian products treatment less favorable than that accorded to like products of U.S. origin, particularly in regard to the use of the proceeds of the equalizing excise tax for advertising and promotion of Florida citrus and citrus products.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR007@ustr.gov,* with ''DS250'' in the subject line. For documents sent by U.S. mail, the submitter should provide a confirmation copy, either electronically or by fax to (202) 395–3640.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(b)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel E. Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 03–12037 Filed 5–13–03; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34339]**

### Huron & Eastern Railway Company, Inc.-Corporate Family Merger Exemption-Saginaw Valley Railway Company, Inc.

Huron & Eastern Railway Company, Inc. (HESR)[1] and the Saginaw Valley Railway Company, Inc. (SGVY),[2] both of which are subsidiaries of RailAmerica, Inc., have filed a verified notice of exemption with respect to a proposed corporate restructuring, through which SGVY will merge into HESR, with HESR as the surviving entity. Under the agreement and plan of merger, HESR will own all of the assets of SGVY and will be responsible for all debts, liabilities, and obligations of SGVY.

The transaction was scheduled to be consummated on or after April 21, 2003, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to reduce corporate overhead and duplication and save state taxes.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under that statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34339 must be filed with the

[1] HESR, a Class III rail carrier, owns and operates approximately 171 miles of railroad in the State of Michigan.

[2] SGVY, a Class III rail carrier, owns and operates approximately 56.72 miles of railroad in the State of Michigan.

Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Of Counsel, BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–12002 Filed 5–13–03; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 8, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before June 13, 2003, to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0233.

*Form Number:* IRS Form 7004.

*Type of Review:* Extension.

*Title:* Application for Automatic Extension of Time to File Corporation Income Tax Return.

*Description:* Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 1,081,045.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—5 hr., 44 min.
Learning about the law or the form—1 hr., 33 min.
Preparing the form—2 hr., 39 min.
Copying, assembling, and sending the form to the IRS—16 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 11,048,280 hours.

*OMB Number:* 1545–0887.

*Form Number:* IRS Form 8281.

*Type of Review:* Extension.

*Title:* Information Return for Publicly Offered Original Issue Discount Instruments.

*Description:* Form 8281 is filed by the issuer of a publicly offered debt instrument having Original Issue Discount (OID). The information is used to update Publication 1212, ''List of Original Issue Discount Instruments.''

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—5 hr., 1 min.
Learning about the law or the form—30 min.
Preparing, copying, assembling and sending the form to the IRS—36 min.

*Frequency of Response:* On occasion, annually.

*Estimated Total Reporting/Recordkeeping Burden:* 3,060 hours.

*OMB Number:* 1545–1131.

*Regulation Project Number:* INTL–485–89 Final.

*Type of Review:* Extension.

*Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

*Description:* Sections 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

*Respondents:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 40 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 3,333 hours.

*OMB Number:* 1545–1241.

*Regulation Project Number:* PS–92–90 Final.

*Type of Review:* Extension.

*Title:* Special Valuation Rules.

*Description:* Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interests and the retained interests.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,200.

*Estimated Burden Hours Per Respondent:* 25 minutes.

*Frequency of Response:* Other (one-time election).

*Estimated Total Reporting Burden:* 496 hours.

*OMB Number:* 1545–1260.

*Regulation Project Number:* CO–62–89 Final.

*Type of Review:* Extension.

*Title:* Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

*Description:* The reporting requirement concerns the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title II or similar case rather than the confirmation date of a plan.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Other (once).

*Estimated Total Reporting Burden:* 1 hour.

*OMB Number:* 1545–1344.

*Regulation Project Number:* CO–30–92 Final.

*Type of Review:* Extension.

*Title:* Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non-applicability of Section 357(c).

*Description:* The reporting requirements affect consolidated taxpayers who will be making elections (if made) to treat certain loss carryovers as expiring and an election (if made) allocating items between returns. The information will facilitate enforcement of consolidated return regulations.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 52,049.

*Estimated Burden Hours Per Respondent:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 18,600 hours.

*OMB Number:* 1545–1426.

*Regulation Project Number:* INTL–21–91 Temporary and Final.

*Type of Review:* Extension.

*Title:* Section 6662—Imposition of the Accuracy-Related Penalty.

*Description:* These regulations provide guidance about substantial and gross valuation misstatements as defined in section 6662(e) and 6662(h). They also provide guidance about the reasonable cause and good faith exclusion. The regulations apply to taxpayers who have transactions between persons described in section 482 and net section 482 transfer price adjustments.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 2,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 8 hours, 3 minutes.

*Frequency of Response:* Annually, other (one-time only).

*Estimated Total Reporting/Recordkeeping Burden:* 20,125 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 03–11999 Filed 5–13–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

**ACTION:** Notification of CCAC public meeting.

**SUMMARY:** Pursuant to Public Law 108–15, enacted on April 23, 2003, the United States Mint announces the first Citizens Coinage Advisory Committee (CCAC) bi-monthly meeting. This meeting is open to the public. The purpose of this meeting is to conduct business associated with the CCAC's responsibility to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

*Date:* May 15, 2003.

*Time:* 9 a.m. to 11 a.m.

*Location:* United States Mint, 801 Ninth St., NW., Washington, DC Treasury Executive Institute Conference Room—1st floor.

*Subject:* Consider 5-cent coin designs, state commemorative quarter-dollar coin designs, and other business.

The meeting completion time may be extended to accommodate additional business that must be conducted. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals produced by the United States Mint;
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Melody Grimm, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6424.

**Authority:** Public Law 108–15 (April 23, 2003).

Dated: May 9, 2003.

**Henrietta Holsman Fore,**

*Director, United States Mint.*

[FR Doc. 03–12066 Filed 5–13–03; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Wednesday,
May 14, 2003

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 60 Plant Species from the Islands of Maui and Kahoolawe, HI; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AH70**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 60 Plant Species from the Islands of Maui and Kahoolawe, HI

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 60 of 70 listed plant species known historically from the Hawaiian islands of Maui and Kahoolawe. A total of approximately 37,717 hectares (ha) (93,200 acres (ac)) of land on the island of Maui and 1,180 ha (2,915 ac) of land on the island of Kahoolawe fall within the boundaries of the 139 critical habitat units designated for the 60 species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

**DATES:** This rule becomes effective on June 13, 2003.

**ADDRESSES:** Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

**SUPPLEMENTARY INFORMATION:**

### Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are 70 plant species that, at the time of listing, were reported from the islands of Maui and/or Kahoolawe (Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE

| Species (common name) | Island distribution | | | | | | |
|---|---|---|---|---|---|---|---|
| | Kauai | Oahu | Molokai | Lanai | Maui | Hawaii | NW Isles, Kahoolawe, Niihau |
| *Acaena exigua* (liliwai) | H | | | | H | | |
| *Adenophorus periens* (pendent kihi fern). | C | C | C | R | R | C | |
| *Alectryon macrococcus* (mahoe) | C | C | C | | C | | |
| *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina). | | | | | C | | |
| *Asplenium fragile* var. *insulare* (NCN) | | | | | C | C | |
| *Bidens micrantha* ssp. *kalealaha* (kookoolau). | | | | H | C | | |
| *Bonamia menziesii* (NCN) | C | C | H | C | C | C | |
| *Brighamia rockii* (pua ala) | | | C | H | H | | |
| *Cenchrus agrimonioides* (kamanomano) | | C | | H | C | R | NW Isles (H) |
| *Centaurium sebaeoides* (awiwi) | C | C | C | C | C | | |
| *Clermontia lindseyana* (oha wai) | | | | | C | C | |
| *Clermontia oblongifolia* ssp. mauiensis (oha wai). | | | | C | C | | |
| *Clermontia peleana* (oha wai) | | | | | H | C | |
| *Clermontia samuelii* (oha wai) | | | | | C | | |
| *Colubrina oppositifolia* (kauila) | | C | | | C | C | |
| *Ctenitis squamigera* (pauoa) | H | C | C | C | C | H | |
| *Cyanea copelandii* ssp. *haleakalaensis* (haha). | | | | | C | | |
| *Cyanea glabra* (haha) | | | | | C | | |
| *Cyanea grimesiana* ssp. *grimesiana* (haha). | | C | C | C | C | | |
| *Cyanea hamatiflora* ssp. *hamatiflora* (haha). | | | | | C | | |
| *Cyanea lobata* (haha) | | | | H | C | | |
| *Cyanea mceldowneyi* (haha) | | | | | C | | |
| *Cyrtandra munroi* (haiwale) | | | | C | C | | |
| *Delissea undulata* (NCN) | C | | | | H | C | Ni (H) |
| *Diellia erecta* (asplenium-leaved diellia) | H | H | C | H | C | C | |
| *Diplazium molokaiense* (NCN) | H | H | H | H | C | | |
| *Dubautia plantaginea* ssp. *humilis* (naenae). | | | | | C | | |
| *Flueggea neowawraea* (mehamehame) | C | C | H | | C | C | |
| *Geranium arboreum* (nohoanu) | | | | | C | | |
| *Geranium multiflorum* (nohoanu) | | | | | C | | |
| *Gouania vitifolia* (NCN) | | C | | | H | C | |
| *Hedyotis coriacea* (kioele) | | H | | | C | C | |
| *Hedyotis mannii* (pilo) | | | C | C | C | | |
| *Hesperomannia arborescens* (NCN) | | C | C | H | C | | |

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species (common name) | Island distribution | | | | | | |
|---|---|---|---|---|---|---|---|
| | Kauai | Oahu | Molokai | Lanai | Maui | Hawaii | NW Isles, Kahoolawe, Niihau |
| *Hesperomannia arbuscula* (NCN) | | C | | | C | | |
| *Hibiscus brackenridgei* (mao hau hele) | H | C | H | C | C | C | Ka (R) |
| *Ischaemum byrone* (Hilo ischaemum) | C | H | C | | C | C | |
| *Isodendrion pyrifolium* (wahine noho kula). | | H | H | H | H | C | Ni (H) |
| *Kanaloa kahoolawensis* (kohe malama malama o kanaloa). | | | | | | | Ka (C) |
| *Lipochaeta kamolensis* (nehe) | | | | | C | | |
| *Lysimachia lydgatei* (NCN) | | H | | | C | | |
| *Mariscus pennatiformis* (NCN) | H | H | | | C | H | NW Isles (C) |
| *Melicope adscendens* (alani) | | | | | C | | |
| *Melicope balloui* (alani) | | | | | C | | |
| *Melicope knudsenii* (alani) | C | | | | C | | |
| *Melicope mucronulata* (alani) | | | C | | C | | |
| *Melicope ovalis* (alani) | | | | | C | | |
| *Neraudia sericea* (NCN) | | | C | H | C | | Ka (H) |
| *Nototrichium humile* (kului) | | C | | | H | | |
| *Peucedanum sandwicense* (makou) | C | C | C | | C | | |
| *Phlegmariurus mannii* (wawaeiole) | H | | | | C | C | |
| *Phyllostegia mannii* (NCN) | | | C | | H | | |
| *Phyllostegia mollis* (NCN) | | C | H | | C | | |
| *Phyllostegia parviflora* (NCN) | | C | | | H | H | |
| *Plantago princeps* (laukahi kuahiwi) | C | C | C | | C | H | |
| *Platanthera holochila* (NCN) | C | H | C | | C | | |
| *Pteris lidgatei* (NCN) | | C | H | | C | | |
| *Remya mauiensis* (NCN) | | | | | C | | |
| *Sanicula purpurea* (NCN) | | C | | | C | | |
| *Schiedea haleakalensis* (NCN) | | | | | C | | |
| *Schiedea hookeri* (NCN) | | C | | | H | | |
| *Schiedea nuttallii* (NCN) | C | C | C | | R | | |
| *Sesbania tomentosa* (ohai) | C | C | C | H | C | C | Ni (H), Ka (C), NW Isles (C) |
| *Solanum incompletum* (popolo ku mai) | H | | H | H | H | C | |
| *Spermolepis hawaiiensis* (NCN) | C | C | C | C | C | C | |
| *Tetramolopium arenarium* (NCN) | | | | | H | C | |
| *Tetramolopium capillare* (pamakani) | | | | | C | | |
| *Tetramolopium remyi* (NCN) | | | | C | H | | |
| *Vigna o-wahuensis* (NCN) | | H | C | C | C | C | Ni (H), Ka (C) |
| *Zanthoxylum hawaiiense* (ae) | C | | C | H | C | C | |

**Key:**
C (Current)—population last observed within the past 30 years
H (Historical)—population not seen for more than 30 years
R (Reported)—reported from undocumented observations
NCN—no common name

Eighteen of these species are endemic to the islands of Maui and Kahoolawe, while 42 species are reported from one or more other islands, as well as Maui and/or Kahoolawe. Each of these species is described in more detail below in the section, ''Discussion of Plant Taxa.'' Although we considered designating critical habitat on Maui and Kahoolawe for each of the 70 plant species, for the reasons described below, the final designation includes critical habitat for 60 of 70 plant species. Species that also occur on other islands may have critical habitat designated on other islands in previous or subsequent rulemakings.

**The Islands of Maui and Kahoolawe**

Maui, the second largest island in Hawaii at 1,888 square kilometers (sq km) (729 square miles (sq mi)) in area, was formed from the remnants of two large shield volcanoes, the older West Maui volcano (1.3 million years) on the west and the larger, but much younger, Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has an average rainfall of 1,020 centimeters (cm) (400 inches (in)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 km (11 mi) long by 11.3 km (7 mi) wide, comprising some 11,655 ha (28,800 ac). Located in the lee of

Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 50 cm (20 in), with most of it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon *et al.* 1992).

**Discussion of Plant Taxa**

*Species Endemic to Maui or Kahoolawe*

*Argyroxiphium sandwicense* ssp. *macrocephalum* (Ahinahina)

*Argyroxiphium sandwicense* ssp. *macrocephalum,* a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *A. sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence (flowering part of plant), the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (dry fruits) (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15 to 50 years. The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered). Numbers recorded flowering in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope of the U.S. Geological Survey—Biological Resources Division (USGS–BRD) to explore whether enhanced flowering is related to increased UV–B radiation caused by temporary reduction of stratospheric ozone. Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii* (naenae) have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals can flower for several years before dying (Carr 1985; Loope and Crivellone 1986; Loope and Medeiros, in press; Service 1997; 57 FR 20772).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100 to 3,000 m (6,890 to 9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve. There are a total of 7 occurrences on Federal and privately owned land, with a total of 39,025 to 44,025 individual plants (Geographic Decision Systems International (GDSI) 2001; Hawaii Natural Heritage Program (HINHP) Database 2001; Loope and Crivellone 1986; Service 1997; TNCH 1998; 57 FR 20772).

The habitat of this species consists primarily of lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones or in *Deschampsia nubigena* (hair grass) grasslands at elevations between 1,508 and 3,053 m (4,947 and 10,016 ft). Mean annual precipitation is approximately 75 to 250 cm (29.6 to 98.4 in). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days. This species is found in alpine dry shrubland with native species, including *Agrostis sandwicensis* (bent grass), *Dubautia menziesii, Leptecophylla tameiameiae* (pukiawe), *Silene struthioloides* (catchfly), *Tetramolopium humile* (NCN), or *Trisetum glomeratum* (pili uka) (Service 1997; 57 FR 20772; Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), pers. comm., 2001).

The threats to this species are loss of pollinators caused by the nonnative Argentine ant (*Iridomyrmex humilis*) and yellow jackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*); limited natural range, which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the nonnative plant species *Verbascum thapsus* (mullein); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (Service 1997; 57 FR 20772).

*Clermontia samuelii* (Oha wai)

*Clermontia samuelii,* a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *C. s.* ssp. *hanaensis* is differentiated from *C. s.* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (base of flower) (Lammers 1999; Service 2001).

Little is known about the life history of *Clermontia samuelii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the leeward (southeastern) side of Haleakala. Currently, *C. samuelii* is known from Papanalahoa Point, Kuhiwa Valley, the ridge north of Palike Stream, Kawaipapa, and Mokulehua Gulch. There are 7 occurrences with 309 individual plants on State and Federal lands within Haleakala National Park, Hanawi Natural Area Reserve (NAR), Hana Forest Reserve, and within the East Maui Watershed Partnership (GDSI 2001, HINHP Database 2001, Medeiros and Loope 1989, Service 2001, Warshauer 1998, 64 FR 48307, R. Hobdy, DOFAW, *in litt.* 2000, Ken Wood, National Tropical Botanical Garden (NTBG), *in litt.* 2000).

*Clermontia samuelii* is found at elevations between 723 and 2,244 m (2,372 and 7,362 ft). *Clermontia samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* (ohia) and *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus* (wahine no mauna); *Broussaisia arguta* (kanawao); *Carex alligata* (NCN); *Cheirodendron trigynum* (olapa); *Cibotium* spp. (hapuu); *Diplazium sandwichianum* (hoio); *Dubautia* spp. (naenae); *Hedyotis hillebrandii* (manono); *Hedyotis terminalis* (manono); *Melicope clusiifolia* (kolokolo mokihana); *Melicope* spp. (alani); *Peperomia obovatilimba* (ala ala wai nui); *Psychotria mariniana* (kopiko);

*Tetraplasandra oahuensis* (ohe mauka); or *Vaccinium* spp. (ohelo). In addition, *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest containing one or more of the following native plant species: *Broussaisia arguta*; *Carex alligata*; *Cibotium* spp.; *Clermontia arborescens* ssp. *waihiae* (oha wai nui); *Clermontia* spp. (oha wai); *Diplazium sandwichianum*; *Dubautia* spp.; *Hedyotis hillebrandii*; *Hedyotis* spp. (NCN); *Melicope* spp.; *Rubus hawaiensis* (akala); or *Vaccinium* spp. (HINHP Database 2001; Service 2001; 64 FR 48307; R. Hobdy pers. comm., 2001; K. Wood, *in litt.* 2000).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and destruction by feral pigs (*Sus scrofa*) and competition with nonnative plant species such as *Hedychium coronarium* (white ginger), *Hedychium gardnerianum* (kahili ginger), *Juncus* spp. (NCN), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), or *Tibouchina herbacea* (glorybush). In addition, two extremely invasive nonnative plant species, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled. The habitat of *Clermontia samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State-owned lands. The occurrence within the National Park has been fenced, and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park occurrences must constantly be monitored to prevent further ingress. Competition with nonnative plant species such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is also a major threat to this subspecies. In addition, rats (mainly black rats (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus and therefore are a potential threat to both subspecies (Service 2001; 64 FR 48307; K. Wood, *in litt.* 2000).

*Cyanea copelandii* ssp. *haleakalaensis* (Haha)

*Cyanea copelandii* ssp. *haleakalaensis,* a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex (sap). This subspecies is differentiated from *C. c.* ssp. *copelandii* by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red caused by the covering of hairs (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea copelandii* ssp. *haleakalaensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley. Currently, this species is known from 5 occurrences with a total of 204 individuals on Federal and privately owned land within the East Maui Watershed Partnership in Haiku Uka, the ridge above Kuhiwa Valley, and Kipahulu Valley within Haleakala National Park and Hanawi Natural Area Reserve (NAR) (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 2001; Warshauer 1998; 64 FR 48307).

*Cyanea copelandii* ssp. *haleakalaensis* is found on stream banks or wet scree (a sloping mass of rocks at the base of a cliff) slopes or in forest understory in montane wet or mesic forests dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* at elevations between 616 and 1,411 m (2,021 and 4,630 ft). Associated species include *Broussaisia arguta, Cibotium* spp., *Hedyotis acuminata* (au), *Perrottetia sandwicensis* (olomea), and *Psychotria hawaiiensis* (kopiko ula) (HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 2001; 64 FR 48307).

The major threats to this species are habitat degradation and destruction by feral pigs; competition with several nonnative plant species; rats; slugs; human activities; and potential extinction caused by random environmental events due to small occurrence sizes (Service 2001; 64 FR 48307).

*Cyanea glabra* (Haha)

*Cyanea glabra,* a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately lobed juvenile leaves (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea glabra.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui. Currently, this species is known from a single occurrence of 12 individual plants on privately owned land in Kauaula Valley (GDSI 2001; HINHP Database 2001; 64 FR 48307).

*Cyanea glabra* is found on soil and rock stream banks in wet lowland forests dominated by *Acacia koa* and *Metrosideros polymorpha,* at elevations between 413 and 1,572 m (1,355 and 5,156 ft). Associated native plants include *Boehmeria grandis* (akolea), *Cheirodendron trigynum, Christella cyatheoides* (kikawaio), *Cibotium* spp., *Clermontia kakeana* (ohai wai), *Coprosma* spp. (pilo), *Diplazium* spp. (NCN), *Dodonaea viscosa* (aalii), *Dubautia plantaginea* (naenae), *Perrottetia sandwicensis, Pipturus albidus* (mamaki), *Psychotria* spp. (kopiko), *Sadleria* spp. (amau), *Touchardia latifolia* (olona), and *Xylosma hawaiiense* (maua) (Service 2001; 64 FR 48307; Joel Lau, HINHP, pers. comm., 2001; HINHP Database 2001; R. Hobdy, pers. comm., 2001).

The threats to this species are slugs; habitat degradation and destruction by feral pigs; flooding; competition with several nonnative plant species; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events caused by the small number of individuals in the only remaining occurrence (Service 2001; 64 FR 48307).

*Cyanea hamatiflora* ssp. *hamatiflora (Haha)*

*Cyanea hamatiflora* ssp. *hamatiflora,* a short-lived perennial member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the other listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea hamatiflora* ssp. *hamatiflora.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui. Currently, this species is known from 9

occurrences with a total of 12 individuals within the East Maui Watershed Partnership in Honomanu, Wailuaiki, Kipahulu Valley, Koukouai, and Puu Ahulili, on Federal (Haleakala National Park) and privately owned lands (GDSI 2001; HINHP Database 2001; Service 2001; Warshauer 1998; 64 FR 48307).

Typical habitat for this species is montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* spp. and/or native shrub understory, or closed *Acacia koa-M. polymorpha* wet forest, containing one or more of the following associated native plant species: *Athyrium microphyllum* (akolea), *Broussaisia arguta*, *Cheirodendron trigynum*, *Cyanea aculeatiflora* (haha), *Cyanea kunthiana* (haha), *Dicranopteris linearis*, *Diplazium sandwichianum, Melicope* spp., *Myrsine* spp. (kolea), or *Vaccinium* spp.; and at elevations between 767 and 1,553 m (2,515 and 5,095 ft) (HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 2001; 64 FR 48307).

The threats to this species are habitat degradation and destruction by feral pigs; landslides; competition with the nonnative plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (Service 2001; 64 FR 48307).

*Cyanea mceldowneyi* (Haha)

*Cyanea mceldowneyi,* a member of the bellflower family (Campanulaceae), is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk; long (4 cm (1.6 in)), white corollas; and leaf blade size and shape (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea mceldowneyi.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala. Currently, this species is known from 11 occurrences with a total of 36 individuals on State (Makawao Forest Reserve and Hanawi NAR) and privately owned lands within the East Maui Watershed Partnership at Kahakapao Gulch, Opana Gulch, Waikamoi, Puohokamoa, Makapipi, and the flats above Kuhiwa Valley (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; Warshauer 1998; 57 FR 20772).

The habitat of this species is montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Broussaisia arguta*, *Cheirodendron trigynum, Cibotium* spp., *Clermontia arborescens*, Cyrtandra spp. (haiwale), *Dicranopteris linearis*, *Diplazium sandwichianum*, *Hedyotis* spp., or *Melicope clusiifolia*, at elevations between 779 and 1,357 m (2,555 and 4,453 ft) (R. Hobdy, pers. comm., 2001, Service 1997, 57 FR 20772).

The threats to this species are habitat degradation and physical destruction by feral pigs, small number of occurrences and individuals, human activities, and competition with nonnative plant species, especially *Setaria palmifolia* (palmgrass) (Service 1997; 57 FR 20772).

*Dubautia plantaginea* ssp. *humilis* (Naenae)

*Dubautia plantaginea* ssp. *humilis*, a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in) tall with hairless or strigillose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of veins in the leaves and by the close resemblance of the leaves to the genus *Plantago*. The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *D. plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Carr 1985; Carr 1999b; Service 2001).

Little is known about the life history of *Dubautia plantaginea* ssp. *humilis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

*Dubautia plantaginea* ssp. *humilis* has only been reported from Iao Valley on West Maui. The two occurrences with 60 to 65 individuals in total are on privately owned land (GDSI 2001; HINHP Database 2001; Service 2001; 64 FR 48307).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Bidens* spp. (kookoolau), *Carex* spp. (NCN), *Eragrostis variabilis* (kawelu), *Hedyotis formosa* (NCN), *Lysimachia remyi* (NCN), *Metrosideros polymorpha*, *Pipturus albidus*, *Plantago princeps* (laukahi kuahiwi), or *Pritchardia* spp. (loulu), at elevations between 266 and 1,593 m (873 and 5,226 ft) (HINHP Database 2001; Service 2001; 64 FR 48307; R. Hobdy, pers. comm., 2001).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from nonnative plant species. Random environmental events, such as landslides, are a threat because of the limited number of individuals and occurrences and their narrow distribution (Service 2001; 64 FR 48307).

*Geranium arboreum* (Nohoanu)

*Geranium arboreum,* a long-lived perennial member of the geranium family (Geraniaceae), is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium species* by its red petals with the upper three petals erect and the lower two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

*Geranium arboreum* is the only species in its genus that appears to be adapted to bird-pollination. Native honeycreepers appear to be a major pollination vector. *Geranium arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution. Native honeycreepers are reasonably abundant in both areas. Little else is known about the life history of *Geranium arboreum.* Flowering cycles, other pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Funk 1982, 1988; Service 1997; 57 FR 20772).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. Currently, there are 12 occurrences totaling 158 individuals, within the East Maui Watershed Partnership on State (Kula and Kahikinui Forest Reserves), private, and federally owned or leased (Haleakala National Park) lands. These occurrences are found in Kahua, Kanahau, Waiohuli, Kaipoioi Gulch, Hapapa Gulch, Keauaiwi Gulch, Kalialinui, and south of Puu Luau and east of Puu Nianiau (GDSI 2001; HINHP Database 2001; Service 1997; Warshauer 1998; 57 FR 20772).

*Geranium arboreum* grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland or *Metrosideros polymorpha* montane forest containing one or more of the

following associated native plant species: *Dryopteris wallichiana* (io nui); *Dodonaea viscosa; Leptecophylla tameiameiae*; *Rubus hawaiiensis*; or *Vaccinium reticulatum* (ohelo ai), at elevations between 1,451 and 2,184 m (4,760 and 7,164 ft) (R. Hobdy, pers. comm., 2001; Service 1997; 57 FR 20772).

The greatest immediate threat to the survival of this species is encroachment and competition from naturalized, nonnative vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from nonnative pine trees, which at certain times of the year completely covers the stigmas of the geraniums, precluding any fertilization by its own pollen. The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (Funk 1982, 1988; Service 1997; 57 FR 20772).

*Geranium multiflorum* (Nohoanu)

*Geranium multiflorum,* a long-lived member of the geranium family (Geraniaceae), is a perennial many-branched shrub 1 to 3 m (3 to 10 ft) tall. Flowers are in clusters of 25 to 50 and have 5 white petals that are 10 to 15 millimeters (mm) (0.4 to 0.6 in) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Geranium multiflorum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui. This species is now known from Federal (Haleakala National Park), State (Hanawi NAR and Koolau Forest Reserve), and private lands within the East Maui Watershed Partnership in Haiku Ula, Kalialinui, Koolau Gap, between East Waiuaki and Kopiliula Streams, near Puu Alaea along Kalapawili Ridge, Kipahulu Valley, Waiakekeehia, and Haleakala Crater. The 13 known occurrences extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the occurrences, and the difficulty in determining the number of individuals (caused by the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (GDSI 2001; HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 1997; Warshauer 1998; 57 FR 20772).

*Geranium multiflorum* is found in wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana* (pilo); *Dryopteris glabra* (hohui); *Dryopteris wallichiana; Hedyotis* spp.; *Rubus hawaiiensis; Sadleria cyatheoides;* or *Vaccinium* spp. (amau), at elevations between 1,499 and 2,710 m (4,918 and 8,890 ft) (HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772).

The major threat to *Geranium multiflorum* is competition with encroaching nonnative plant species, particularly *Rubus argutus* (prickly Florida blackberry). A potential threat is habitat destruction by feral pigs and goats in unfenced areas (Service 1997; 57 FR 20772).

*Kanaloa kahoolawensis* (Kohe malama malama o kanaloa)

*Kanaloa kahoolawensis,* a short-lived perennial member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. No other species of legume in Hawaii bears any resemblance to this species, which is why it is the only one in this genus (Lorence and Wood 1994; Service 2001).

Little is known about the life history of *Kanaloa kahoolawensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

*Kanaloa kahoolawensis* was unknown to science until its discovery by Steve Perlman and Ken Wood of NTBG in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *K. kahoolawensis* is this rocky stack on the southern coast of Kahoolawe, in an area which is owned by the State of Hawaii. While there are no previous records of the plant, pollen core studies on Oahu revealed a legume pollen that could not be identified but is most likely this species. The pollen cores indicate that this previously unidentified species was a codominant with *Dodonaea viscosa* and *Pritchardia* spp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* spp. declined dramatically. Only one occurrence with two living individuals is known (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994; Service 2001; 64 FR 48307; Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm., 2000).

The only known habitat is steep rocky talus slopes in mixed coastal shrubland at elevations between 0 and 305 m (0 and 1,000 ft) and containing one or more of the following associated native plant species: *Bidens mauiensis* (kookoolau); *Capparis sandwichiana* (maiapilo); *Melanthera lavarum* (nehe); *Portulaca molokiniensis* (ihi); *Senna gaudichaudii* (kolomona); or *Sida fallax* (ilima) (Service 2001; 64 FR 48307; R. Hobdy, pers. comm., 2001).

The major threats to *Kanaloa kahoolawensis* are landslides and competition with the nonnative plant species *Emilia fosbergii* (pualele) and *Nicotiana glauca* (tree tobacco). Goats played a major role in the destruction of vegetation on Kahoolawe before they were removed, and *K. kahoolawensis* probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats. Rats are a potential threat to *K. kahoolawensis,* because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiensis* (uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species over 400 years ago. Trampling and habitat degradation from introduced cats and native seabirds are also potential threats. Random environmental events and reduced reproductive vigor are also threats to this species, because only two individuals are known (Cuddihy and Stone 1990; Lorence and Wood 1994; Service 2001; 64 FR 48307; P. Higashino, pers. comm., 2000).

*Lipochaeta kamolensis* (Nehe)

*Lipochaeta kamolensis,* a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves, which are pinnately lobed or cut, and by

the size of the flower heads (Wagner *et al.* 1999).

*Lipochaeta kamolensis* has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April to May. Plants are deciduous and appear to be metabolically inactive during the dry season. Little else is known about the life history of *L. kamolensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (Service 1997; 57 FR 20772).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office. This species still occurs in Kamole Gulch, on State-owned (Department of Hawaiian Home Lands (DHHL)) land. The only known occurrence, which extends over an area of about 40 ha (100 ac), is estimated to contain fewer than 500 individuals (GDSI 2001; HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772; K. Wood, *in litt.* 1999).

*Lipochaeta kamolensis* typically grows in gulches or on gentle slopes outside gulches in dry shrubland at elevations between 40 and 602 m (132 and 1,974 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa; Ipomoea indica* (koali awa); or *Plumbago zeylanica* (iliee) (Service 1997; Wagner *et al.* 1999; 57 FR 20772; R. Hobdy, pers. comm., 2001; K. Wood, *in litt. 1999).*

The major threats to *Lipochaeta kamolensis* are habitat destruction, predation by cattle and goats, competition with nonnative plants such as *Lantana camara* (lantana), fire, and the one occurrence being subject to extinction by random environmental events (Service 1997; 57 FR 20772).

*Melicope adscendens* (Alani)

*Melicope adscendens,* a long-lived perennial of the rue family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *Melicope adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles (chambers) of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

*Melicope adscendens* fruits have been collected in March and July. Little else is known about the life history of *M. adscendens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

*Melicope adscendens* has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are 16 occurrences on State (Kanaio NAR) and privately owned lands at Puu Ouli and on the border of the Hana and Makawao Districts (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346).

This species typically grows on aa lava (a particular type of lava flow with very sharp edges) with pockets of soil in *Nestegis sandwicensis* (olopua)-*Pleomele auwahiensis* (hala pepe)-*Dodonaea viscosa* lowland mesic forest or open dry forest containing one or more of the following associated native plant species: *Alphitonia ponderosa* (kauila); *Chamaesyce celastroides* var. *lorifolia* (akoko); *Leptecophylla tameiameiae; Osteomeles anthyllidifolia* (ulei); *Pouteria sandwicensis* (alaa); *Santalum ellipticum* (iliahialoe); or *Xylosma hawaiiense* (maua) at elevations between 761 and 1,209 m (2,497 and 3,967 ft) (HINHP Database 2001; Service 1997; 59 FR 62346; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

Major threats are habitat damage and trampling by cattle; competition with nonnative plant species, including *Bocconia frutescens* (NCN), *Lantana camara,* and *Pennisetum clandestinum* (kikuyu grass); and reduced reproductive vigor or extinction from random environmental events caused by the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer (*Xylosandrus compactus*), fire, and ranch activities (HINHP Database 2001; Service 1997; 59 FR 62346).

*Melicope balloui* (Alani)

*Melicope balloui,* a long-lived perennial of the rue family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule (dry fruit) and usually persistent sepals and petals (Stone *et al.* 1999).

Little is known about the life history of *Melicope balloui.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

*Melicope balloui* has been found only on the northern and southeastern slopes of Haleakala. There are 3 known occurrences with a total of approximately 50 individuals on private and federally owned (Haleakala National Park) lands within the East Maui Watershed Partnership at Puu O Kakae and Palikea Stream (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

*Melicope balloui* typically grows in mesic to wet forest between 781 and 1,596 m (2,561 and 5,267 ft) in elevation and containing one or more of the following associated native plant species: *Acacia koa; Cibotium chamissoi* (hapuu); *Cibotium glaucum* (hapuu); *Diplazium sandwichianum; Melicope clusiifolia; Metrosideros polymorpha;* or *Sadleria pallida* (amau) (HINHP Database 2001; Service 1997; 59 FR 62346; J. Lau, Hawaii Natural Heritage Program, pers. comm., 2001).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events caused by the small number of existing occurrences and individuals. Potential threats include competition with nonnative plant species such as *Clidemia hirta, Paspalum conjugatum, Paspalum urvillei,* and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer; and predation by rats (HINHP Database 2001; Service 1997; 59 FR 62346).

*Melicope ovalis* (Alani)

*Melicope ovalis,* a long-lived perennial of the rue family (Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. Bruised foliage has an anise odor similar to that of *M. anisata* (mokihana). *Melicope ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (leaf stems) (Stone *et al.* 1999).

Little is known about the life history of *Melicope ovalis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

*Melicope ovalis* has been found only on the eastern and southeastern slopes of Haleakala. There are two occurrences with approximately 200 individuals,

found on federally owned land along Palikea Stream in Haleakala National Park within the East Maui Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 753 and 1,537 m (2,469 and 5,042 ft). Associated plant species include: *Broussaisia arguta; Cheirodendron trigynum; Dicranopteris linearis; Dubautia plantaginea; Hedyotis hillebrandii; Labordia hedyosmifolia* (kamakahala); *Machaerina angustifolia* (uki); *Perrottetia sandwicensis;* or *Wikstroemia oahuensis* (akia) (HINHP Database 2001; Service 1997; 59 FR 62346; R. Hobdy, pers. comm., 2001).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction caused by random environmental events. Competition with introduced plants such as *Clidemia hirta, Paspalum conjugatum, Psidium cattleianum* and *Rubus rosifolius* (thimbleberry); seed predation by rats; and susceptibility to black twig borer are also threats to this species. Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the occurrence is compromised (HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

*Remya mauiensis* (NCN)

*Remya mauiensis* is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. This species is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent (climbing) to weakly erect branches. It is distinguished from the other two members of the genus by its hairy stems and foliage, leaf shape, and length of the petiole (Wagner *et al.* 1999).

Little is known about the life history of *Remya mauiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 56 FR 1450).

*Remya mauiensis* was collected twice on West Maui by William Hillebrand between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from five occurrences on State-owned land within the West Maui Mountains Watershed Partnership at Paupau, Kokuula, Kanaulaiki, and Maunawainui Gulch in the Panaewa section of the West Maui NAR, the West Maui Forest Reserve, and the Manawainui Plant Sanctuary. Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals; however, there is an estimated total of 21 individuals (GDSI 2001; HINHP Database 2001; Service 1997; 56 FR 1450).

*Remya mauiensis* grows chiefly on steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests containing one or more of the following associated native species: *Alyxia oliviformis* (maile); *Diospyros sandwicensis* (lama); *Diplazium sandwichianum; Dodonaea viscosa; Leptecophylla tameiameiae; Lysimachia remyi; Melicope* spp.; *Microlepia strigosa* (palapalai); *Myrsine lessertiana* (kolea lau nui); *Nestegis sandwicensis; Pleomele auwahiensis; Psychotria mariniana; Wikstroemia* spp. (akia); or *Xylosma hawaiiense* at elevations between 400 and 1,228 m (1,312 and 4,029 ft) (HINHP Database 2001; Service 1997; 56 FR 1450; R. Hobdy, pers. comm., 2001).

This species is threatened by extinction caused by random catastrophic environmental events by virtue of the extremely small size of the occurrences coupled with their limited distribution. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat caused by the introduction of nonnative plants, such as *Adiantum hispidulum* (rough maidenhair fern), Rubus rosifolius, *Schinus terebinthifolius* (Christmas berry), or *Tibouchina herbacea;* human activities; and feral goats and pigs (Service 1997; 56 FR 1450).

*Schiedea haleakalensis* (NCN)

*Schiedea haleakalensis,* a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are in clusters at the ends of the branches. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

*Schiedea haleakalensis* is gynodioecious (individuals either have only female flowers or only bisexual flowers) and so likely requires cross-pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August through September. Little else is known about the life history of *S. haleakalensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Leleiwi Pali and Kaupo Gap in Haleakala National Park within the East Maui Watershed Partnership. The two occurrences are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

*Schiedea haleakalensis* typically grows in rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or in bare lava substrate with little or no soil development and periodic freezing temperatures, and containing one or more of the following associated native plant species: *Artemisia mauiensis* (hinahina), *Bidens micrantha* (kookoolau), *Dubautia menziesii, Leptecophylla tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana* (pamakani) at elevations between 1,678 and 2,434 m (5,505 and 7,986 ft) (HINHP Database 2001, Service 1997, 57 FR 20772 R. Hobdy, pers. comm., 2001).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and occurrences (Service 1997; 57 FR 20772).

*Tetramolopium capillare* (Pamakani)

*Tetramolopium capillare,* a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in) long and covered with many glands when young. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi,* with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Little is known about the life history of *Tetramolopium capillare.* Flowering

cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Lowrey 1999).

Historically, *Tetramolopium capillare* is known from Lahaina Luna to Wailuku on West Maui. Currently, 5 known occurrences with a total of 166 individuals are known from State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership, south of Kanaha Stream, Kauaula, Ulaula, and Koia (GDSI 2001; Lowrey 1999; Service 1997; 59 FR 49860).

*Tetramolopium capillare* typically grows on rocky substrates in *Heteropogon contortus* (pili grass) lowland dry forest containing *Dodonaea viscosa* or *Myoporum sandwicense* (naio); or in *Metrosideros polymorpha-Leptecophylla tameiameiae montane mesic* or wet shrubland and wet cliff faces containing one or more of the following associated plant species: *Dodonaea viscosa, Leptecophylla tameiameiaem* or *Metrosideros polymorpha,* at elevations between 131 and 1,432 m (430 and 4,698 ft) (Service 1997; 59 FR 49860; R. Hobdy, pers. comm., 2001).

The major threats to *Tetramolopium capillare* are fires; competition from nonnative plant species, particularly *Lantana camara, Leucaena leucocephala* (koa haole), or *Melinus repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events caused by the small number of existing occurrences and individuals (Service 1997; 59 FR 49860).

**Multi-Island Species**

*Acaena exigua* (Liliwai)

*Acaena exigua* is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves. It is easily hidden among the other low, tufted bog plants with which it grows. It is distinguished from other Hawaiian rose family members by its lack of petals and by the urn-shaped, constricted base of the flower, that encloses the fruit (Wagner *et al.* 1999).

Little is known about the life history of *Acaena exigua.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai. On Maui, *A. exigua* was last seen by Hank Oppenheimer and Steve Perlman in 1999 within the Puu Kukui Watershed Management Area. It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772).

*Acaena exigua* is known only from montane bogs characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs at elevations between 1,178 and 1,764 m (3,865 and 5,787 ft). Associated native species include the sedges and grasses *Carex montis-eeke* (NCN), *Deschampsia nubigena, Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Oreobolus furcatus (NCN),* or *Rhynchospora chinensis* (kuolohia), and the shrubs *Lagenifera maviensis* (howaiaulu), *Metrosideros polymorpha, Myrsine* spp., *Vaccinium* spp., or *Viola maviensis* (pamakani) (R. Hobdy, pers. comm., 2001; Service 1997; 57 FR 20772).

The reason for the disappearance of this species is not known. The main current threats to *Acaena exigua,* if it exists, are believed to include small occurrence size; human impacts (collecting and site degradation); consumption of vegetative or floral parts by nonnative slugs and rats; predation and habitat disturbance by feral pigs; and competition with nonnative plant species (Service 1997; 57 FR 20772).

*Adenophorus periens* (Pendent kihi fern)

*Adenophorus periens,* a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendent, epiphytic (not rooted in the ground) fern. This species differs from others in this endemic Hawaiian genus by having hairs along the pinna (leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori (spore-bearing structures) on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, and Hawaii. On Maui, it has not been seen in the wild since 1929 (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

Nothing is known of the preferred habitat of or native plant species associated with *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Nothing is known of the threats to *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

*Alectryon macrococcus* (Mahoe)

*Alectryon macrococcus,* a long-lived perennial member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis,* both trees with reddish-brown branches and leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in A. macrococcus var. auwahiensis but only on leaves of young *A. macrococcus* var. *macrococcus.* The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Service 1997; Wagner *et al.* 1999; 57 FR 20772).

*Alectryon macrococcus* is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997; 57 FR 20772).

Historically and currently, *Alectryon macrococcus* var. *macrococcus is* known from Kauai, Oahu, Molokai, and Maui. On Maui, 10 occurrences with a total of 10 individuals are found along the Honokowai Ditch Trail, Launiupoko Valley, and Iao Valley on privately owned land within the West Maui Mountains Watershed Partnership. Currently, *A. macrococcus* var. *auwahiensis* is known from 3 occurrences with 22 individuals on leeward East Maui in Auwahi in the Hana District and on the ridge east of Pahihi Gulch on private and State-owned (Kahikinui Forest Reserve) lands (GDSI 2001; HINHP Database 2001;

Medeiros *et al.* 1986; Service 1997; 57 FR 20772).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Maui is mesic forests with *Antidesma platyphyllum* (hame), *Antidesma pulvinatum* (hame), *Bobea sandwicensis* (ahakea), *Nestegis sandwicensis, Pittosporum confertiflorum* (hoawa), *Pittosporum glabrum* (hoawa), *Pouteria sandwicensis,* or *Xylosma* spp. (maua) at elevations between 1,017 and 3,562 m (1,168 and 3,337 ft). The habitat of *Alectryon macrococcus* var. *auwahiensis* is mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Alphitonia ponderosa; Diospyros sandwicensis; Dodonaea viscosa; Osteomeles anthyllidifolia; Pleomele auwahiensis; Pouteria sandwicensis; Santalum ellipticum; Streblus pendulinus* (aiai); or *Xylosma hawaiiense,* at elevations between 333 and 1,210 m (1,092 and 3,969 ft) (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; nonnative plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum, Psidium cattleianum,* or *Schinus terebinthifolius;* damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and caused by the very small remaining number of individuals and their limited distribution, the likelihood that a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs, deer, and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); nonnative plant species; loss of pollinators; depressed reproductive vigor; and caused by the very small remaining number of individuals and their limited distribution, the likelihood that a single natural or human-caused environmental disturbance could be catastrophic (Service 1997; 57 FR 20772).

*Asplenium fragile* var. *insulare* (NCN)

*Asplenium fragile* var. *insulare,* a short-lived perennial member of the spleenwort family (Aspleniaceae), is a fern with a short sub-erect stem with a dull gray or brown main axis with two greenish ridges. This species is most similar to *A. macraei.* The two can be distinguished by the size and shape of the pinnae and the number of sori (spore-bearing structures) per pinna (Wagner and Wagner 1992).

Little life history information is available for *Asplenium fragile* var. *insulare.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are largely unknown. Researchers have collected information on species composition, extent of cover, and age-class structure in six sub-populations at Pohakuloa Training Area on the island of Hawaii in order to describe the populations. No gametophytes (gamete-producing life stage) were found, and the age-class structure of the sub-populations sampled was determined to be 100 percent reproductive adults because all the sporophytes (spore-producing life stage) had sori on some fronds (Service 1998a; 59 FR 49025).

*Asplenium fragile* var. *insulare* was known historically and currently from East Maui and the island of Hawaii. Currently, on Maui there are two occurrences with 18 individuals found in Kalialinui within the East Maui Watershed Partnership on private and federally (Haleakala National Park) owned lands (GDSI 2001; Service 1998a; 59 FR 49025).

On Maui, *Asplenium fragile* var. *insulare* is found in streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Leptecophylla tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha,* between 1,682 and 2,407 m (5,518 and 7,896 ft). Associated native plant species include *Dryopteris wallichiana* and *Grammitis hookeri* (makue lau lii) (Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threat to *Asplenium fragile* var. *insulare* on the island of Maui is the risk of extinction caused by random naturally occurring events due to the small number of existing individuals (Service 1998a; Shaw 1992; 59 FR 49025).

*Bidens micrantha* ssp. *kalealaha* (Kookoolau)

*Bidens micrantha* ssp. *kalealaha,* a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (Ganders and Nagata 1999; 57 FR 20772).

*Bidens micrantha* is known to hybridize with other native *Bidens,* such as *B. mauiensis* and *B. menziesii,* and possibly *B. conjuncta.* Little else is known about the life history of *B. micrantha* ssp. *kalealaha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one location on West Maui. Currently, this species remains only on East Maui in Kahua, Nakula, and Haleakala Crater and Kaupo Gap, on State (Kahikinui Forest Reserve) and Federal (Haleakala National Park) lands within the East Maui Watershed Partnership. There are a total of 4 occurrences with less than a total of 2,000 individuals (Ganders and Nagata 1999; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of *Bidens micrantha* ssp. *kalealaha* on Maui is blocky lava flows with little or no soil development; deep pit craters; sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest; montane shrubland; *Sophora chrysophylla* forests or cliff faces, and containing one or more of the following associated native plant species: *Coprosma montana* (pilo); *Dodonaea viscosa; Dubautia platyphylla* (naenae); *Leptecophylla tameiameiae; Santalum haleakalae* (iliahi); or *Vaccinium reticulatum.* In addition, the habitat of *Bidens micrantha* ssp. *kalealaha* is at elevations between 1,317 and 2,565 m (4,321 and 8,414 ft) (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (Service 1997; 57 FR 20772).

*Bonamia menziesii* (NCN)

*Bonamia menziesii,* a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii. Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, there are six occurrences containing a total of eight individuals on State (Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership at Honokawai, Keokea, Haunauhane, and Kanaio (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; K. Wood, *in litt.* 1999).

*Bonamia menziesii* on Maui is found on a lava in mixed open dry forest, *Erythrina sandwicensis* (wiliwili) lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Acacia koaia* (koaia); *Achyranthes splendens* (Maui hinahina ewa); *Alphitonia ponderosa; Alyxia oliviformis; Diospyros sandwicensis; Dodonaea viscosa; Lipochaeta rockii* (nehe); *Myoporum sandwicense; Nestegis sandwicensis; Nothocestrum latifolium* (aiea); *Nototrichium* spp. (kului); *Pleomele auwahiensis; Pouteria sandwicensis; Osteomeles anthyllidifolia; Reynoldsia sandwicensis* (ohe); *Santalum ellipticum; Sicyos* spp. (anunu); *Sida fallax;* or *Xylosma hawaiiense,* at elevations between 184 and 906 m (604 and 2,971 ft) (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of nonnative plant species, particularly *Bocconia frutescens* or *Lantana camara;* and an nonnative beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

*Brighamia rockii* (Pua ala)

*Brighamia rockii,* a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem-succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: The reproductive system is protandrous, meaning male flower parts are produced before female parts, in this case, separated by several days; only five percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months of age. This species has been observed in flower during August. Little else is known about the life history of *B. rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai (HINHP Database 2001; Lammers 1999; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

*Brighamia rockii* occurs in rock crevices on steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands between 0 and 195 m (0 and 640 ft). Associated plant species include *Diospyros sandwicensis, Psydrax odorata* (alahee), *Osteomeles anthyllidifolia,* and *Scaevola taccada* (naupaka kahakai) (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Brighamia rockii* on the island of Maui (Service 1996b; 57 FR 46325).

*Cenchrus agrimonioides* (Kamanomano, =sandbur, agrimony)

*Cenchrus agrimonioides* is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year-round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, the south slope of Haleakala and Ulupalakua on Maui, and (in an undocumented report) the island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within what is now the Northwestern Hawaiian Islands National Wildlife Refuge, but has not been seen since 1973. This variety was never known from Maui. Currently, *C. agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from one occurrence on State-owned land (Kanaio NAR) at Ukumehame and Kanaio, East Maui, containing an unknown number of individuals (Corn 1980; HINHP Database 2001; Service 1999; 61 FR 53108).

*Cenchrus agrimonioides* var. *agrimonioides* is found in mid-elevation dry forest or *Pleomele-Diospyros* forest associated with *Alyxia oliviformis, Dodonaea viscosa, Osteomeles anthyllidifolia,* or *Santalum ellipticum* at elevations between 471 and 1,091 m (1,544 and 3,579 ft) (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The major threats to the only known occurrence of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with nonnative plant species, browsing and habitat degradation by goats and cattle and a risk of extinction from naturally occurring events and/or reduced reproductive vigor caused by the small number of existing individuals (Service 1999; 61 FR 53108).

*Centaurium sebaeoides* (Awiwi)

*Centaurium sebaeoides* is an annual herb in the gentian family (Gentianaceae) with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

*Centaurium sebaeoides* has been observed flowering in April. Flowering may be induced by heavy rainfall. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of this plant. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 56 FR 55770).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui. On Maui, there are 3 occurrences of this species, with a total of more than 50 individuals, on State and privately owned lands at Kahakuloa Head, Lahoole, and Kupaa Gulch (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 56 FR 55770).

This species typically grows in volcanic or clay soils or on cliffs in windward coastal areas at elevations between 0 and 194 m (0 and 636 ft) and containing one or more of the following associated native plant species: *Bidens mauiensis; Lycium sandwicense* (ohelo kai); *Lysimachia mauritiana* (kolokolo kuahiwi); *Melanthera integrifolia* (nehe); *Panicum torridum* (kakonakona); *Scaevola taccada;* or *Schiedea globosa* (NCN) (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 56 FR 55770; R. Hobdy, pers. comm., 2001).

The major threats to this species on Maui are habitat degradation by feral goats and cattle, competition from the nonnative plant species *Leucaena leucocephala,* trampling by humans on or near trails, and fire (Service 1999; 56 FR 55770).

*Clermontia lindseyana* (Oha wai)

*Clermontia lindseyana,* a short-lived perennial member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5 to 6 m (8.2 to 20 ft) tall. *Clermontia lindseyana* is either terrestrial or epiphytic. *Clermontia lindseyana* is easily distinguished from the other species within this genus by several characters: Much larger leaves and flowers; petals similar to sepals; and spreading floral lobes. Rock (1962) commented on the leaves being conspicuously hairy beneath (Cuddihy *et al.* 1983; Lammers 1999).

This species has been observed in fruit from June to October and in flower from February to August. Little else is known about the life history of *Clermontia lindseyana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically, *Clermontia lindseyana* was known from Maui and the island of Hawaii. The two Maui occurrences are located in Waiopai and Wailaulau Gulches in the Kahikinui and Kula Forest Reserves on State and private lands, and are estimated to total about 330 individuals (GDSI 2001, HINHP Database 2001, Service 1996a, 59 FR 10305; Arthur Medeiros, USGS–BRD, *in litt.* 2000).

On Maui, *Clermontia lindseyana* grows in *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Coprosma* spp.; *Cyrtandra* spp.; *Ilex anomala* (kawau); *Myrsine* spp.; or native fern species, at elevations between 1,142 and 1,870 m (3,747 and 6,134 ft) (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and trampling and rooting by pigs; competition with the nonnative plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (Service 1996a; 59 FR 10305).

*Clermontia oblongifolia* ssp. *mauiensis* (Oha wai)

*Clermontia oblongifolia* ssp. *mauiensis,* a short-lived perennial member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves with petioles. *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai (Lammers 1988, 1999; 57 FR 20772).

*Clermontia oblongifolia* ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Service 1997; 57 FR 20772).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Lanai and Honomanu Valley on Haleakala, East Maui. Currently, it is known from Lanai and West Maui. This species is currently known from one occurrence with an unknown number of individuals, at Kaulalewelewe on privately owned land within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772).

This plant typically grows on the sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane wet forests at elevations between 414 and 1,764 m (1,358 and 5,787 ft) and containing one or more of the following associated native plant species: *Cheirodendron* spp. (NCN); *Clermontia* spp.; *Coprosma* spp.; *Dicranopteris linearis; Hedyotis* spp.; *Ilex anomala; Melicope* spp.; or *Myrsine* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance caused by its small size; depressed reproductive vigor; competition with the nonnative plant species *Tibouchina herbacea;* and habitat degradation by feral pigs (Service 1997; 57 FR 20772).

*Clermontia peleana* (Oha wai)

*Clermontia peleana,* a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an epiphytic shrub or tree that grows on native trees and tree ferns. Two subspecies are recognized: *C. peleana* ssp. *singuliflora* (with greenish-white petals) and *C. peleana* ssp. *peleana* (with blackish-purple petals). This species can be separated from other Hawaiian members of the genus by its epiphytic growth, small triangular green calyx lobes, and single-lipped flowers (Lammers 1999).

*Clermontia peleana* has been observed in flower during June and November, and in fruit during November. Little else is known about the life history of *C. peleana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

*Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii and on East Maui, but has not been seen in either place since the early 1900s (HINHP Database 2001; Service 1996a; Wagner *et al.* 1999; 59 FR 10305; Lyman Perry, DOFAW, pers. comm., 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Clermontia peleana* on the island of Maui (R. Hobdy, pers. comm., 2001; Service 1996a; 59 FR 10305) or of the threats to *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305).

*Colubrina oppositifolia* (Kauila)

*Colubrina oppositifolia,* a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard, red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species has been observed in fruit and flower in September and June, and in flower during December and January. Little else is known about the

life history of *Colubrina oppositifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically and currently, *Colubrina oppositifolia* is known from Oahu, Maui, and the island of Hawaii. Currently on Maui, there are two occurrences containing one individual each on privately owned land in Honokawai in Lahaina District and in Auwahi in Hana District (GDSI 2001; HINHP Database 2001; Service 1996a; Warshauer 1998; 59 FR 10305).

The habitat of this species is lowland dry and mesic forest dominated by *Diospyros sandwicensis,* at elevations between 192 and 929 m (630 and 3,047 ft) and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *micrantha* (kookoolau); *Canavalia* spp. (awikiwiki); *Dodonaea viscosa; Freycinetia arborea* (ieie); *Metrosideros polymorpha; Microlepia strigosa; Pleomele auwahiensis; Psydrax odorata; Reynoldsia sandwicensis;* or *Wikstroemia* spp. (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral pigs, competition with the nonnative plants *Lantana camara* and *Schinus terebinthifolius,* the black twig borer, Chinese rose beetle (*Adoretus sinicus*), fire; and its small number of occurrences and limited distribution (Service 1996a; 59 FR 10305).

*Ctenitis squamigera* (Pauoa)

*Ctenitis squamigera* is a short-lived perennial of the woodfern family (Dryopteridaceae). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. On Maui, there are 12 occurrences with 41 individuals on State (West Maui Forest Reserve) and privately owned lands at Honolua, Kahana, Honokawai, Wahikuli, Kapilau Ridge, Paupau, and Hukoula within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025; J. Lau *in litt.* 2000; J. Lau, pers. comm., 2000; H. Oppenheimer, *in litt.* 2000; K. Wood, pers. comm., 2000).

This species is found in the forest understory of *Metrosideros polymorpha* montane wet forest or diverse mesic forest at elevations between 74 and 1,593 m (243 and 5,226 ft) and containing one or more of the following native plant species: *Alyxia oliviformis; Antidesma* spp. (hame); *Bobea* spp. (ahakea); *Canavalia* spp.; *Coprosma* spp.; *Dicranopteris linearis; Doodia* spp. (okupukupu lauii); *Dryopteris* spp. (NCN); *Freycinetia arborea; Hedyotis terminalis; Hibiscus kokio* ssp. *kokio* (kokio); *Myrsine* spp.; *Peperomia* spp. (ala ala wainui); *Pittosporum* spp. (hoawa); *Pleomele* spp. (hala pepe); *Pritchardia* spp.; *Psychotria* spp.; *Remya mauiensis; Sadleria* spp.; *Schiedea pubescens* var. *pubescens* (NCN); or *Xylosma* spp. (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001; H. Oppenheimer, pers. comm., 2000).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with nonnative plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events caused by the small number of existing occurrences and individuals (Service 1998a; 59 FR 49025).

*Cyanea grimesiana* ssp. *grimesiana* (Haha)

*Cyanea grimesiana* ssp. *grimesiana,* a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1990).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui. Currently on Maui, there are two occurrences with a total of five individuals on privately owned land in Iao Valley and Kapilau Ridge (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species is typically found on rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* at elevations between 312 and 1,617 m (1,024 and 5,305 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Bobea* spp.; *Myrsine* spp.; *Nestegis sandwicensis; Psychotria* spp.; or *Xylosma* spp. (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various nonnative plants; random naturally occurring events that could cause extinction caused by the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (Service 1999; 61 FR 53108).

*Cyanea lobata* (Haha)

*Cyanea lobata,* a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

*Cyanea lobata* is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Degener 1936; Rock 1919; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It is no longer extant on Lanai. On Maui, there are currently 5 occurrences with a total of 12 individuals on privately owned land within the West Maui Mountains Watershed Partnership at Kaulalewelewe, Honolowai, Honokohau, and Waikapu (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations between 204 and 1,530 m (669 and 5,020 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Athyrium* spp. (akolea); *Clermontia kakeana; Cyrtandra* spp.; *Freycinetia arborea; Metrosideros polymorpha; Morinda trimera* (noni

kuahiwi); *Peperomia* spp.; *Pipturus albidus; Pleomele* spp.; *Psychotria* spp.; *Touchardia latifolia;* or *Xylosma* spp. (HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat degradation by feral pigs, depressed reproductive vigor, and natural or human-caused environmental disturbance that could easily be catastrophic caused by the small number of remaining individuals and the limited and scattered distribution of the species (Service 1997; 57 FR 20772).

*Cyrtandra munroi* (Haiwale)

*Cyrtandra munroi,* a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves that are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

The reproductive biology of some species of *Cyrtandra* has been studied, but not on *C. munroi* specifically. Studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds that eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995b; 57 FR 20772).

*Cyrtandra munroi* was historically and is currently known from Lanai and West Maui. Currently on Maui, there are 5 occurrences with a total of approximately 1,000 individuals on private and State (West Maui Forest Reserve) owned lands within the West Maui Mountains Watershed Partnership in Kahanaiki Gulch, Pulepule Gulch, Honokahua Gulch, along Makamakaole Stream, and Hahakea (GDSI 2001; HINHP Database 2001; Service 1995b; Wagner *et al.* 1999; 57 FR 20772).

The habitat of this species is rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest at elevations between 390 and 1,108 m (1,280 and 3,635 ft) and containing one or more of the following associated native plant species: *Alyxia oliviformis; Bobea* spp.; *Clermontia* spp.; *Coprosma* spp.; *Cyrtandra* spp.; *Diospyros* spp. (lama); *Freycinetia arborea; Hedyotis acuminata; Melicope* spp.; *Myrsine* spp.; *Perrottetia sandwicensis; Pipturus* spp. (mamaki); *Pittosporum* spp.; *Pouteria sandwicensis; Psychotria* spp.; *Sadleria* spp.; *Scaevola* spp. (naupaka); *Sicyos* spp.; *Strongylodon ruber* (nuku iiwi); *Xylosma* spp.; or *Zanthoxylum kauense* (ae) (HINHP Database 2001; Service 1995b; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are from competition with the nonnative plant species *Melinis minutiflora, Paspalum conjugatum, Pluchea carolinensis* (sourbush), *Psidium cattleianum,* and *Rubus rosifolius;* loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic caused by the small number of occurrences on Maui (Service 1995b; 57 FR 20772).

*Delissea undulata* (NCN)

*Delissea undulata,* a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched, palm-like, woody-stemmed tree with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. Three subspecies, all but the last of which are considered extinct, may be separated on the basis of leaf shape and margin characters: In *D. undulata* var. *kauaiensis,* the leaf blades are oval and flat-margined with sharp teeth; in *D. undulata* var. *niihauensis,* the leaf blades are heart shaped and flat-margined with shallow, rounded teeth; and in *D. undulata* var. *undulata,* the leaf blades are elliptic to lance-shaped and wavy-margined with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases. *Delissea undulata* ssp. *undulata* is the only subspecies known from Maui (Lammers 1990).

*Delissea undulata* var. *undulata* has been observed in fruit and flower during December. Little else is known about the life history of *D. undulata* var. *undulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 61 FR 53124).

*Delissea undulata* var. *undulata* was known from southwestern Maui, western Hawaii, and Niihau. Currently it occurs on Kauai and the island of Hawaii (GDSI 2001; HINHP Database 2001; Service 1996a; 61 FR 53124; Linda Pratt, USGS-BRD, pers. comm., 2001; K. Wood, pers. comm., 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124; R. Hobdy, pers. comm., 2001) or of the threats to *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124).

*Diellia erecta* (Asplenium-leaved diellia)

*Diellia erecta,* a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Smith 1934; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, Maui, and Hawaii. On Maui, there are 5 known occurrences with a total of 35 individual plants on State (West Maui Forest Reserve, Manawainui Plant Sanctuary, and Department of Hawaiian Home Lands) and privately owned lands within the West Maui Mountains Watershed Partnership in Iao Valley, Hanaulaiki, Manawainui Gulch, near Polipoli in Kamaole, and west of Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

This species is found in steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low-to mid-elevation mesic forests between 338 and 1,744 m (1,109 and 5,722 ft) and containing one or more of the following associated native plant species: *Coprosma* spp.; *Dodonaea viscosa; Dryopteris unidentata* (akole); *Leptecophylla tameiameiae; Melicope* spp.; *Myrsine* spp.; *Osteomeles anthyllidifolia;* or *Psychotria* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with nonnative plant species, including

*Blechnum occidentale* (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor caused by the small number of existing individuals (Service 1999; 59 FR 56333).

*Diplazium molokaiense* (NCN)

*Diplazium molokaiense,* a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense.* Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and East and West Maui. Currently, this species is only known from Maui. Four occurrences with a total of 23 individuals are found on State (Kula and Kahikinui Forest Reserves) and privately owned lands within the East Maui Watershed Partnership near Polipoli in Kamaole, between Kahakapao Gulch and Puu O Kakae, Honomanu, and Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1998a; Warshauer 1998; 59 FR 49025).

This species occurs near water courses, often in proximity to waterfalls, in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 273 and 1,917 m (896 and 6,289 ft) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with nonnative plant species; decreased reproductive vigor; and extinction from randomly occurring natural events caused by the small number of occurrences and individuals (HINHP Database 2001; Service 1998a; 59 FR 49025).

*Flueggea neowawraea* (Mehamehame)

*Flueggea neowawraea,* a long-lived perennial member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from similar Hawaiian species in the family by its hairless whitish lower leaf surfaces and round fruits (Hayden 1999; Linney 1982; Neal 1965; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of *F. neowawraea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999; Service 1999; 59 FR 56333).

Historically, *Flueggea neowawraea* was known from the islands of Oahu, Kauai, Molokai, and Hawaii. Currently, occurrences are known from Kauai, Oahu, East Maui, and Hawaii. On Maui, there are four occurrences on State (DHHL) and privately owned lands at Auwahi, and above Lualailua and Alena (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; Mahealani Kaiaokamalie, Ulupalakua Ranch, *in litt.* 2000).

*Flueggea neowawraea* occurs in dry or mesic forest at elevations between 633 and 971 m (2,078 and 3,186 ft) and containing one or more of the following associated native plant species: *Alectryon macrococcus; Antidesma pulvinatum; Bobea timonioides* (ahakea); *Charpentiera* spp. (papala); *Diplazium sandwichianum; Diospyros* spp.; *Myrsine lanaiensis* (kolea); *Nesoluma polynesicum* (keahi); *Nestegis sandwicensis; Pleomele auwahiensis; Pleomele* spp.; *Pouteria sandwicensis; Psydrax odorata; Rauvolfia sandwicensis* (hao); or *Tetraplasandra* spp. (oheohe) (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with nonnative plant species; depressed reproductive vigor; the risk of extinction from a random environmental event caused by the small number of individuals; and predation of the fruit by rats (HINHP Database 2001; Service 1999; 59 FR 56333).

*Gouania vitifolia* (NCN)

*Gouania vitifolia,* a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is a climbing shrub with tendriled flowering branches. This species differs from other members of its genus by having flowering branches with a tendril and coarsely wavy to toothed leaf margins (Wagner *et al.* 1999).

In winter and late spring, the main vine of *Gouania vitifolia* produces new young side shoots which soon die. Plants have been observed flowering from late November to January, but flowering probably depends on precipitation. Little else is known about the life history of *G. vitifolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 32932).

Historically, *Gouania vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and Oahu. The species currently occurs on Oahu and on the island of Hawaii (GDSI 2001; Service 1998b; 59 FR 32932; Jon Giffin, DOFAW, *in litt.* 2000).

On Maui, *Gouania vitifolia* typically grows on the sides of ridges and gulches in dry to mesic forests at elevations between 155 and 1,326 m (509 and 4,350 ft). Associated plant species include: *Bidens* spp.; *Carex meyenii* (NCN); *Chamaesyce* spp. (akoko); *Diospyros sandwicensis; Dodonaea viscosa; Erythrina sandwicensis; Hedyotis* spp.; *Hibiscus* spp.; *Melicope* spp.; *Nestegis sandwicensis; Pipturus albidus; Psychotria* spp.; or *Urera glabra* (opuhe) (Service 1998b; 59 FR 32932; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Gouania vitifolia* on the island of Maui (Service 1998b; 59 FR 32932).

*Hedyotis coriacea* (Kioele)

*Hedyotis coriacea,* a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in) long and usually 1.5 to 3 cm (0.6 to 1.2 in) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross-section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Hedyotis coriacea* was known from Oahu and the island of Hawaii. Considered extinct on all islands in recent years, this species was discovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, island of Hawaii. Currently, only a single individual is known from West Maui on State-owned

land within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

*Hedyotis coriacea* is found on steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands at elevations between 110 and 937 m (361 and 3,074 ft) and containing one or more of the following associated native plant species: *Bidens menziesii* (kookoolau); *Gouania hillebrandii* (NCN); *Melanthera lavarum; Myoporum sandwicense; Schiedea menziesii* (NCN); or *Sida fallax* (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event (Service 1997; 57 FR 20772).

*Hedyotis mannii* (Pilo)

*Hedyotis mannii,* a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai. On Maui, there is a single occurrence of approximately 20 individuals located on private land in Kauaula Valley (GDSI 2001; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

The occurrence on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest at elevations between 340 and 1,593 m (1,115 and 5,226 ft) and containing one or more of the following associated native plant species: *Boehmeria grandis; Carex meyenii; Cyanea* spp. (haha); *Cyrtandra grayi* (haiwale); *Cyrtandra hawaiensis* (haiwale); *Cyrtandra platyphylla* (ilihia); *Hedyotis acuminata; Isachne distichophylla* (ohe); *Machaerina* spp. (uki); *Phyllostegia* spp. (NCN); *Pipturus albidus; Psychotria spp.; Touchardia latifolia;* or *Urera glabra* (Service 1996b; 57 FR 46325; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 2000).

*Hedyotis mannii* on Maui is threatened by landslides; competition with the nonnative plant species *Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Clidemia hirta, Pluchea carolinensis* (sourbush), and *Rubus rosifolius;* and the low number of individuals which makes it extremely vulnerable to extinction by random naturally occurring events (Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

*Hesperomannia arborescens* (NCN)

*Hesperomannia arborescens,* a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: Erect to ascending flower heads; thick flower head stalks; and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species has been observed in flower from April through June and in fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

*Hesperomannia arborescens* was formerly known from Oahu, Molokai, and Lanai. This species is now known from Oahu, Molokai, and Maui. There are four occurrences with a total of six individuals on State (Kahukuloa section of the West Maui NAR) and privately owned lands in Honokohau and Lanilii within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 59 FR 14482).

*Hesperomannia arborescens* is found on slopes or ridges in lowland mesic or wet forest at elevations between 346 and 1,422 m (1,135 and 4,665 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Bobea* spp.; *Cheirodendron* spp.; *Clermontia* spp.; *Cibotium* spp.; *Coprosma* spp.; *Dicranopteris linearis; Freycinetia arborea; Isachne distichophylla; Machaerina* spp.; *Melicope* spp.; *Metrosideros polymorpha; Myrsine sandwicensis* (kolea); *Pipturus* spp.; *Psychotria* spp.; or *Sadleria* spp. (HINHP Database 2001; Service 1998b; 59 FR 14482; R. Hobdy, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with nonnative plant species; impact by humans; and extinction caused by random environmental events or reduced reproductive vigor caused by the small number of remaining individuals (HINHP Database 2001; Service 1998b; 59 FR 14482).

*Hesperomannia arbuscula* (NCN)

*Hesperomannia arbuscula,* a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

*Hesperomannia arbuscula* usually flowers in the spring, depending on precipitation. Seeds mature in about 6 weeks and trees live about 10 to 15 years. Little else is known about the life history of *H. arbuscula.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui. On Maui, there are 8 occurrences with a total of 37 individuals, on privately owned land along Waihee Stream and Nakalaloa within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770; K. Wood, *in litt.* 1999).

*Hesperomannia arbuscula* typically grows on steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* at elevations between 354 and 1,453 m (1,161 and 4,767 ft) and containing one or more of the following associated native plant species: *Alyxia oliviformis; Bidens* spp.; *Cheirodendron* spp.; *Clermontia* spp.; *Cyanea spp.; Psychotria* spp.; or *Tetraplasandra* spp. (HINHP Database 2001; Service 1998b; 56 FR 55770; R. Hobdy and J. Lau, pers. comm., 2001).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from nonnative plant species, trampling by humans, and extinction from naturally occurring random events caused by the small number of occurrences (Service 1998b; 56 FR 55770).

*Hibiscus brackenridgei* (Mao hau hele)

*Hibiscus brackenridgei,* a short-lived perennial member of the mallow family (Malvaceae), is a sprawling to erect

shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: Yellow petals; a calyx consisting of triangular lobes with raised veins and a single midrib; bracts attached below the calyx, and thin stipules (leaf bracts) that fall off, leaving an elliptical scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

*Hibiscus brackenridgei* is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of *H. brackenridgei.* Pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, Kahoolawe, and Hawaii. Currently, *H. brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *H. brackenridgei* ssp. *brackenridgei* is found in 5 occurrences, containing 40 individuals, on State (Lihau section of West Maui NAR and DHHL) and privately owned lands at Lihau, Kaonohua, Keokea, and near Puu O Kali (Bates 1990; GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

*Hibiscus brackenridgei* ssp. *brackenridgei* occurs in lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree at elevations between 43 and 771 m (141 and 2,530 ft) and containing one or more of the following associated native plant species: *Achyranthes* spp. (NCN); *Chamaesyce celastroides* var. *lorifolia; Chenopodium* spp. (aheahea); *Diospyros* spp.; *Dodonaea viscosa; Melanthera lavarum; Myoporum sandwicense; Nototrichium* spp.; annual *Panicum* spp.; *Psydrax odorata; Schiedea salicaria* (NCN); or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui and Kahoolawe are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with nonnative plant species; fire; and extinction caused by random environmental events or reduced reproductive vigor caused by small occurrence size and the limited number of individuals (Service 1999; 59 FR 56333).

*Ischaemum byrone* (Hilo ischaemum)

*Ischaemum byrone,* a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts; dissimilar basic flower units, which are awned (slender bristle) and two-flowered; and a two-or three-tiered-branching inflorescence (O'Connor 1999).

Little is known about the life history of *Ischaemum byrone.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Ischaemum byrone* was reported from Kauai, Oahu, Molokai, East Maui, and the island of Hawaii. Currently, this species is found on Kauai, Molokai, Maui, and Hawaii. On Maui, there are 6 occurrences with less than 2,000 individuals found on State and privately owned lands at Keopuka Rock, Paupalu Point, Moku Huki, west of Kalahu Point, between Keakulikuli Point and Pukaulua Point, and Kauiki Head (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

*Ischaemum byrone* grows in close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland at elevations between 0 and 190 m (0 and 623 ft) and containing one or more of the following associated native plant species: *Bidens* spp. *Fimbristylis cymosa* (mauu akiaki) or *Scaevola taccada* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The most serious threat to *Ischaemum byrone* is the invasion of nonnative plant species, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardisia), and *Casuarina equisetifolia* (ironwood). Additionally, fire may pose a threat in areas infested with nonnative grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer. Disturbance incurred from these ungulates further promotes the introduction and establishment of nonnative weeds. Some occurrences are also threatened by residential development (HINHP Database 2001; Service 1996a; 59 FR 10305).

*Isodendrion pyrifolium* (Wahine noho kula)

*Isodendrion pyrifolium,* a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade has moderately hairy veins. Below the petiole are oval, hairy stipules. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about the life history of *Isodendrion pyrifolium.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

*Isodendrion pyrifolium* is known historically from six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently, it is only found on the island of Hawaii (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305; Marie Bruegmann, Service, pers. comm., 2000).

On Maui, *Isodendrion pyrifolium* occured in dry shrubland at elevations between 54 and 557 m (177 and 1,827 ft) with one or more of the following associated native plant species: *Capparis sandwichiana; Dodonaea viscosa; Myoporum sandwicense;* or *Psydrax odorata* (Service 1996a; 59 FR 10305; R. Hobdy and J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Maui (Service 1996a; 59 FR 10305).

*Lysimachia lydgatei (NCN)*

*Lysimachia lydgatei,* a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia lydgatei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

*Lysimachia lydgatei* was known historically from a gulch behind

Lahaina on West Maui and from Oahu. Currently, it is found only on Maui on State (Lihau section of West Maui NAR and the West Maui Forest Reserve) and privately owned lands at Helu, Lihau, east of Halepohaku, and Ulaula within the West Maui Mountains Watershed Partnership. The 4 Maui occurrences number approximately 240 individuals (GDSI 2001; HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772).

*Lysimachia lydgatei* typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* spp. montane forest at elevations between 829 and 1,432 m (2,720 and 4,698 ft) and containing one or more of the following associated native plant species: *Astelia* spp. (painiu); *Broussaisia arguta; Coprosma* spp.; *Dodonaea viscosa; Eurya sandwicensis* (anini); *Ilex anomala; Leptecophylla tameiameiae; Lycopodium* spp. (wawae iole); *Ochrosia* spp. (holei); *Vaccinium* spp.; or mat ferns such as *Dicranopteris* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The greatest threats to *Lysimachia lydgatei* are extinction from a random environmental event caused by the small number of occurrences; competition with nonnative plant species such as *Rubus argutus;* and fire (Service 1997; 57 FR 20772).

*Mariscus pennatiformis* (NCN)

*Mariscus pennatiformis,* a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is divided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis,* which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the fruit. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

*Mariscus pennatiformis* is known to flower from November to December after heavy rainfall. Little else is known about the life history of *M. pennatiformis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the island of Hawaii, and from Laysan in the northwestern Hawaiian Islands. *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. Two occurrences of approximately 30 individuals are found on State-owned land near the mouth of Hanawi Stream (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; K. Wood, *in litt.* 1999).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found on cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* (hala) coastal wet forests at elevations between 0 and 188 m (0 and 615 ft) and containing one or more of the following associated native plant species: *Cyperus laevigatus* (makaloa); *Eragrostis* spp. (NCN); *Ipomoea* spp. (morning glory); *Lysimachia mauritiana;* or *Sadleria pallida* (HINHP Database 2001; Service 1999; 59 FR 56333; J. Lau, pers. comm., 2001; K. Wood, *in litt.* 1999).

Threats to *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition with nonnative plant species; and extinction from random naturally occurring events (Service 1999; 59 FR 56333).

*Melicope knudsenii* (Alani)

*Melicope knudsenii,* a long-lived perennial member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels (chambers) present in the fruit, a hairless endocarp (fruit wall), a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Melicope knudsenii* is known from the southeastern slope of Haleakala on Maui and from Kauai. Currently on Maui, there are four occurrences on State (DHHL) and privately owned lands from Puu Mahoe to east of Puu Ouli (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

*Melicope knudsenii* grows in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests at elevations between 648 and 1,331 m (2,125 and 4,367 ft) and containing one or more of the following associated native plant species: *Alphitonia ponderosa; Dodonaea viscosa; Osteomeles anthyllidifolia; Santalum ellipticum;* or *Xylosma hawaiiense* (HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy, pers. comm., 2001).

Threats to *Melicope knudsenii* include habitat degradation by nonnative animals, such as goats, cattle, and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (Service 1995a; 59 FR 9304).

*Melicope mucronulata* (Alani)

*Melicope mucronulata,* a long-lived perennial of the rue family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in) long and 3.5 to 6.5 cm (1.5 to 2.5 in) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Little is known about the life history of *Melicope mucronulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from privately owned land with an unknown number of plants in Auwahi. This species was also found two years later on East Molokai (GDSI 2001; HINHP Database 2001; Service 1997; Stone *et al.* 1999; 57 FR 20772).

*Melicope mucronulata* typically grows on gentle south-facing slopes in lowland dry to mesic forest at elevations between 625 and 1,331 m (2,050 and 4,367 ft) and containing one or more of the following associated species: *Antidesma pulvinatum; Dodonaea viscosa; Melicope hawaiensis* (alani); *Nestegis sandwicensis; Pleomele auwahiensis; Pouteria sandwicensis;* and *Streblus pendulinus* (Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001).

The major threat to the continued existence of the only known occurrence of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with nonnative plant species, particularly *Melinis minutiflora,* also pose immediate threats to this species (Service 1997; 57 FR 20772).

*Neraudia sericea* (NCN)

*Neraudia sericea,* a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. *Neraudia sericea* differs from the other four species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Neraudia sericea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

*Neraudia sericea* was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe. Currently, this species is known from Molokai and Maui. On Maui, five occurrences are found on State (DHHL) and privately owned lands in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui) (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; M. Kaiaokamalie, *in litt.* 2000).

*Neraudia sericea* generally occurs in dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest at elevations between 198 and 1,658 m (650 and 5,439 ft) and containing one or more of the following associated native plant species: *Bobea* spp.; *Coprosma* spp.; *Cyrtandra oxybapha* (haiwale); *Cyrtandra* spp.; *Diospyros* spp.; *Hedyotis* spp.; *Sida fallax;* or *Urera glabra* (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 59 FR 56333; M. Bruegmann, *in litt.* 1995; R. Hobdy, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the nonnative plant species *Cymbopogon refractus* (barbwire grass), *Eragrostis* spp. (love grass), *Holcus lanatus, Melinus minutiflora,* and *Pennisetum clandestinum;* and a risk of extinction caused by random environmental events (Service 1999; 59 FR 56333).

*Nototrichium humile* (Kului)

*Nototrichium humile,* a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 4 mm (0.2 in) in diameter or less, which is covered with short hairs (Wagner *et al.* 1999).

*Nototrichium humile* has been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade. Little else is known about the life history of *N. humile.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Nototrichium humile* was known from Oahu and Maui. It currently occurs only on Oahu. On Maui, *N. humile* was last seen in the wild by Robert Hobdy in 1979 in Pohakea Gulch (HINHP Database 2001; Service 1998b; 56 FR 55770).

On Maui, *Nototrichium humile* occurred on old cinder cones in dry shrubland at elevations between 338 and 734 m (1,110 and 2,407 ft) with one or more of the following associated native plant species: *Dodonaea viscosa; Erythrina sandwicensis; Heteropogon contortus;* and *N. sandwicense* (kului) (Service 1998b; 56 FR 55770; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Nototrichium humile* on the island of Maui (Service 1998b; 56 FR 55770).

*Peucedanum sandwicense* (Makou)

*Peucedanum sandwicense,* a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands. It is distinguished from other Hawaiian members of the family by being a slightly succulent perennial herb and having broad basal leaflets, white flowers, and by its floral bracts, the size and shape of its fruit, and the oil glands in the fruit wall (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. Currently on Maui, there are 3 occurrences on State and privately owned lands at Keopuka Islet, near Pauwalu Point, and east of Hanawi Stream, with a total of 32 individuals (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

This species grows on sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities at elevations between 0 and 1,132 m (0 and 3,714 ft) and containing one or more of the following associated native species: *Artemisia australis; Bidens* spp.; *Carex* spp.; *Chamaesyce* spp.; *Diospyros sandwicensis; Eragrostis* spp.; *Hedyotis littoralis; Lysimachia mauritiana; Metrosideros polymorpha; Peperomia* spp.; *Pandanus tectorius* (hala); *Scaevola taccada;* or *Schiedea globosa* (NCN) (Constance and Affolter 1999; HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy and J. Lau pers. comms., 2001).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock. Additionally, small occurrence sizes also make the species subject to extinction caused by random environmental events (Service 1995a; 59 FR 9304).

*Phlegmariurus mannii* (Wawae iole)

*Phlegmariurus* (=*Huperzia,* =*Lycopodium*) *mannii,* a short-lived perennial member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; Holub 1991; St. John 1981; Wagner and Wagner 1992).

Little is known about the life history of *Phlegmariurus mannii.* Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the island of Hawaii. Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State (Lihau section of West Maui NAR, Makawao Forest Reserve, DHHL, and Kipahulu Forest Reserve), Federal and privately owned lands in Honokohau, Lihau, Puu Okakae, Manawainui, Healani Stream, Puu Ahulili, and Kaapahu within the East Maui Watershed Partnership and the West Maui Mountains Watershed Partnership. There are 7 occurrences with a total of 22 individuals on Maui (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

On Maui, *Phlegmariurus mannii* typically grows as an epiphyte on

*Metrosideros polymorpha, Dodonaea viscosa* and *Acacia koa* trees in moist, protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests at elevations between 446 and 1,688 m (1,464 and 5,539 ft) and containing one or more of the following associated native plant species: *Astelia menziesiana* (kaluaha); *Athyrium* spp.; *Cheirodendron trigynum; Christella* spp. (NCN); *Coprosma* spp.; *Cyanea* spp.; *Cyrtandra* spp.; *Ilex anomala; Leptecophylla tameiameiae; Machaerina* spp.; *Sadleria* spp.; or *Vaccinium* spp. (Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The primary threats to this species are habitat alteration by goats, cattle and pigs, and the impacts of nonnative plant species. Additionally, small occurrence sizes also make the species subject to extinction caused by random environmental events (Service 1997; 57 FR 20772).

*Phyllostegia mannii* (NCN)

*Phyllostegia mannii,* a non-aromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species has been observed with fruit in July. Little else is known about the life history of *Phyllostegia mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years. This species is now known only from Molokai (HINHP Database 2001; Service 1996b; 57 FR 46325).

On Maui, *Phyllostegia mannii* occured on gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* at elevations between 1,069 and 1,615 m (3,506 and 5,297 ft) with one or more of the following associated native plant species: *Alyxia oliviformis; Cheirodendron trigynum; Dicranopteris linearis; Diplazium sandwichianum; Melicope* spp.; or *Myrsine lessertiana* (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Phyllostegia mannii* on the island of Maui (Service 1996b; 57 FR 46325).

*Phyllostegia mollis* (NCN)

*Phyllostegia mollis,* a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of other plant parts separate this species from other members of the genus (Wagner *et al.* 1990).

Individual *Phyllostegia mollis* plants live for approximately 5 years. The species is known to flower in late winter and spring. Little else is known about the life history of *P. mollis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is only known from Oahu and Maui. On East Maui, a single occurrence with an unknown number of individuals remains on State (on the border of Kahikinui Forest Reserve and DHHL) land in Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1998b; Wagner *et al.* 1999; 56 FR 55770).

*Phyllostegia mollis* typically grows on steep slopes and in gulches in mesic forests dominated by *Metrosideros polymorpha* and/or *Acacia koa* at elevations between 1,144 and 1,970 m (3,754 and 6,463 ft). Associated native plant species include *Alyxia oliviformis, Cheirodendron trigynum, Diplazium sandwichianum, Melicope* spp., and *Myrsine lessertiana* (Service 1998b; 56 FR 55770; J. Lau, pers. comm., 2001).

The major threats to *Phyllostegia mollis* are competition from the nonnative plant species *Rubus* spp. and *Schinus terebinthifolius,* and a risk of extinction of the only known occurrence of this species on Maui caused by random environmental events (Service 1998b; 56 FR 55770).

*Phyllostegia parviflora* (NCN)

*Phyllostegia parviflora,* a member of the mint family (Lamiaceae), is a perennial herb. The species is distinguished from others of the genus by the egg-shaped to broadly egg-shaped leaves, leaf stalks usually 6 to 13.5 cm (2.4 to 5.3 in) long, and the lower corolla lip 6 to 9 mm (0.24 to 0.36 in) long. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences compared with *P. parviflora* var. *parviflora. Phyllostegia parviflora* var. *lydgatei* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence. At the time of listing of this species, only two varieties were recognized, *glabriuscula* and *parviflora.* Subsequent to the final rule listing this species in 1996, Wagner's (1999) taxonomic treatment of this group reorganized *P. parviflora* var. *lydgatei* as distinct from *P. parviflora* var. *parviflora.* Wagner's (1999) treatment is cited in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *P. parviflora* var. *lydgatei* (Wagner *et al.* 1999). This name change will be addressed in a future **Federal Register** notice.

Historically *Phyllostegia parviflora* was known from three islands, Oahu, Hawaii, and Maui. This species is now known only from two occurrences on Oahu (HINHP Database 2001; GDSI 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001) or of the threats to *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108).

*Plantago princeps* (Laukahi kuahiwi)

*Plantago princeps,* a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, vars. *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Individuals of this species have been observed in fruit from April through September. Little else is known about the life history of *Plantago princeps.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

*Plantago princeps* was historically found on Kauai, Oahu, Molokai, Maui, and Hawaii. It is no longer extant on the island of Hawaii. Only one of the four varieties is on Maui; *Plantago princeps* var. *laxiflora* is known from Molokai

and Maui. On Maui, there are 8 occurrences of *P. princeps* var. *laxiflora,* with a total of 118 individuals, on Federal (Haleakala National Park) and privately owned lands within the East Maui Watershed Partnership. This variety is found at Kahoolewa Ridge, Nakalaloa Stream, Iao Valley near the Needle, Hanakauhi, the west side of Kaupo Gap, and Palikea Stream (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

On Maui, *Plantago princeps* var. *laxiflora* is typically found on basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-M. polymorpha* montane wet forest; or *M. polymorpha* montane wet shrubland at elevations between 281 and 2,539 m (922 and 8,329 ft) and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *kalealaha; Chamaesyce celastroides; Cyanea* spp.; or *Dryopteris* spp. and various other ferns, such as *Dubautia menziesii, Dubautia plantaginea* ssp. *humilis, Eragrostis variabilis, Hedyotis formosa, Leptecophylla tameiameiae, Melicope ovalis, Perrottetia sandwicensis, Pipturus albidus,* or *Touchardia latifolia* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Plantago princeps* var. laxiflora on Maui are herbivory and habitat degradation by feral pigs and goats and competition with various nonnative plant species (Service 1999; 59 FR 56333).

*Platanthera holochila* (NCN)

*Platanthera holochila,* a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance- to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs on the Hawaiian Islands. It is distinguished from other Hawaiian orchids by its underground tubers that lack roots at the nodes or pseudo bulbs, and the shape and length of its dorsal sepal (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Maui, 5 occurrences with 22 individuals are reported on State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership and the East Maui Watershed Partnership from Kapaloa Stream, Waihee River, the border of Lahaina and Wailuku Districts and Koolau Gap (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

*Platanthera holochila* is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest at elevations between 536 and 2,314 m (1,759 and 7,592 ft) and containing one or more of the following associated native plant species: *Broussaisia arguta; Cibotium* spp.; *Clermontia* spp.; *Coprosma ernodeoides* (kukae nene); *Deschampsia nubigena; Dubautia scabra* (naenae); *Gahnia gahniiformis* (NCN); *Leptecophylla tameiameiae; Lycopodiella cernua* (wawae iole); *Luzula hawaiiensis* (wood rush); *Oreobolus furcatus; Polypodium pellucidum* (ae); *Sadleria* spp.; *Scaevola chamissoniana* (naupaka kuahiwi); *Sisyrinchium acre* (mauu laili); *Vaccinium reticulatum;* or *Wikstroemia* spp. (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and destruction by feral pigs; landslides; competition with nonnative plant species; and a risk of extinction on Maui from naturally occurring events and reduced reproductive vigor caused by the small number of remaining occurrences and individuals. Predation by slugs may also be a potential threat to this species (Service 1999; 61 FR 53108).

*Pteris lidgatei* (NCN)

*Pteris lidgatei,* a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. *Pteris lidgatei* can be distinguished from other species of *Pteris* on the Hawaiian Islands by the thick, brittle texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner 1949; Wagner and Wagner 1992).

Little is known about the life history of *Pteris lidgatei.* Reproductive cycles, dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and at Waihee on West Maui. Currently, this species is known from Oahu and Maui. Two occurrences with approximately 20 individuals occur on Maui on State (Kahakuloa section of the West Maui NAR) and privately owned lands within the West Maui Mountains Watershed Partnership north of Eke Crater and at Kauala (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species grows on steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest at elevations between 201 and 1,717 m (659 and 5,633 ft) and containing one or more of the following native plant species: *Christella cyatheoides; Cibotium chamissoi; Dicranopteris linearis; Elaphoglossum crassifolium* (hoe a Maui); *Sadleria squarrosa* (apuu); or *Sphenomeris chinensis* (palaa) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threats to *Pteris lidgatei* on Maui are the nonnative plants *Ageratina adenophora, Clidemia hirta,* and *Tibouchina herbacea;* habitat destruction by feral pigs; and a risk of extinction caused by random environmental events (Service 1998a; 59 FR 49025).

*Sanicula purpurea* (NCN)

*Sanicula purpurea,* a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Little is known about the life history of *Sanicula purpurea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui. On Maui, 7 occurrences totaling 200 individuals are currently known on State (Kahakuloa and Honokawai sections of the West Maui NAR) and private lands within the West Maui Mountains Watershed Partnership north of Eke Crater and east of Kahakuloa Stream, south of Eke Crater, near Violet Lake, the ridge west of Puu Kukui, and Kahoolewa Ridge east of Puu Kukui (GSDI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs at elevations between 1,195 and 1,764 m (3,921 and 5,787 ft) and containing one or more of the following associated plant species: *Argyroxiphium caliginis* (eke silversword); *Argyroxiphium grayanum* (green sword); *Gahnia beecheyi* (NCN);

*Geranium hillebrandii* (nohoanu); *Lagenifera maviensis*; *Leptecophylla tameiameiae*; *Lycopodium* spp.; *Machaerina* spp.; *Myrsine vaccinioides* (kolea); *Oreobolus furcatus*; *Plantago pachyphylla* (laukahi kuahiwi); or *Viola maviensis* (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

Habitat degradation by feral pigs, a risk of extinction caused by random environmental events and reduced reproductive vigor caused by the small number of existing occurrences, and slugs are the major threats to *Sanicula purpurea* (HINHP Database 2001; Service 1999; 61 FR 53108).

*Schiedea hookeri* (NCN)

*Schiedea hookeri*, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1999).

Based on field and greenhouse observations, *Schiedea hookeri* is hermaphroditic, which means that each individual has both male and female reproductive organs. Mature fruits have been observed in June and August. *Schiedea hookeri* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed. A related species, *S. lydgatei* on Molokai, is apparently pollinated by native, night-flying moths. A series of self-pollinations, intra-population crosses, and crosses among populations have demonstrated that *S. hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in inbreeding depression among progeny, with negative consequences for the long-term persistence of this species. Individuals of *S. hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *S. membranacea,* another mesic forest species that occurs on Kauai. In contrast to mesic forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer nonnative predators. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright and show little potential for clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes. Little else is known about the life history of *Schiedea hookeri*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (HINHP Database 2001; Service 1999; Weller and Sakai, unpublished data; 61 FR 53108).

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and from a single fragmentary collection from Haleakala on Maui that may represent *S. menziesii* rather than *S. hookeri*. Currently, this species is known only from Oahu (Environmental Division of the Army (EDA) Database 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of, or native plant species associated with, *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108).

*Schiedea nuttallii* (NCN)

*Schiedea nuttallii*, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic. Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand-pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little else is known about the life history of *S. nuttallii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (Service 1999; 61 FR 53108).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of, or native plant species associated with, *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108).

*Sesbania tomentosa* (Ohai)

*Sesbania tomentosa*, a short-lived perennial member of the pea family (Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon colored, tinged with yellow, orange-red, scarlet or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by David Hopper, University of Hawaii at Manoa. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus,* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of the life history of *S. tomentosa* are unknown (Service 1999; 59 FR 56333).

Historically, *Sesbania tomentosa* occurred on all eight of the main Hawaiian Islands and on the northwestern Hawaiian Islands of Nihoa and Necker. Currently, *S. tomentosa* occurs on Kauai, Oahu, Molokai, Kahoolawe, Maui, Hawaii, Nihoa, and Necker. On Maui, *S. tomentosa* is known from 7 occurrences with a total of 83 individuals. The occurrences are located on State-owned and/or State-leased land (Lihau section of West Maui NAR, Hana Forest Reserve, and Kanaio Training Area), under Federal jusisdiction (Kanaio National Guard Training Area) and on privately owned land within the East Maui Watershed Partnership and West Maui Mountains Watershed Partnership at Poelua Bay, Mokolea Point, between Kahakuloa Head and Puu Kahulianapa, Mahinanui, Olowalu, and Pimoe, south of Puu Puou. Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State-

owned seabird sanctuary (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *in litt.* 2000).

*Sesbania tomentosa* is found on windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands at elevations between 0 and 608 m (0 and 1,993 ft) and containing one or more of the following associated native plant species: *Bidens* spp.; *Diospyros sandwicensis*; stunted *Dodonaea viscosa*; *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiiaka); *Melanthera integrifolia*; or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various nonnative plant species such as *Lantana camara, Waltheria indica* (uhaloa), and various grass species; grazing and trampling by feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, nonnative insects; fire; and destruction by off-road vehicles and other human disturbances. Threats to *S. tomentosa* on Kahoolawe include habitat degradation caused by competition with various nonnative plant species, erosion, and trampling by cats and seabirds (Service 1999; 59 FR 56333; P. Higashino, pers. comm., 2000).

*Solanum incompletum* (Popolo ku mai)

*Solanum incompletum,* a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known from Lanai, scattered locations on Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *S. incompletum* also extended to the islands of Kauai and Molokai. Currently, *S. incompletum* is only known from the island of Hawaii (HINHP Database 2001; Service 1999; 59 FR 56333).

Nothing is known of the preferred habitat of, or native plant species associated with, *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333).

*Spermolepis hawaiiensis* (NCN)

*Spermolepis hawaiiensis*, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii. Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On Maui, there are five known occurrences with hundreds to thousands of individuals on State (Lihau section of West Maui NAR and Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership in Puu Hipa, south of Kanaha Stream, Olowalu, and Kanaio (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; Charles Chimera, USGS-BRD, pers. comm., 2000).

*Spermolepis hawaiiensis* on Maui is known from shady spots in *Dodonaea viscosa* lowland dry shrubland at elevations between 221 and 742 m (725 and 2,434 ft) and containing one or more of the following associated native species: *Diospyros* spp.; *Eragrostis variabilis*; *Erythrina sandwicensis*; *Gouania hillebrandii*; *Heteropogon contortus*; *Melanthera lavarum*; *Myoporum sandwicense*; *Pleomele* spp.; *Santalum ellipticum*; *Sida fallax*; or *Wikstroemia* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; C. Chimera, pers. comm., 2000; R. Hobdy, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, cattle, and axis deer; competition with various nonnative plants, such as *Lantana camara* and *Melinis repens*; fire; erosion, landslides, and rock slides caused by natural weathering, which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333).

*Tetramolopium arenarium* (NCN)

*Tetramolopium arenarium* is a short-lived perennial and an upright, branched shrub in the sunflower family (Asteraceae). Alternate leaves are lance-shaped, hairy, glandular, and gray-green. This species is separated from other species of the genus in the Hawaiian Islands by several characters: Upright habit; number of heads per flower cluster; presence and type of glands and hairs; size of male ray flowers; number and color of bisexual disk flowers; and fruit shape and pubescence. Three infra-specific taxa are recognized: *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* (from Maui and Hawaii); *T. arenarium* ssp. *arenarium* var. *confertum* (from Hawaii); and *T. arenarium* ssp. *laxum* (from Maui). These taxa are distinguished by a combination of characters. *Tetramolopium arenarium* ssp. *arenarium* var. *confertum* and *T. arenarium* ssp. *laxum* have not been seen the late 1800s (Lowrey 1999).

Little is known about the life history of *Tetramolopium arenarium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

*Tetramolopium arenarium* was historically known from the islands of Maui and Hawaii. The species was considered extinct until *T. arenarium* ssp. *arenarium* var. *arenarium* was recently rediscovered on the island of Hawaii. Both subspecies were last seen on Maui in the late 1800s (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Nothing is known about the preferred habitat of or native species associated with *Tetramolopium arenarium* on Maui (Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Tetramolopium arenarium* on the island of Maui (Service 1996a; 59 FR 10305).

*Tetramolopium remyi* (NCN)

*Tetramolopium remyi*, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other

species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than one flower head per branch (Lowrey 1999).

*Tetramolopium remyi* flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation. The adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. Success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be by butterflies, bees, or flies. Seed dispersal agents, specific environmental requirements, and other limiting factors of this species are unknown (Service 1995b; 56 FR 47686).

Historically, the species was known from the Lahaina area of West Maui and Lanai. Currently, *Tetramolopium remyi* is known from two occurrences on Lanai. It was last seen on Maui in 1944 until relocated in 2001 by Joel Lau of HINHP on State-owned land with an unknown number of plants in the Kuia area (GDSI 2001; HINHP Database 2001; Service 1995b; 56 FR 47686).

On Maui, *Tetramolopium remyi* occurs in lowland dry shrubland on dry, exposed ridges or flats at elevations between 52 and 550 m (171 and 1,804 ft). Associated plant species include *Bidens mauiensis, Bidens menziesii, Dodonaea viscosa, Eragrostis atropioides* (lovegrass), *Heteropogon contortus, Lipochaeta heterophylla* (NCN), or *Waltheria indica* (Service 1995b; 56 FR 47686; R. Hobdy, pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium remyi* on the island of Maui (Service 1995b; 56 FR 47686).

*Vigna o-wahuensis* (NCN)

*Vigna o-wahuensis,* a member of the pea family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear. This species differs from others in the genus by its thin, yellowish petals; sparsely hairy calyx; and thin pods, which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui. Currently, *V. o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. On the State-owned island of Kahoolawe, there is one occurrence with an unknown number of individuals in the Makaalae/Lua Kealialalo area. On Maui, there is a single occurrence of at least one individual on State-owned land at Kamanamana (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; C. Chimera, pers. comm., 2000).

On Kahoolawe and Maui, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland at elevations between 0 and 50 m (0 and 164 ft) and containing one or more of the following associated plant species: *Chamaesyce* spp.; *Chenopodium* spp.; or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various nonnative plant species, fire, a risk of extinction caused by random environmental events, and reduced reproductive vigor caused by the small number of existing occurrences and individuals. The primary threats to this species on Maui are competition with the nonnative plant species *Cenchrus ciliaris* (buffelgrass) and *Lantana camara,* and herbivory by axis deer and goats (Service 1999; 59 FR 56333).

*Zanthoxylum hawaiiense* (Ae)

*Zanthoxylum hawaiiense,* a long-lived perennial, is a medium-sized tree with pale to dark gray bark and lemon-scented leaves in the rue family (Rutaceae). *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: Three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and the southern and southwestern slopes of Haleakala on Maui. Currently, *Z. hawaiiense* is extant on the islands of Kauai, Molokai, Maui, and Hawaii. This species is found on Maui in 9 occurrences with a total of 11 individuals on private and State (Makawao Forest Reserve and DHHL) lands at Kahakapao, and in the Hana District, north and south of the Jeep Trail and north of the Kula Pipeline (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

*Zanthoxylum hawaiiense* on Maui is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest at elevations between 869 and 1,540 m (2,852 and 5,051 ft) and containing one or more of the following associated native species: *Alectryon macrococcus; Alphitonia ponderosa; Charpentiera* spp.; *Diospyros sandwicensis; Dodonaea viscosa; Melicope* spp.; *Metrosideros polymorpha; Myrsine lanaiensis; Osteomeles anthyllidifolia; Pisonia* spp. (papala kepau); *Santalum ellipticum; Sophora chrysophylla; Streblus pendulinus;* or *Xylosma hawaiiense* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the nonnative plant species, *Lantana camara, Melia azedarach* (chinaberry) and *Pennisetum clandestinum;* fire; human disturbance; risk of extinction from naturally occurring events; and reduced reproductive vigor caused by the small number of populations (Service 1996a; 59 FR 10305).

A summary of occurrences and land ownership for the 70 plant species reported from the islands of Maui and Kahoolawe is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES AND LAND OWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE

| Species | Number of current occurrences | Land ownership | | |
|---|---|---|---|---|
| | | Federal | State | Private |
| *Acaena exigua* | 0 | | | |
| *Adenophorus periens* | 0 | | | |
| *Alectryon macrococcus* | 13 | | X | X |
| *Argyroxiphium sandwicense* ssp. *macrocephalum* | 7 | X* | | X |
| *Asplenium fragile* var. *insulare* | 2 | X* | | X |
| *Bidens micrantha* ssp. *kalealaha* | 4 | X* | X | |
| *Bonamia menziesii* | 6 | | X | X |
| *Brighamia rockii* | 0 | | | |
| *Cenchrus agrimonioides* | 1 | | X | |
| *Centaurium sebaeoides* | 3 | | X | X |
| *Clermontia lindseyana* | 2 | | X | X |
| *Clermontia oblongifolia* ssp. *mauiensis* | 1 | | | |
| *Clermontia peleana* | 0 | | | |
| *Clermontia samuelii* | 7 | X* | X | |
| *Colubrina oppositifolia* | 1 | | | X |
| *Ctenitis squamigera* | 12 | | X | X |
| *Cyanea copelandii* ssp. *haleakalaensis* | 5 | X* | X | X |
| *Cyanea glabra* | 1 | | | X |
| *Cyanea grimesiana* ssp. *grimesiana* | 2 | | | X |
| *Cyanea hamatiflora* ssp. *hamatiflora* | 9 | X* | X | X |
| *Cyanea lobata* | 5 | | | X |
| *Cyanea mceldowneyi* | 11 | | X | X |
| *Cyrtandra munroi* | 5 | | X | X |
| *Delissea undulata* | 0 | | | |
| *Diellia erecta* | 5 | | X | X |
| *Diplazium molokaiense* | 4 | | X | X |
| *Dubautia plantaginea* ssp. *humilis* | 2 | | | X |
| *Flueggea neowawraea* | 4 | | X | X |
| *Geranium arboreum* | 12 | | X | X |
| *Geranium multiflorum* | 13 | X* | X | X |
| *Gouania vitifolia* | 0 | | | |
| *Hedyotis coriacea* | 1 | | X | |
| *Hedyotis mannii* | 1 | | | X |
| *Hesperomannia arborescens* | 4 | | X | X |
| *Hesperomannia arbuscula* | 8 | | | X |
| *Hibiscus brackenridgei* | 5 | | X | X |
| *Ischaemum byrone* | 6 | | X | X |
| *Isodendrion pyrifolium* | 0 | | | |
| *Kanaloa kahoolawensis* | 1 | | X | |
| *Lipochaeta kamolensis* | 1 | | X | |
| *Lysimachia lydgatei* | 4 | | X | X |
| *Mariscus pennatiformis* | 2 | | X | |
| *Melicope adscendens* | 16 | | X | X |
| *Melicope balloui* | 3 | X* | | X |
| *Melicope knudsenii* | 4 | | X | X |
| *Melicope mucronulata* | 1 | | | X |
| *Melicope ovalis* | 2 | X* | | |
| *Neraudia sericea* | 5 | | X | X |
| *Nototrichium humile* | 0 | | | |
| *Peucedanum sandwicense* | 3 | | X | X |
| *Phlegmariurus mannii* | 7 | X* | X | X |
| *Phyllostegia mannii* | 0 | | | |
| *Phyllostegia mollis* | 1 | | X | |
| *Phyllostegia parviflora* | 0 | | | |
| *Plantago princeps* | 8 | X* | | X |
| *Platanthera holochila* | 5 | | X | X |
| *Pteris lidgatei* | 2 | | X | X |
| *Remya mauiensis* | 5 | | X | |
| *Sanicula purpurea* | 7 | | X | X |
| *Schiedea haleakalensis* | 2 | X* | | |
| *Schiedea hookeri* | 0 | | | |
| *Schiedea nuttallii* | 0 | | | |
| *Sesbania tomentosa* | 6 | X** | X | X |
| *Solanum incompletum* | 0 | | | |
| *Spermolepis hawaiiensis* | 5 | | X | X |
| *Tetramolopium arenarium* | 0 | | | |
| *Tetramolopium capillare* | 5 | | X | X |
| *Tetramolopium remyi* | 1 | | X | |
| *Vigna o-wahuensis* | 2 | | X | |

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES AND LAND OWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE—Continued

| Species | Number of current occurrences | Land ownership | | |
|---|---|---|---|---|
| | | Federal | State | Private |
| *Zanthoxylum hawaiiense* | 9 | | X | X |

* Haleakala National Park Lands.
** Kanaio Army National Guard Lands.

**Previous Federal Action**

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii*, *Brighamia rockii*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum*, *Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum*, var. *ovatifolium*, and var. *superbum*), *Hedyotis mannii* (as *Hedyotis thyrsoidea var. thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushian*a and var. *swezeyi*), *Hesperomannia arbuscula*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. ''from Hawaii''), *Ischaemum byrone*, *Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Nototrichium humile*, *Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis, Plantago princeps* (as *Plantago princeps* var. *elata*, var. *laxiflora,* var. *princeps*), *Remya mauiensis*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*), were considered to be endangered; *Cyrtandra munroi*, *Diellia erecta*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* ssp. *kalealaha*), *Ctenitis squamigera*, *Diplazium molokaiense*, *Gouania vitifolia*, *Hedyotis coriacea*, *Isodendrion pyrifolium*, *Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis* var. *denticulata*, and var. *queleniana*), *Pteris lidgatei*, *Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium*, var. *confertum*, and var. *dentatum*), *Tetramolopium capillare*, and *Tetramolopium remyi* were considered extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyanea glabra* and *Cyrtandra munroi;* additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A 1-year grace period was given to proposals already over two years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). We listed the 70 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 3(a).

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

| Species | Federal status | Proposed listing rule | | Final listing rule | |
|---|---|---|---|---|---|
| | | Date | Federal Register | Date | Federal Register |
| *Acaena exigua* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Adenophorus periens* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Alectryon macrococcus* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Argyroxiphium sandwicense* ssp. *macrocephalum* | T | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Asplenium fragile* var. *insulare* | E | 06/24/93 | 58 FR 34231 | 09/09/94 | 59 FR 49025 |
| *Bidens micrantha* ssp. *kalealaha* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Bonamia menziesii* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species | Federal status | Proposed listing rule | | Final listing rule | |
|---|---|---|---|---|---|
| | | Date | Federal Register | Date | Federal Register |
| *Brighamia rockii* | E | 09/20/91 | 56 FR 47718 | 10/08/92 | 57 FR 46325 |
| *Cenchrus agrimonioides* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Centaurium sebaeoides* | E | 09/28/90 | 55 FR 39664 | 10/29/91 | 56 FR 55770 |
| *Clermontia lindseyana* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Clermontia oblongifolia* ssp. *mauiensis* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Clermontia peleana* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Clermontia samuelii* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Colubrina oppositifolia* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Ctenitis squamigera* | E | 06/24/93 | 58 FR 34231 | 09/09/94 | 59 FR 49025 |
| *Cyanea copelandii* ssp. *haleakalaensis* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Cyanea glabra* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Cyanea grimesiana* ssp. *grimesiana* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Cyanea hamatiflora* ssp. *hamatiflora* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Cyanea lobata* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Cyanea mceldowneyi* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Cyrtandra munroi* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Delissea undulata* | E | 06/27/94 | 59 FR 32946 | 10/10/96 | 61 FR 53124 |
| *Diellia erecta* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Diplazium molokaiense* | E | 06/24/93 | 58 FR 34231 | 09/09/94 | 59 FR 49025 |
| *Dubautia plantaginea* ssp. *humilis* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Flueggea neowawraea* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Geranium arboreum* | E | 01/23/91 | 56 FR 2490 | 05/13/92 | 57 FR 20589 |
| *Geranium multiflorum* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Gouania vitifolia* | E | 12/14/92 | 57 FR 39066 | 06/27/94 | 59 FR 32932 |
| *Hedyotis coriacea* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Hedyotis mannii* | E | 09/20/91 | 56 FR 47718 | 10/08/92 | 57 FR 46325 |
| *Hesperomannia arborescens* | E | 10/14/92 | 57 FR 47028 | 03/28/94 | 59 FR 14482 |
| *Hesperomannia arbuscula* | E | 09/28/90 | 55 FR 39664 | 10/29/91 | 56 FR 55770 |
| *Hibiscus brackenridgei* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Ischaemum byrone* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Isodendrion pyrifolium* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Kanaloa kahoolawensis* | E | 05/15/97 | 62 FR 26757 | 09/03/99 | 64 FR 48307 |
| *Lipochaeta kamolensis* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Lysimachia lydgatei* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Mariscus pennatiformis* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Melicope adscendens* | E | 05/11/93 | 58 FR 18073 | 12/05/94 | 59 FR 62346 |
| *Melicope balloui* | E | 05/11/93 | 58 FR 18073 | 12/05/94 | 59 FR 62346 |
| *Melicope knudsenii* | E | 10/30/91 | 56 FR 5562 | 02/25/94 | 59 FR 09304 |
| *Melicope mucronulata* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Melicope ovalis* | E | 05/11/93 | 58 FR 18073 | 12/05/94 | 59 FR 62346 |
| *Neraudia sericea* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Nototrichium humile* | E | 10/02/95 | 60 FR 51398 | 10/10/96 | 61 FR 53089 |
| *Peucedanum sandwicense* | T | 10/30/91 | 56 FR 5562 | 02/25/94 | 59 FR 09304 |
| *Phlegmariurus mannii* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Phyllostegia mannii* | E | 09/20/91 | 56 FR 47718 | 10/08/92 | 57 FR 46325 |
| *Phyllostegia mollis* | E | 09/28/90 | 55 FR 39664 | 10/29/91 | 56 FR 55770 |
| *Phyllostegia parviflora* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Plantago princeps* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Platanthera holochila* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Pteris lidgatei* | E | 06/24/93 | 58 FR 34231 | 09/09/94 | 59 FR 49025 |
| *Remya mauiensis* | E | 10/02/89 | 54 FR 40447 | 01/14/91 | 56 FR 1450 |
| *Sanicula purpurea* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Schiedea haleakalensis* | E | 05/24/91 | 56 FR 23842 | 05/15/92 | 57 FR 20772 |
| *Schiedea hookeri* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Schiedea nuttallii* | E | 10/02/95 | 60 FR 51417 | 10/10/96 | 61 FR 53108 |
| *Sesbania tomentosa* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Solanum incompletum* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Spermolepis hawaiiensis* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Tetramolopium arenarium* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |
| *Tetramolopium capillare* | E | 03/25/93 | 58 FR 16164 | 09/30/94 | 59 FR 49860 |
| *Tetramolopium remyi* | E | 09/17/90 | 55 FR 38236 | 09/20/91 | 56 FR 47686 |
| *Vigna o-wahuensis* | E | 09/14/93 | 58 FR 48012 | 11/10/94 | 59 FR 56333 |
| *Zanthoxylum hawaiiense* | E | 12/17/92 | 57 FR 59951 | 03/04/94 | 59 FR 10305 |

**Key:**
E= Endangered.
T= Threatened.

At the time each plant was listed, we found that designation of critical habitat was prudent for six of these plants (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis*) and not prudent for the other 64 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency findings for 245 listed plant species in Hawaii, including 64 of the 70 listed species reported from Maui. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these six taxa, along with four others, by the time we completed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but ordered us to publish proposed critical habitat designations for the 10 Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we provided information to landowners on the islands of Maui and Kahoolawe, regarding our requirement to designate critical habitat for 70 plant species. This information included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively, to meet with local landowners and other interested members of the public. A total of 30 people attended the two open houses. In addition, we met with Maui County DOFAW staff to discuss their management activities on Maui.

On December 18, 2000, we published the second of the court-ordered proposed critical habitat designations or nondesignations for 61 Maui and Kahoolawe plants (65 FR 79192). The proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Molokai plants on December 29, 2000 (65 FR 83158), and for Lanai plants on December 27, 2000 (65 FR 82086). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals we proposed that critical habitat was prudent for 61 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata,*

*Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Maui and/or Kahoolawe, as well as Kauai, Niihau, Molokai, and Lanai. We proposed that critical habitat was not prudent for one species, *Acaena exigua,* a species reported from Maui as well as Kauai, because it had not been seen recently in the wild, and no genetic material of this species was known to exist. At the time we proposed critical habitat on Maui, critical habitat was not proposed for four species, *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis,* because they were found only in areas on Maui that did not require special management considerations or protection because they were already protected and managed to the benefit of these species, pursuant to 16 U.S.C. 1532(5)(A)(i). (However, a recent Federal District Court disagreed with this interpretation of the definition of critical habitat. *Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB (D. Ariz. Jan. 13, 2003). While the Service still believes our interpretation is reasonable, we have not excluded areas from this critical habitat designation based on 16 U.S.C. 1532(5)(a)(i).)

On December 18, 2000, we proposed designation of critical habitat on approximately 13,574 ha (33,614 ac) of land on the island of Maui and 207 ha (512 ac) on the island of Kahoolawe. The publication of the proposed rule opened a 60-day public comment period, which closed on February 16, 2001. On February 22, 2001, we published a notice (66 FR 11131) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for 50 plants from Maui and Kahoolawe and a notice of a public hearing. On March 20, 2001, we held a public hearing at the Renaissance Wailea Beach Resort, Maui.

On October 3, 2001, we submitted a joint stipulation with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council* v. *Babbitt*) to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On April 3, 2002, we published a revised proposed rule for 70 listed plant species from Maui and Kahoolawe (67 FR 15856). Critical habitat for 61 (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) of the 70 plant species from the islands of Maui and Kahoolawe was proposed on approximately 51,208 ha (126,531 ac) of land on Maui, and approximately 1,372 ha (4,500 ac) on Kahoolawe (67 FR 15856). We proposed that critical habitat was prudent for six species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which a prudency finding had not been made previously. Critical habitat was not proposed for *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium* on the islands of Maui and Kahoolawe because these plants no longer occur on Maui or Kahoolawe, and we were unable to identify habitat which was essential to their conservation on these islands. Critical habitat was not proposed for *Acaena exigua,* a species reported from Maui as well as Kauai because it has not been seen recently in the wild and was not known to be in storage or under propagation.

The publication of the revised proposed rule opened up a 60-day public comment period, which closed on June 3, 2002. On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional reviews of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On August 26, 2002, we published a notice (67 FR 54764) announcing a public hearing and reopening the comment period until September 30, 2002. On August 27, 2002, September 12, 2002, and September 26, 2002, we held public meetings at the Maui Arts and Cultural Center, Kahului, Maui. On October 2, 2002, we published a notice (67 FR 61845) announcing the availability of the draft economic analysis on the proposed critical habitat and reopening the public comment period until November 2, 2002.

We determined that designation of critical habitat for the multi-island species, *Acaena exigua,* was not prudent on February 27, 2003 (68 FR

9116) and explained why we believe critical habitat is prudent for the following 45 multi-island species in other published final critical habitat rules: *Adenophorus periens; Alectryon macrococcus; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Brighamia rockii; Cenchrus agrimonioides; Centaurium sebaeoides; Clermontia oblongifolia* ssp. *mauiensis; Clermontia samuelii; Ctenitis squamigera; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea lobata; Cyrtandra munroi; Delissea undulata; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Hedyotis mannii; Hesperomannia arborescens; Hibiscus brackenridgei; Ischaemum byrone; Isodendrion pyrifolium; Kanaloa kahoolawensis; Mariscus pennatiformis; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Phyllostegia parvilfora; Plantago princeps; Platanthera holochila; Pteris lidgatei; Schiedea nuttallii; Sesbania tomentosa; Solanum incompletum; Spermolepis hawaiiensis; Tetramolopium remyi; Vigna o-wahuensis;* and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1220, 68 FR 9116, 68 FR 12982). A summary of the critical habitat actions can be found in Table 3(b).

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

| Species | Proposed critical habitat | | Final critical habitat prior to publication of this rule | |
|---|---|---|---|---|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| *Acaena exigua* | 12/18/2000 | 65 FR 79192 | NA | NA |
| *Adenophorus periens* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/27/2000 | 65 FR 82086 | 03/18/03 | |
| | 12/29/2000 | 65 FR 83158 | | 68 FR 12982 |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Alectryon macrococcus* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Argyroxiphium sandwicense* ssp. *macrocephalum* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Asplenium fragile* var. *insulare* | 04/03/2002 | 67 FR 15856 | NA | NA |
| | 05/28/2002 | 67 FR 36968 | | |
| *Bidens micrantha* ssp. *kalealaha* | 12/18/2000 | 65 FR 79192 | 01/09/03 | 68 FR 1220 |
| | 04/03/2002 | 67 FR 15856 | | |
| *Bonamia menziesii* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/27/2000 | 65 FR 82086 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Brighamia rockii* | 12/29/2000 | 65 FR 83158 | 03/18/03 | 68 FR 12982 |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| *Cenchrus agrimonioides* | 03/04/2002 | 67 FR 9806 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Centaurium sebaeoides* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/27/2000 | 65 FR 82086 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Clermontia lindseyana* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 36968 | | |

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species | Proposed critical habitat | | Final critical habitat prior to publication of this rule | |
|---|---|---|---|---|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| *Clermontia oblongifolia* ssp. *mauiensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 12/27/2000 | 65 FR 82086 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| *Clermontia peleana* | 05/28/2002 | 67 FR 36968 | NA | NA |
| *Clermontia samuelii* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Colubrina oppositifolia* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Ctenitis squamigera* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 12/27/2000 | 65 FR 82086 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Cyanea copelandii* ssp. *haleakalaensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Cyanea glabra* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Cyanea grimesiana* ssp. *grimesiana* | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/27/2000 | 65 FR 82086 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/5/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Cyanea hamatiflora* ssp. *hamatiflora* | 12/18/2002 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Cyanea lobata* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| *Cyanea mceldowneyi* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Cyrtandra munroi* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 12/27/2000 | 65 FR 82086 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| *Delissea undulata* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 01/28/2002 | 67 FR 3940 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| *Diellia erecta* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 12/29/2000 | 65 FR 83158 | 03/18/03 | 68 FR 12982 |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Diplazium molokaiense* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 01/28/2002 | 67 FR 3940 | 03/18/03 | 68 FR 12982 |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Dubautia plantaginea* ssp. *humilis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/04/2002 | 67 FR 15856 | | |
| *Flueggea neowawraea* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species | Proposed critical habitat | | Final critical habitat prior to publication of this rule | |
|---|---|---|---|---|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| *Geranium arboreum* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/04/2002 | 67 FR 15856 | | |
| *Geranium multiflorum* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/04/2002 | 67 FR 15856 | | |
| *Gouania vitifolia* | 04/03/2002 | 67 FR 15856 | NA | NA |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Hedyotis coriacea* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Hedyotis mannii* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 12/27/2000 | 65 FR 82086 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| *Hesperomannia arborescens* | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Hesperomannia arbuscula* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Hibiscus brackenridgei* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 12/27/2000 | 65 FR 82086 | 03/18/03 | 68 FR 12982 |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Ischaemum byrone* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 12/29/2000 | 65 FR 83157 | 03/18/03 | 68 FR 12982 |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| *Isodendrion pyrifolium* | 01/28/2002 | 67 FR 3940 | 03/18/03 | 68 FR 12982 |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Kanaloa kahoolawensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Lipochaeta kamolensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Lysimachia lydgatei* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Mariscus pennatiformis* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/14/2002 | 67 FR 34522 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Melicope adscendens* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Melicope balloui* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Melicope knudsenii* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species | Proposed critical habitat | | Final critical habitat prior to publication of this rule | |
|---|---|---|---|---|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| *Melicope mucronulata* | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| *Melicope ovalis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Neraudia sericea* | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| *Nototrichium humile* | 04/03/2002 | 66 FR 79192 | NA | NA |
| | 05/28/2002 | 67 FR 37108 | | |
| *Peucedanum sandwicense* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Phlegmariurus mannii* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Phyllostegia mannii* | 04/03/2002 | 67 FR 15856 | 03/18/03 | 68 FR 12982 |
| | 04/05/2002 | 67 FR 16492 | | |
| *Phyllostegia mollis* | 12/18/2000 | 65 FR 79192 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Phyllostegia parviflora* | 05/28/2002 | 67 FR 37108 | NA | NA |
| *Plantago princeps* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Platanthera holochila* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Pteris lidgatei* | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Remya mauiensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Sanicula purpurea* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Schiedea haleakalensis* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Schiedea hookeri* | 05/28/2002 | 67 FR 37108 | NA | NA |
| *Schiedea nuttallii* | 12/29/2000 | 65 FR 83158 | 03/18/03 | 68 FR 12982 |
| | 04/05/2002 | 67 FR 16492 | | |
| *Sesbania tomentosa* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/14/2002 | 67 FR 34522 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

| Species | Proposed critical habitat | | Final critical habitat prior to publication of this rule | |
|---|---|---|---|---|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| *Solanum incompletum* | 01/28/2002 | 67 FR 3940 | 03/18/03 | 68 FR 12982 |
| | 04/05/2002 | 67 FR 16492 | | |
| *Spermolepis hawaiiensis* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/27/2000 | 65 FR 82086 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Tetramolopium arenarium* | 05/28/2002 | 67 FR 36968 | NA | NA |
| *Tetramolopium capillare* | 12/18/2000 | 65 FR 79192 | NA | NA |
| | 04/03/2002 | 67 FR 15856 | | |
| *Tetramolopium remyi* | 12/27/2000 | 65 FR 79192 | 01/09/03 | 68 FR 1220 |
| | 04/04/2002 | 67 FR 15856 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| *Vigna o-wahuensis* | 12/18/2000 | 65 FR 79192 | 02/27/03 | 68 FR 9116 |
| | 12/27/2000 | 65 FR 82086 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2002 | 67 FR 3940 | | |
| | 03/04/2002 | 67 FR 9806 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |
| | 05/28/2002 | 67 FR 37108 | | |
| *Zanthoxylum hawaiiense* | 11/07/2000 | 65 FR 66808 | 02/27/03 | 68 FR 9116 |
| | 12/18/2000 | 65 FR 79192 | 03/18/03 | 68 FR 12982 |
| | 12/29/2000 | 65 FR 83158 | | |
| | 01/28/2000 | 67 FR 3940 | | |
| | 04/03/2002 | 67 FR 15856 | | |
| | 04/05/2002 | 67 FR 16492 | | |
| | 05/28/2002 | 67 FR 36968 | | |

**Summary of Comments and Recommendations**

We received a total of seven oral and 2,779 written comments during the three comment periods on the revised proposal published on April 3, 2002, and the draft economic analysis, including the public hearing held on September 12, 2002, and the public meetings held on August 27, 2002 and September 26, 2002. These included responses from eight State offices, four local agencies, and 39 private organizations or individuals. Of the written comments, approximately 2,728 letters were submitted by facsimile or by e-mail, as part of mailing campaign, all in support of the proposed critical habitat designations. Of the other 51 comments, 21 supported the designation, 28 were opposed to it, and two provided information or declined to oppose or support the designations. We reviewed all comments received for substantive issues and new information regarding critical habitat for the Maui and Kahoolawe plants. Similar comments were grouped into ten general issues relating specifically to the proposed critical habitat designations and the draft economic analysis on the proposed designations. These are addressed in the following summary.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 19 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. We received comments from seven reviewers. One reviewer expressed support for the proposed critical habitat designations. The other six reviewers generally supported our methodology and conclusion, but none expressed support or opposition for the proposed critical habitat designations. Comments received from the peer reviewers are summarized in the following section and were considered in developing the final rule.

*Issue 1: Species-Specific Biological Comments*

(1) *Comment:* A peer reviewer noted that unit Maui I3 excludes two small DOFAW exclosures and an unprotected area containing good populations of *Geranium arboreum.* Critical habitat should be expanded to include these populations.

*Our Response:* While the habitat noted above may be important for the recovery of the species, not all suitable habitat (including occupied) is essential to the conservation of the species. At the time we proposed critical habitat on Maui, we were not aware of these exclosures, and we had identified and proposed other sites that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate

our recovery goals of 8 to 10 populations for *Geranium arboreum.*

(2) *Comment:* One commentor stated that the ''best scientific data available at this time'' does not support the areas being proposed for *Vigna o-wahuensis* on Kahoolawe. The proposed areas for this plant are based on a single observation at each of two different sites. Repeated surveys in these areas by plant specialists over the last 5 years have yet to confirm the presence of *Vigna* at these sites. However, the Navy commented that the area excluded from critical habitat perhaps merits reconsideration because *Vigna o-wahuensis* has appeared in the Lua Makika area on Kahoolawe that was previously the subject of a planned burn. That fact supports the conclusion that fire apparently does not adversely affect the constituent elements for *Vigna.*

*Our Response:* We have reevaluated the proposed designation of critical habitat for *Vigna o-wahuensis* on Kahoolawe in response to additional information received during the comment periods. Critical habitat was not designated for *Vigna o-wahuensis* on Kahoolawe because there is some question about the location of the earlier observations and because we were able to locate other sites that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(3) *Comment:* One peer reviewer noted that reducing the amount of designated critical habitat for *Hibiscus brackenridgei* on West Maui and Lanai, because it occurs on more than one island, might adversely affect the retention of the genetic diversity needed for recovery. The diversity of East versus West Maui populations will not be retained if unit Maui D1 is reduced or removed. The Lanai prostrate form of the species is distinct from all other populations and should be conserved as a distinct recovery unit.

*Our Response:* We have retained our proposed designation of critical habitat for *Hibiscus brackenridgei* on Maui in this final rule. Because the Lanai populations are not considered by taxonomists to be a distinct subspecies, and therefore were not listed as such, we cannot consider them as separate from the Maui taxon. However, if the taxonomy is revised and the scientific community approves such revision, we will consider the new information with regard to critical habitat.

(4) *Comment:* One commenter was concerned that *Bidens micrantha, Lipochaeta kamolensis,* and *Sesbania tomentosa* might hybridize with other members of their families. It is possible that such unnatural hybridization could lead to further endangerment of the species while inducing the endangerment of other species.

*Our Response:* Hybridization presents potential problems with species recovery. To the maximum extent possible, we separated critical habitat of species that potentially had hybridization potential. In addition, issues of hybridization and other technical questions will be addressed in project specific recovery planning actions.

(5) *Comment:* In the case of *Phyllostegia mollis,* it appears that the Service is unsure for which species it is designating critical habitat. In the 1998 recovery plan for this species, the Service states, ''the Maui population may be separated into its own species.'' Critical habitat designation cannot be made for a plant or animal for which the science is so scant that more harm may come to the species by the designation.

*Our Response:* At the time the recovery plan was completed for *Phyllostegia mollis,* the Service acknowledged that the Maui population may warrant recognition as a separate species, based on a personal communication from Joel Lau, a botanist with the Hawaii Natural Heritage Program. In 1999, a taxonomic revision of the species was published by Dr. Warren L. Wagner in which the Oahu populations were recognized as *Phyllostegia mollis* and the Maui populations were assigned to *P. pilosa.* Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for this species. We plan to publish a taxonomic change notice for *Phyllostegia mollis* after we have published the final critical habitat designations on Maui and Kahoolawe. We do not believe that the designation of critical habitat for *Phyllostegia mollis* will entail harm to the species. Federal agencies are required to consult with the Service regarding any action they may fund, authorize, or permit that may affect a listed species or designated critical habitat. The consultation process results in conservation benefits to the species, not in harmful actions to the species.

(6) *Comment:* One commenter expressed concern about the designation of critical habitat for *Alectryon macrococcus* var. *auwahiensis* and *Melicope adscendens* on Ulupalakua Ranch. Forty *A. m.* var. *auwahiensis* trees were last sighted in 1910. No other populations of this tree were documented. However, the Service recommends that four new populations be established, even as far away as Kaupo. In the case of *M. adscendens,* the Service stated that within historic times, this species has apparently always been extremely rare. Restoring any plant or animal beyond their historical numbers and or geographical distribution is not the intent of the Act.

*Our Response: Alectryon macrococcus* var. *auwahiensis* trees were reported from the area as recently as 1990 and 1999. However, Ulupalakua Ranch has been excluded from critical habitat designation under section 4(b)(2), which states that critical habitat may be excluded if the benefits of not designating outweigh the benefits of designating critical habitat. We were also able to locate other sites for *A. m.* var. *auwahiensis* that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(7) *Comment:* One peer reviewer and many commenters did not support the Service's conclusion that *Acaena exigua* would not benefit from critical habitat designation. These commenters pointed out that the fact that *Acaena* has not been sighted since 1999 (only three years ago) does not justify the Service's refusal to protect its critical habitat, as it is common for biologists in Hawaii to rediscover plants that have not been seen for decades. Some also felt that the decision was based on a faulty interpretation of the Act's direction to designate critical habitat ''to the maximum extent prudent.'' In enacting this language, according to these commenters, Congress clearly intended that the Service would designate critical habitat in all but the rare instances in which designation would actually increase threats to listed species from overcollecting or vandalism, or otherwise affirmatively harm the species. The Service cannot refuse to designate critical habitat merely because it cannot come up with examples of how critical habitat would benefit this species. Absent a finding that designation would actually harm *Acaena exigua* in some concrete way, the Service must designate its critical habitat. Furthermore, if the Service believes this species is extinct, it must follow the procedures set forth in the ESA for delisting species. As long as this species remains on the endangered species list, the Service cannot lawfully deny it the habitat protection that

Congress intended that all listed species enjoy.

*Our Response:* We continue to believe that it would not be prudent to designate critical habitat for *Acaena exigua.* It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772) and is not known to be in storage or under propagation. Given these circumstances, we have determined that designation of critical habitat for *Acaena exigua* is not prudent because such designation would not be beneficial to the species. If this species is rediscovered, we may reconsider designating critical habitat for this species as new information becomes available. *See* 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f).

*Issue 2: Biological Justification and Methodology*

(8) *Comment:* One peer reviewer was concerned about the number of populations needed for recovery. The expert opinion of the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) is that 10 to 20 viable populations are needed for recovery. How did the Service determine that 8 to 10 populations were all that should be required? While 8 to 10 populations may be sufficient for the recovery of long-lived species, it may be insufficient for ephemeral annuals or certain ferns or species with unique island variants. The target number of populations should be revisited on a species-by-species basis. Another peer reviewer commented that the proposed rule was improved by the use of targets of 8 to 10 populations ranging in size from 100 to 500 mature individuals, unless information that is more specific was available (*e.g.*, *Argyroxiphium sandwicense* ssp. *macrocephalum).* However, these targets are generally lower than those used by the HPPRCC and should be considered the ''low end'' of what is needed for recovery.

*Our Response:* In defining the procedures used to delineate essential habitat areas the HPPRCC agreed that ''the minimum target for each species was to have habitat for at least 10 potential populations for each species that was found on a single island and have habitat for at least 5 potential populations on each island for species that occurred on two or more islands. The maximum number of target populations was set at 20 potential populations.'' However, in defining generalized recovery objectives for Hawaiian plants, the committee recommended 5–10 populations for delisting. The Service adopted a relatively conservative 8–10 viable populations for the recovery objectives for each species in the recovery plans. Establishing and conserving 8 to10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et. al.* 2000; Mangel and Tier 1994; Pimm *et. al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

(9) *Comment:* Areas that are excluded from proposed critical habitat should be identified and mapped in the proposed and final rule to allow reviewers to fully evaluate how well the proposal provides for listed species.

*Our Response:* Although we have not mapped the areas excluded from critical habitat, textual descriptions of the areas excluded can be found in the section titled ''Summary of Changes from the Revised Proposed Rule and *Analysis of Impacts Under Section 4(b)(2).*''

(10) *Comment:* One peer reviewer stated that the Service did not identify explicit modeling efforts that provide clear guidance for Hawaiian species. If available, these models should be evaluated and included in the Service's methodology to determine future critical habitat designations. Models of the population dynamics of understory plants in tropical forests, focusing on environmental variation caused by natural disturbance and plant-animal interactions, do exist.

*Our Response:* The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis) to identify the optimal number, size, and location of critical habitat units to achieve recovery. At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, our approach employed two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species, and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished. In addition, we used a GIS model that evaluated known current and historic range, elevation, rainfall, and vegetation units to determine potential habitat for each species. Using this information plus information from existing historically known plant locations and advice from species experts, we modeled the potentially suitable habitat for each species. The critical habitat designated is a subset of suitable potential habitat that was determined to be essential to the conservation of each species (see the ''Methods'' section for more detail).

(11) *Comment:* One peer reviewer commented that fencing and control of ungulates is critical to the success of a plant restoration program. One commenter was concerned that there is a lack of solid scientific evidence on the relationship between introduced ungulates (in particular, cattle), nonnative plants, and native ecosystems. In the recovery plan for *Lipochaeta kamolensis,* the Service appears to concur that more research on the relationship between managed ungulates and native plants needs to be examined. In the Recovery Plan for the Maui Plant Cluster, the Service states, ''Portions of the populations should be left unfenced until the effects of protection from grazing and browsing are fully known.'' Because the science on how to best protect these plants is not certain, the designation of critical habitat may have a negative, rather than positive impact.

*Our Response:* We believe that it is important to control threats to the survival and recovery of federally listed species and have received numerous sources of information demonstrating that nonnative ungulates are a threat to the listed plant species as can be seen in the discussion of each species' background in the ''Discussion of Plant Taxa'' and ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*'' sections of this final rule. However, critical habitat is only one of many tools established in the Act that can play an important role in the recovery of the species. Critical habitat designation does not create a wilderness area, preserve, or wildlife refuge. It does not require activities associated with conservation management such as

ungulate control and fencing. Critical habitat increases protection of federally listed species by requiring consultation under section 7 of the Act to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of the critical habitat. The management of nonnative species is an important conservation issue that is addressed in the recovery plans for these species.

(12) *Comment:* One peer reviewer stated that degraded areas should only be excluded if they lack the ability to become habitat in the future. Another peer reviewer felt that, in some situations, populations in degraded habitat might be critical to the viability of the overall populations. Other peer reviewers commented that degraded habitat should be considered secondary only if adequate non-degraded habitat is available and designated. Many peer reviewers were optimistic about the potential for degraded areas to be restored. One peer reviewer suggested that sites significantly altered by human activities, such as roads and buildings, should not be included in conservation plans, but that areas that have been altered by agriculture and other activities that do not significantly disturb the soil should be included as they provide potential sites for restoration of plant species. Other commenters objected to critical habitat designation in degraded areas.

*Our Response:* We agree that recovery of a species is more likely in designated critical habitat in the least degraded areas containing primary constituent elements. During our evaluation of areas essential for the conservation of the species we tried to select the least degraded areas where possible because these areas are most essential. However, for some species, especially those only known from low-elevation areas, only degraded habitat remains. Therefore, some units still contain degraded habitat, but only if the area could be restored. Management for the restoration of these habitats is addressed in the species' recovery plans.

(13) *Comment:* The proposed designation failed to contain all historically known listed plants, and therefore failed to propose critical habitat for all listed plants statewide. The following endangered plant species lack proposed critical habitat on Maui and Kahoolawe: *Abutilon menziesii; Argyroxiphium sandwicense* ssp. *sandwicense; Abutilon menziesii; Caesalpinia kaviensis; Gardenia brighamii; Haplostachys haplostachya; Panicum fauriei* var. *carteri; Santalum freycinetianum* var. *lanaiense;* and *Scaevola coriacea.*

*Our Response:* These species were not part of the lawsuit (see ''Previous Federal Action'' section) and subsequent stipulations, and therefore were not included in this rulemaking. Critical habitat for these species may be considered in the future if warranted and funding and resources are available.

(14) *Comment:* Peer reviewers and other commenters wrote that the amount, location, and type of land proposed for critical habitat appears to be mostly adequate for the long-term conservation of these species. In order to build self-sustaining populations, adequate land for expansion is required, and most peer reviewers supported inclusion of larger amounts of land. One peer reviewer believes that removing significant portions of any of the proposed critical habitat units is likely to prevent the recovery of, or lead to the extinction of, listed species. One peer reviewer felt that the boundaries appear to be set by landowner parcels and not based upon the habitat features required for protection, especially units Maui H and L. Other commenters questioned the methodology that led to the increase in proposed critical habitat from 33,614 acres (13,574) in the original proposal to 126,531 acres (51,208 ha) in the revised proposal. These commenters believe the proposed critical habitat units are larger than necessary. The Service should work to ensure that (1) areas designated as critical habitat are ''essential for the conservation of the species'', and that (2) ''critical habitat does not include the entire geographical area which can be occupied by the threatened or endangered species'' 16 U.S.C. 1532(5)(C).

*Our Response:* We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of proposed units, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In many cases, critical habitat boundaries were reduced for multi-island species because we have identified adequate and more appropriate habitat on other islands within the historical range in at least eight other places that have more primary constituent elements or are less degraded; already undergoing restoration; within a partnership, NAR, or TNCH preserve; or on a refuge.

No critical habitat units in the proposed rule were excluded or modified due to economic impacts. However, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). We have removed the two TNCH Maui Preserves, the State's Hanawi NAR, Maui Land and Pineapple Company, Inc.'s (ML&P) Puu Kukui Watershed Management Area (WMA), and Ulupalakua and Haleakala Ranches from final critical habitat designation based upon either their conservation history or the relevant issue that designation of critical habitat would have a negative effect on the landowner's voluntary ongoing conservation activities as well as future activities under consideration by the landowner. In both cases, we believe it is in the best interest of the species to exclude habitat from the designation based on their conservation actions. See ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*''.

The land area in the second proposal of critical habitat was increased from the first proposal caused by the Service's decision to include unoccupied habitat. To recover the species, it is essential in some instances to conserve suitable habitat that is not currently occupied to allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and nonnative species introductions).

(15) *Comment:* The majority of our peer reviewers agreed that the methodology used to define critical habitat is appropriate, scientifically well grounded, and conceptually sound. The proposed rule represents the best scientific information available and the most scientifically appropriate techniques for determining critical habitat on Maui. On the other hand, some commenters felt that the Service's approach to designating critical habitat was not based on scientific principles and knowledge of the needs of the plant species. The proposed rule acknowledges that little is known about the life history, threats, or preferred

habitat of particular species and applies a ''broad-brush'' approach.

*Our Response:* In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our methodology for designation of critical habitat of Maui plants was based on scientifically sound data, assumptions, and analysis. The majority of peer reviewers support our methodology. All data and information on species status information received in preparation of this rule were weighted equally and considered to come from reliable sources. Where discrepancies existed between different data sources, the most current data were used. While we agree that additional time would be beneficial for the preparation of these final rules, and the collection of more scientific information, we are required under the court-approved stipulation to finalize this designation by April 18, 2003. If provided with new information, we may revise the critical habitat designation in the future.

(16) *Comment:* Peer reviewers commented that a multi-population approach is essential for the survival and recovery of listed Hawaiian plant species. Multiple populations prevent small-scale changes in habitat from destroying all remaining individuals. The multiple population approach offers the opportunity to protect a wider range of genetic variability for each species, rather than concentrating on a single or small number of areas with genetically similar individuals. The Service has designated enough land to provide for the long-term conservation of multiple populations of the listed species.

*Our Response:* We agree that the multi-population approach to conservation is necessary for the recovery of Hawaii's endangered plants.

(17) *Comment:* One peer reviewer and other commenters stated that the proposed rule is improved by the inclusion of appropriate unoccupied habitat because such habitat will help to recover species that have been reduced to an unsustainable number of populations.

*Our Response:* We agree. Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within historic range.

(18) *Comment:* Several commenters opposed designating critical habitat in unoccupied areas. Two commenters wrote that lands in urban, agricultural, and rural districts are designated, used, and intended for a wide variety of land use activities. As such, there is a much greater likelihood that critical habitat designation will have an adverse economic impact on the landowner. These commenters recommend the following rebuttable presumption: non-conservation lands which are unoccupied by any listed species should not be designated as critical habitat

*Our Response:* Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within the historical range. Because of the very limited current range of many of these species, designating only occupied areas would not meet the conservation requirements of the species and would be inconsistent with our recovery plans. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. Expansion of some of these species to areas that were likely to have been historically occupied is essential to their recovery.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined which areas are essential for the conservation of each species using the guidelines outlined in the recovery plans (*i.e.*, areas that contain one or more of the primary constituent elements and are either in good condition for recovery efforts or could be made suitable through appropriate management actions), and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum of 100 mature reproducing individuals per population for long-lived perennials, 300 mature reproducing individuals per population for short-lived perennials, and 500 mature reproducing individuals per population for annuals.

Areas that contain one or more of the primary constituent elements, are either in good condition for recovery efforts or could be made suitable through appropriate management actions, and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum number of mature reproducing individuals as specified above, were determined to be essential for the conservation of each species, regardless of land-use zoning.

(19) *Comment:* Proposed critical habitat includes unoccupied habitat. It appears that the Service has designated unoccupied habitat largely based on guesswork and the faulty conclusion that any areas that appear, based on limited biological knowledge to be potentially suitable habitat for these species (*i.e.*, ''merely capable of supporting'' these species), are by default essential habitat. This conclusion is not consistent with the provisions in the Act.

*Our Response:* As explained in the Methods section of this rule, we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the species covered by this designation. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 60 species; the December 18, 2000, proposal; the April 3, 2002, revised proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; and any species and management information received for the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 66808; 67 FR 3940; CPC *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed,

and candidate plants and evaluated species of concern to determine if these essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat was distinct from the regulatory designation of critical habitat as defined by the Act. In addition, data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

*Issue 3: Site-Specific Biological Comments*

(20) *Comment:* One peer reviewer was concerned about the lower elevation wet forests on windward Haleakala because Hanawi NAR is expected to be fenced only above 1,000 meters in elevation. *Cyanea mceldowneyi, Cyanea copelandii,* and *Clermontia samuelii* may rely on habitat lower than 1,000 meters in elevation.

*Our Response:* While the habitat lower than 1,000 m (3,281 ft) in elevation may be important for the conservation of these species, we do not believe that this habitat contains the primary constituent elements for *Cyanea mceldowneyi, Cyanea copelandii,* and *Clermontia samuelii.* Therefore, we did not find this area to be essential to the conservation of these three species.

(21) *Comment:* The boundaries of units Maui A and B should be relocated to follow existing conservation boundaries. The boundaries of units C1 and C2 should be refined to reflect that the appropriate habitat of the species of concern is sea cliffs within the spray zone. It should be clarified that units Maui C1 and C2 are unoccupied critical habitat for *Centaurium sebaeoides* and *Sesbania tomentosa.*

*Our Response:* The boundaries of units Maui A and B have been revised. We are no longer proposing critical habitat units Maui C1 and C2 for *Centaurium sebaeoides* and *Sesbania tomentosa* because we were able to locate other sites that were less degraded, contain a better representation of the primary constituent elements that are essential to the conservation of the species, are within the species' historical ranges, and accommodate our recovery goals of 8 to 10 populations.

(22) *Comment:* KIRC commented that, while we support the mission of the Service and the extraordinary efforts it is taking to protect endangered plants, the KIRC feels it is unnecessary to establish critical habitat for the listed taxa on Kahoolawe because of ongoing management for endangered species on the island by KIRC. In addition, because Kahoolawe is already a permanent natural and cultural reserve and a National Historic Site, it is already bound by a set of Federal and State rules for careful stewardship and does not require an additional layer of protection. Further, two of the proposed plants, *Hibiscus brackenridgei* and *Neraudia sericea,* have not been seen in over 90 years, although biological consultants continue to survey their historical locations.

*Our Response:* We did not designate critical habitat for *Hibiscus brackenridgei* and *Neraudia sericea* on Kahoolawe because we were able to locate other sites that contain the primary constituent elements that are essential to the conservation of the species, are within their historical ranges, and accommodate our recovery goals of 8 to 10 populations. The footprint of critical habitat on Kahoolawe is greatly reduced, although it remains designated for *Kanaloa kahoolawensis,* as Kahoolawe has the only suitable habitat for this species identified by our species experts. Designations of critical habitat are to be made on the basis of the best scientific and commercial data available, after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). However, because this is the last known occupied habitat for *Kanaloa kahoolawensis,* we do not believe that the benefits of excluding Kahoolawe outweigh the benefits of including it. *See ''Analysis of Impacts Under Section 4(b)(2): Other Impacts''.*

(23) *Comment:* One peer reviewer commented that the rationale for the configuration of unit Maui H is not clearly explained. In general, units should maximize interior areas and have easily identifiable boundaries. Why was an area almost encircled by unit Maui H excluded? This area appears to be part of the Kahikinui Forest Reserve with current populations of *Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Diellia erecta, Diplazium molokaiense* and *Phyllostegia mollis.* If the Kahikinui area is not managed appropriately, adequate habitat for the above-mentioned species might not exist. Another peer reviewer questions the exclusion of the Waiopae-Wailaulau-Pahihi area from unit Maui H because it contains occurrences for two to three plant species and is DOFAW land slated and funded for fencing, restoration, and removal of cattle. It is crucial to include this parcel.

*Our Response:* We evaluated the Kahikinui area and determined that it was not essential for the conservation of the species because critical habitat was designated elsewhere for these species that is less degraded and contains a better representation of the primary constituent elements that are essential to the conservation of the species, are within their historical ranges, and accommodates our recovery goals of 8 to 10 populations.

*Issue 4: Effects of Critical Habitat Designation*

(24) *Comment:* One commenter suggested that critical habitat designation presents an opportunity to expand Hawaii's appeal in ecotourism. Many of the areas covered by the designation are degraded forests that could be restored to showcase Hawaii's unique birds and plants.

*Our Response:* Although we agree that the restoration of degraded forests is essential to the conservation of federally listed species, critical habitat is only one of many tools established in the Act that can play an important role in the recovery of the species. Critical habitat designation does not create a wilderness area, preserve, or wildlife refuge. It does not require activities associated with conservation management, such as ungulate control and fencing. Critical habitat increases protection of federally listed species by requiring consultation under section 7 of the Act to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of the critical habitat.

(25) *Comment:* Animal Rights Hawaii stated that although they support protection for endangered species, they are also concerned about protecting nonnative species. The current interpretation of critical habitat allows the Federal government and its partners

to utilize any methodology they wish in dealing with feral animals, even though such methods may be cruel and environmentally unsound.

*Our Response:* The designation of critical habitat does not give the Federal government and its partners the authority to utilize any methodology they wish in dealing with feral animals. Any potential animal control program would be subject to all applicable State, Federal, and local laws.

(26) *Comment:* Critical habitat designation, and the underlying decision to list as endangered the species that are the subject of the designation, exceed the constitutional limits of the Service's delegated authority. Congress enacted the ESA as an exercise of its Commerce Clause power and delegated exercise of that Commerce Clause power to the Service to apply the ESA by regulation. The listed species are not interstate. They exist only in Hawaii and do not cross state lines. Nor are they in commerce as the subject of any economic endeavor. They lack any commercial value. Therefore, the Service's regulations listing these species and designating critical habitat for them within Hawaii exceed the Federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

*Our Response:* The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Homebuilders* v. *Babbitt,* 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S.Ct, 2340 (1998). *See also Gibbs* v. *Babbitt,* No. 99–1218 (4th Cir. 2000). The *Home Builders* case involved a challenge to application of ESA prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one state. Judge Wald held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

(27) *Comment:* Many commenters questioned the utility of critical habitat designation because it will not result in on-the-ground improvement of habitat or endangered species. Most commenters felt that voluntary partnerships to effect actual land management would be more beneficial to the species. Conversely, some commenters pointed out that critical habitat will prevent the Federal government from carrying out activities that destroy habitat or species in need of recovery and that it will benefit the people of Maui by preserving native forests, thus preventing erosion that pollutes water and smothers reefs.

*Our Response:* Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Education benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

(28) *Comment:* One commenter stated that the designation of critical habitat may result in delays and confusion in water use decisions in the State and that permits for non-point source discharges into protected areas may be denied, which would have a devastating effect on agricultural activities.

*Our Response:* As noted in the October 2002 Draft Economic Analysis (DEA), the likelihood of changes to the existing water diversions based on critical habitat is very low for the following two reasons: (1) None of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion, and (2) water infrastructure is considered a manmade feature and therefore would not be included in critical habitat pursuant to the rule, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements. Thus, unless its operation and maintenance would indirectly affect critical habitat, which is not anticipated, it should not be affected by section 7 of the Act.

The potential impacts on State water uses were analyzed in the October 2002 DEA and December 2002 Addendum to the DEA. As noted in the DEA and Addendum, Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects by the DWS include water source development in Unit B2; construction of a water reservoir adjacent to Unit L; access and intake improvements in Unit L; and repair and maintenance of existing flumes in Unit L. As noted in this final rule, we have removed Unit B2 from the final designation. Most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation caused by Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). As a worst case scenario, the DEA estimates that the consultations could cost up to $68,000 with project modifications that could range up to $200,000.

The State Department of Health Polluted Runoff Control Program and the State Office of Planning, Coastal Zone Management Program work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create Statewide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to either water quality standards or to critical habitat. Until the State administrative rules are finalized, the impact caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative.

*Issue 5: Mapping and PCEs*

(29) *Comment:* The State of Hawaii Department of Transportation (DOT) stated that the proposed designations near State routes would restrict the design, maintenance, and construction of highways. In particular, Units Maui C1 and C2 may impact Route 30, Honoapiilani Highway, and Unit C3 may impact route 30, Kahekili Highway. Highway corridors require constant upkeep and periodic improvements to maintain safe transportation, keep abreast of changing policies and regulations, limit liability exposure, and manage congestion. These activities, and the intrusive nature of highway traffic itself (pollutants, litter, alien species), tend to conflict with the critical habitat designation. The DOT recommends that buffer zones on each side of the State highway right of way should be excluded from proposed critical habitat to minimize designation-related costs for future improvements, maintenance, and repair to roads, bridges, drainage culverts etc. The buffer zones should be based on topography and be a minimum of 100 feet (30 m) in width.

*Our Response:* Units C1 and C2 have been removed from the final designation and Unit C3 has been substantially reduced in the final designation. State DOT's comments did not identify any planned widening or other significant improvement project within Unit C3. Rather, State DOT's concerns focused on the impact to routine repair and maintenance. Operation and maintenance of existing manmade features and structures adjacent to critical habitat are not subject to section 7 consultation, unless they involve federal funding or permitting and they affect the critical habitat or the species.

(30) *Comment:* The Service should reconsider designating critical habitat on Navy lands because such designation will adversely impact the Navy's ability to accomplish its national defense mission. The designation will also impose costly procedural burdens on the Navy's ongoing efforts to clear ordnance at Kahoolawe. A careful analysis of the benefits and burdens of critical habitat designation may result in a determination that critical habitat designation on Kahoolawe is not prudent, especially in light of potential prescribed burns for clearing ordnance. While the Navy will manage endangered species found on its property, it will not agree to introduce any endangered species to an area where it is currently absent.

*Our Response:* In 1993, the U.S. Congress passed a law that required the return of Kahoolawe to the State of Hawaii and authorized Federal funding through November 2003. Therefore, critical habitat will not adversely impact the Navy's ability to accomplish its national defense mission as the Navy will not have a presence on the island for that purpose. As modified, the critical habitat designation on Kahoolawe covers the southeastern coastline, an area along the eastern side of the island, and an area on the western side of the island, predominantly overlapping with Level 3 and Level 4 areas—areas which have either received surface clearance only or which have received no ordnance clearance. Anticipated activities in these areas within the next 10 years are likely to be limited to ordnance removal. Part of the designation on the western tip of Kahoolawe is a Level 1 area, and anticipated activities in this area could include operation of overnight campsites with minimal facilities to support restoration efforts. The December 2002 Addendum to the Draft Economic Analysis of Proposed Critical Habitat for the Maui and Kahoolawe plants considered the effects of critical habitat designation on the Navy's clean-up program on Kahoolawe and estimates section 7 consultation costs to range from $0 to $47,100. The removal of ordnance, which will enable long-term restoration efforts to proceed, is consistent with the recovery goals for these listed plant species on Kahoolawe. Kahoolawe is essential to the conservation of *Kanaloa kahoolawensis* because this is the only place where this plant currently is known to exist.

*Issue 6: Definition of Critical Habitat*

(31) *Comment:* Many commenters, including peer reviewers, noted that critical habitat should be identified for all areas that may need to be managed for the benefit of the listed species. The ESA defines critical habitat (Section 3 (5)(A)(I)) as ''the specific areas * * * (I) essential to the conservation of the species and (II) which may require special management considerations or protection. It does not use the phrase ''which may require *additional* special management considerations or protection.'' Therefore, all areas that meet the definition of critical habitat should be designated, even if they are currently being managed for conservation. Designation of these areas would be in accordance with the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable'' 16 U.S.C. 1533(a)(3). Also, designation will provide an additional measure of protection by preventing Federal agencies from carrying out funding or approving any activity likely to result in adverse modification or destruction of critical habitat, whether directly or indirectly, regardless of the location of the activity. Furthermore, areas that may have adequate management in place may not be safe from even direct threats from Federal activities, which can arise with little warning. Additionally, adequate funding for conservation and management of listed species on lands currently being managed for conservation may not be assured. Multiple commenters wrote that the following areas should be designated as critical habitat: Haleakala National Park; Puu Kukui Watershed Management Area; Waikamoi; Kapunakea Preserves; and Hanawi Natural Area Reserve.

*Our Response:* While we do not necessarily agree with the commenters' interpretation of section 3(5)(A) we considered whether the areas proposed for exclusion because special management was not needed should be designated as critical habitat. However, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). We have removed the two TNCH Maui Preserves, the State's Hanawi NAR, ML&P's Puu Kukui WMA, and Ulupalakua and Haleakala Ranches from final critical habitat designation based upon either their conservation history or the relevant issue that designation of critical habitat would have a negative effect on the landowner's voluntary ongoing conservation activities as well as future activities under consideration by the landowner. In both cases, we believe it is in the best interest of the species to exclude habitat from the designation based on their conservation actions. *See* ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*''.

(32) *Comment:* Alexander and Baldwin, Inc., requested that the Service consider excluding lands managed by the East Maui Watershed Partnership (EMWP) because future EMWP efforts to protect the watershed are likely to include many of the same management measures identified as necessary for the recovery of endangered plant species within the watershed (*e.g.,* control of ungulates and invasive weeds). Cooperative conservation efforts by landowners ultimately will benefit

endangered species more than the mere designation of critical habitat.

*Our Response:* We agree that cooperative conservation efforts by landowners are important to the conservation of Hawaiian plant species. We did exclude portions of the EMWP, including portions of Hanawi NAR, Haleakala Ranch, and Waikamoi Preserve. However, at this time, we did not find the benefits of excluding other lands within the EMWP to outweigh the benefits of including them in critical habitat, under section 4(b)(2) of the Act. As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.,* Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (*see* ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*'' for which the benefits of exclusion exceed the benefits of inclusion).

(33) *Comment:* One peer reviewer stated that it is not strategically wise to exclude most of the East Maui Watershed above 3,500–4,000 ft (1,067–1,219 m).

*Our Response:* We agree that the area is essential for the conservation of many of these species and have designated portions of this area as critical habitat.

(34) *Comment:* Maui Land and Pineapple Company, Inc. requested that the currently actively managed, conservation-zoned lands on West Maui (A, B1, and B2) be excluded from critical habitat designation. ML&P has cooperated with many other conservation agencies, including the Service, to preserve the native biodiversity of its conservation lands.

*Our Response:* We have excluded some of ML&P's lands under section 4(b)(2) of the Act, finding that the benefits of their conservation efforts outweigh the benefits of including those lands in this designation (*see* ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*''). However, there are other ML&P lands for which we did not make this finding, and they are therefore included in this critical habitat designation.

(35) *Comment:* The Service should comment on how Haleakala National Park will function as a result of designation of unit Maui J.

*Our Response:* Haleakala National Park will continue to function much the same as it had before the critical habitat designation. However, they will need to consult with us, under section 7 of the Act, if they are planning a project that may affect critical habitat.

(36) *Comment:* The Estate of James Campbell requested that the critical habitat boundaries for their Kula and Kaupo properties be amended in light of a lack of important data on species' life history and habitat. They specifically request that the proposed designation on the Kaupo property be adjusted to exclude unoccupied agricultural land that could be adversely affected by such a designation.

*Our Response:* Unoccupied agricultural lands of the Kaupo properties were not included in the proposed or final designations. However, we have found that some of the James Campbell Estate lands are essential to the conservation of some of the species and do not meet the criteria under section 3(5)(A) of the Act for exclusion because long-range management goals and plans are not yet in place. These lands have been included in the final critical habitat designation. As resources allow, however, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.,* Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (*see* ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*'').

(37) *Comment:* Ulupalakua Ranch requested that its lands be removed from proposed critical habitat for the following reasons: (1) Likelihood of private party lawsuits resulting in mandated protection for critical habitat; (2) likelihood of private party lawsuits limiting current ranch operations; (3) limits on development of diversified agricultural operations caused by the Ranch's interest in Federal cost share programs; (4) lost revenues; (5) expenditures to assess the impact of the proposed designations; (6) economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; (7) lower economic returns and job loss caused by critical habitat dividing up sections of the Ranch, thus leading to inefficiency; (8) concern over the Service becoming involved in County Permitting processes (as they did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunications purposes); (9) ranch lands consisting of predominantly nonnative alien species that the Service has documented as threats; and (10) a reduced willingness of the Ranch to participate in voluntary conservation efforts.

*Our Response:* We found that Ulupalakua Ranch met the requirements under 4(b)(2) of the Act (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'') and therefore has been excluded from critical habitat designation.

*Issue 7: Policy and Regulations*

(38) *Comment:* One commenter opposed the designation of critical habitat in East Maui from Makawao to Kula because hunters use these areas.

*Our Response:* Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat. According to our economic analysis the probability of a major change in game management by the State is regarded as slight. Thus, designation of critical habitat is expected to have minor economic impacts related to management of game mammals and to hunting.

*Issue 8: Economic Issues*

(39) *Comment:* An economic analysis (EA) must be completed before critical habitat is designated. Even though the Service is designating critical habitat before conducting an EA in order to meet a court imposed deadline, the Service is not relieved from meeting the prudent and determinable standard for designating critical habitat. It is a disservice to the landowners to not include an economic impact analysis at the time of proposed designation even if the Service anticipates that such designation will not have any significant economic impact. Any

proposed critical habitat designated without first conducting an economic analysis would be imprudent and premature.

*Our Response:* We did not designate critical habitat before conducting an EA. The draft economic analysis was published and made available for review on October 2, 2002 (67 FR 61845). The comment period on the proposed rule to designate critical habitat for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002, to allow interested and affected parties the opportunity to review the draft economic analysis in conjunction with the proposed critical habitat rule.

The Service determines whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a). In accordance with these regulations, critical habitat designation is not prudent only when one or both of the following two 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 such threat to the species; or (2) such designation would not be beneficial to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If we find that economic and other impacts outweigh the benefit of designating critical habitat in a given area, that area may be excluded.

(40) *Comment:* The proposal identifies portions of two habitat units (units C1, C2, C3, G1, and G5), that consist in part of private lands and are occupied by only one or two species, which have known current populations on other islands. Portions of these units may have economic value to their respective landowners for eventual shoreline development or as sources of surface water for irrigation. Absent the economic analysis, it is impossible to determine from the proposal whether the benefits of excluding these areas would outweigh the benefits of including them as critical habitat.

*Our Response:* We agree that it is difficult to determine the relative costs and benefits of critical habitat designation without benefit of an economic analysis. It is precisely for this reason that the draft economic analysis was made available for review immediately upon completion on October 2, 2002, and the public comment period on the proposed critical habitat designations for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002. Maui units C1 and C2 have not been designated as final critical habitat. Maui unit C3 has been reduced to include only State owned lands within the conservation district and G1 and G5 have been reduced to lands within the conservation district. No costs are expected to occur from such impacts to water systems, because none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversions. In addition, water infrastructures are considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(41) *Comment:* The DEA did not address, or did not adequately consider, a variety of costs and benefits that they believe could occur caused by the implementation of section 7 consultation for these species.

*Our Response:* Many of these possible costs were considered and some were addressed in the DEA. In many cases, however, potential costs were purposely not addressed in the DEA because they are not expected to occur. In other cases, it is possible for them to occur. In still other cases, the concerns no longer have substance given the Service's modifications to the proposed critical habitat. Finally, in some cases, the comments provided new information and costs were modified in section 4 of the Addendum.

(42) *Comment:* One commenter stated that the proposed designation fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands. Haleakala Ranch stated that if critical habitat were designated on ranch lands, the ranch would cease participation in conservation projects designed to promote endangered species recovery. The ranch also stated that access to Haleakala Ranch land will be denied to those seeking data about the presence of the listed species, and future partnerships, existing agreements, and a land steward position may be terminated in an effort to insulate the company from outside governmental oversight. The ranch prefers to work cooperatively with the Service and other conservation entities to continue its legacy of land stewardship. Ulupalakua Ranch stated that designation of critical habitat would result in discontinuation of its associations with organizations associated with native plant restoration. Ulupalakua Ranch will also deny access to those interested in plant conservation and would not allow reintroductions of any native plants to its private property. Similarly, Alexander and Baldwin, Inc. cautioned the Service to carefully consider the benefits of existing cooperative agreements such as the East Maui Watershed Partnership and the potentially chilling effect that designation might have on such agreements. The Estate of James Campbell also stated a preference for encouraging the establishment of voluntary partnerships with landowners to effectuate the desired species conservation. This commenter further stated that the regulatory approach discourages the cooperation which has been a key to successful species conservation. Another commenter stated that if the Service truly wants to carry out its mission statement and ''work with others to conserve, protect and enhance fish, wildlife and plants, and their habitats for the continuing benefit of the American people,'' they should meet with the community of the DHHL Kahikinui homesteads to explain in clear and concise terms what is being proposed and exactly how it may impact our community. Others expressed similar concerns that cooperation and on-the-ground management were more important than critical habitat designation.

*Our Response:* Chapter VI, Section 4.j. of the DEA discusses the potential for reduced cooperation with the Service on conservation projects as a result of critical habitat. The DEA determines that a modest but undetermined reduction in cooperation may occur, along with a corresponding but undetermined environmental loss to society. However, as the comment indicates, the Service received letters from two landowners, Ulupalakua Ranch and Haleakala Ranch, during the public comment period stating that they will no longer participate in conservation projects designed to assist native plant species if critical habitat is designated on their land. Over the past three years alone, these landowners have participated in more than seven different conservation projects, receiving more than $290,000 from the Service or Natural Resources Conservation Service (NRCS). This funding is often matched by the landowner, and thus the cost of these projects likely exceeds $580,000. While the benefits of these projects are difficult to quantify (as discussed further in section 6 of the Addendum), the biological value of these projects to the native plants is at minimum equal

to the costs of each project. Assuming that participation over the past three years is indicative of the average level of participation, over a period of ten years, the value of the conservation projects would exceed $1.7 million. Thus, a reduction in cooperation in conservation projects by these two landowners could be expected to result in a corresponding environmental loss to society of more than $1.7 million. In addition, these landowners have indicated that they will not allow outside individuals, agencies or organizations to monitor, investigate, or collect data about native plants on their lands. In qualitative terms, the total loss to society as a result of reduced cooperation in conservation projects could be considered significant.

(43) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii Land Use Law. Critical habitat could result in changes to zoning under State law. There is an overriding directive under State law that endangered plant species are to be protected in the State's planning and zoning process. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, increase property tax, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as ''minor'' and with the statement that the probabilities of redistricting is ''slight to small.''

*Our Response:* In our economic analysis we indicated that about 8,770 ha (21,670 ac) of Agricultural lands would be included in the designation, of which 4,443 ha (10,980 ac) is privately owned. However, in this final rule, we have designated critical habitat on only 5,170 ha (12,744 ac) of Agricultural lands on Maui and Kahoolawe; the remaining Agricultural lands were excluded from the final designation pursuant to section 4(b)(2). Of this, approximately 15 percent, or 794 ha (1,960 ac), is owned by private landowners. The primary activity that takes place on privately-owned agriculturally-zoned land is ranching. The economic analysis found that reduction in land values that would be caused by redistricting privately owned land from Agricultural to Conservation District ranges from $1,000 to $10,000 per acre. Since 1,960 acres of Agricultural land are privately owned, if all such lands were redistricted, the total loss would range from $1,960,000 to $19,600,000. Even if a landowner has no plans to sell the land, the loss in land value due to redistricting could reduce potential mortgage financing. However, as discussed in the economic analysis, the redistricting of all Agricultural land to Conservation is a worst-case scenario, and one which is not envisioned for several reasons.

HRS section 195D–5.1 states that the Department of Land and Natural Resources (DLNR) ''shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district.'' HRS section 205–2(e) specifies that ''conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *'' Unlike the automatic conferral of State law protection for all federally listed species (*see* HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the Conservation District. Nevertheless, according to the Land Division of DLNR, DLNR is required by HRS 195D–5.1 to initiate amendments to reclassify critical habitat lands to the Conservation District (Deirdre Mamiya, Administrator, Land Division, in litt. 2002).

State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State Land Use Commission (LUC) for a change in the boundary of a district. HRS section 205–4. The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns and other factors and may propose changes to the LUC.

The State Land Use Commission determines whether changes proposed by DLNR, DBEDT, other state agencies, counties or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS 205–17. While the LUC is specifically directed to consider the impact of the proposed reclassification on ''the preservation or maintenance of important natural systems or habitats,'' it is also specifically directed to consider five other impacts in its decision: (1) ''maintenance of valued cultural, historical, or natural resources;'' (2) ''maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;'' (3) ''commitment of state funds and resources;'' (4) ''provision for employment opportunities and economic development;'' and (5) ''provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups.'' HRS 205.17. Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a ''clear preponderance of the evidence that the proposed boundary is reasonable.'' HRS 205–4.

Thus, even if all federally designated critical habitat is petitioned for redistricting, the likelihood of redistricting will vary parcel by parcel. While the LUC may redistrict some parcels, it is unlikely that lands with a high economic value to the community, such as lands with significant State investments, prime agricultural land, land planned for the economic and community development, and land planned for the provision of housing, would be redistricted. By way of illustration, in the last State district boundary review only five privately owned parcels were redistricted to Conservation even though several hundred parcels were proposed for redistricting (Addendum). While concern has been expressed that a third party would challenge a decision by the LUC not to redistrict a critical habitat parcel in State court, State courts have been deferential to the LUC decisions if they are supported by the record, consistent with statutory provisions, and not affected by errors. *See, e.g., Kilauea Neighborhood Ass'n.* v. *Land Use Comm'n.* 751 P.2d 1031, 1035 (Haw. Ct. App. 1988) (finding that, although LUC's findings were poorly drawn, the record provided sufficient support for the decision); *Outdoor Circle* v. *Harold K.L. Castle Trust Estate,* 675 P.2d 784, 793 (Haw. Ct. App. 1983) (upholding LUC's decision as consistent

with statutory provisions and not affected by errors).

(44) *Comment:* A commenter stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it ''substantially affects a rare, threatened or endangered species or its habitat.'' This will result in costly procedural requirements and delays. Another commenter expressed concerns that the Service may get involved in county permitting processes (as it did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunication purposes). Multiple commenters also stated the following: The DEA fails to evaluate the practical effect critical habitat designation will have on development. The draft fails to quantify the indirect costs that critical habitat designation could cause by making the process of obtaining State and county permits for development more difficult, expensive, and time consuming. Similarly, it should take into account the delays and additional cost to ensure compliance with Federal regulations. Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values and may make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called ''direct'' costs of consultation.

Another commenter also stated that the Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property. For example, the Service petitioned the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. The failure of the Service to address this type of activity in the DEA is a fundamental error of the analysis.

*Our Response:* Adverse impacts on development, including, but not limited to, delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, are not expected since there are no known development plans within the designation. Furthermore, the following factors make future development projects in the proposed critical habitat unlikely: (1) As modified, approximately 80 percent of the proposed critical habitat is in Conservation District where development is severely limited; (2) the approximately 20 percent of the proposed critical habitat in the Agricultural district is in remote areas, areas lined with gulches or steep cliffs, or areas with limited access to water; (3) there are no known plans for development within the final critical habitat; and (4) most of the land designated in the Special Management Area is also within the Conservation District.

(45) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states ''adequate provision shall be made for protection of fish and wildlife.'' HRS 174C–71 instructs the commission of Water Resource Management to establish an in-stream use protection program to protect fish and wildlife. Another commenter was concerned that critical habitat is proposed in watershed areas in which stream or irrigation system water flows. This commenter also stated the following: The proposed rule states that activities such as watershed alteration or water diversion may trigger section 7 consultations if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact would be far reaching and affect all lands served by such water sources or systems. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species.

*Our Response:* No costs are expected to occur from such impacts to water systems, because none of the listed plants are aquatic and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(46) *Comment:* A commenter expressed concerns that opponents of water diversions may use critical habitat as a tool to delay, and effectively stop, many worthwhile water diversion projects.

*Our Response:* Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects by the DWS include water source development in Unit B2; construction of a water reservoir adjacent to Unit L; access and intake improvements in Unit L; and repair and maintenance of existing flumes in Unit L. As noted earlier, the Service removed Unit B2 from the final designation. Thus, no section 7 costs would be anticipated to result from future DWS projects in this area. Moreover, most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation caused by Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). The DEA estimates that the consultations could cost up to $68,000 with project modifications that could range up to $200,000.

(47) *Comment:* Several commenters stated that the DEA focuses primarily on the costs of critical habitat and lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement or protection of other stream and riparian biota; the value of the listed plants as an indicator of ecological health; the value of protecting culturally significant species; the value that Hawaii's people place on conservation of Hawaiian plants; and the benefits of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. The Service cannot exclude land from critical habitat designation if it considers only the costs, and not the benefits, of critical habitat designation. In failing to discuss these benefits, the Service missed an opportunity to educate the public regarding the value of protecting native species and native ecosystems. The Service must use the tools available,

such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem services, to quantify the benefits of critical habitat. Conversely, another commenter stated that the alleged benefits are entirely speculative and unquantifiable, and that the listed plants are of no use to anyone and lack commercial value. Another commenter points out that according to the DEA summary of costs and benefits, the benefits of designating critical habitat are ''difficult to estimate'' and are exceeded by the costs. Accordingly, the Service should exclude areas covered by the DEA from designation.

*Our Response:* There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species (Bishop 1978, 1980; Brookshire and Eubanks 1983; Boyle and Bishop 1986; Hageman 1985; Samples *et al.* 1986; Stoll and Johnson 1984). Such benefits have also been ascribed to preservation of open space and biodiversity (see examples in Pearce and Moran (1994) and Fausold and Lilieholm (1999)), both of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

Chapter VI, Section 6 of the DEA discusses potential benefits, both direct and indirect, that can result from the proposed designation. The DEA notes that the proposed designation can create ecological and cultural benefits such as the ones mentioned in the above comment—*e.g.*, ethnobotanical value of plants to the Native Hawaiians and social welfare benefits of ecological improvements. However, the DEA also indicates that these benefits are not quantified due to lack of information available on: (1) Quantified data on the value of the Maui and Kahoolawe species, and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation. The DEA, however, does not conclude that the benefits are exceeded by the costs. Instead, it discusses the benefits that could result from critical habitat designation in qualitative terms.

While section 4(b)(1)(A) of the Act stipulates that listing determinations must be made solely on the basis of biological evidence, section 4(b)(2) of the Act, which calls for the establishment of critical habitat for all listed species if it is prudent and determinable, adds that the Secretary should take into consideration the economic impact of the designation and any other relevant impacts before specifying any particular area as critical habitat. Hence, an economic analysis is part of the process of designating critical habitat. Section 4(b)(2) of the Act provides the Secretary with broad discretion to take into consideration the economic impacts of any proposed critical habitat designation and exclude areas where she finds that the benefits of exclusion outweigh the benefits of designation.

The Secretary may exclude any area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, the failure to designate such area as critical habitat will result in the extinction of the species concerned (16 U.S.C. 1533(b)(2)).

Thus, the Secretary is not required to find that the benefits of inclusion outweigh the costs of inclusion before designating an area, nor is the Secretary required to exclude an area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of inclusion. Rather, the Act provides the Secretary with the discretion to take economic and other considerations into account when designating critical habitat.

As such, the DEA and the Addendum serve to illustrate possible impacts that can result from the designation, whether in the form of costs or benefits. However, the DEA and the Addendum are not intended to provide a comprehensive analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected costs of the rulemaking. The DEA and the Addendum simply provide information for the Secretary to exercise her discretion, but do not provide definitive conclusions or recommendations as to what areas, if any, should be excluded from the final designation.

Finally, although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the proposed critical habitat designation for the plants for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Ko'olau Mountains on the island of Oahu versus the value of the more limited benefits provided by the proposed critical habitat for the plants on the islands of Maui and Kahoolawe. Consistent with its purpose, the UH study provided no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation.

Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the plants' critical habitat. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—an island ¾ of the size of Maui but with a population of nearly ten times that of Maui. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin that must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with significant portions of the plants'critical habitat. Significant portions of the plants' critical habitat units are in mountainous range with steep slopes and difficult access and on coastal cliffs.

(48) *Comment:* Critical habitat does not benefit ecotourism by creating new special places for people to visit, as the DEA suggests. Rather, it helps to protect the special places that already exist from degradation, ensuring that they will be around in the future to attract future ecotourists. Moreover, the Service's subjective preference that commercial operators not feature visits to view threatened and endangered plants has no place in an objective economic analysis.

*Our Response:* Chapter VI, Section 6.b.(1) of the DEA indicates that the proposed critical habitat may enhance the appeal of ecotourism by providing a marketing dimension. However, the DEA also states that this benefit may be slight since these places may already be regarded as special due to the existing natural and cultural resources in the area.

(49) *Comment:* The DEA underestimates economic costs because they are limited to what is likely to occur within 10 years. Critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of

nondesignation, or if the species is delisted.

*Our Response:* A listed species is delisted when it is recovered or has become extinct. Recovery is defined as no longer needing the protections provided by the Act, which includes critical habitat. As such, when a species is delisted, its critical habitat would be simultaneously ''undesignated.''

Furthermore, a 10-year time horizon is used because many landowners and managers do not have specific plans for projects beyond 10 years. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term.

(50) *Comment:* The DEA dismisses concerns about impacts on the use of structures and features already in place in areas to be designated as critical habitat. The draft concedes that the lack of clarity can force landowners to incur costs to investigate the implications of the regulations. The estimate that this will only take 15–40 hours is too low given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals.

In addition, the DEA's analysis of potential costs expected to be incurred by private landowners to investigate the implications of critical habitat on their lands is flawed, because the analysis fails to recognize that the cost to investigate the implications of CH are sunk costs associated with the designation process, not additional costs that the final designation would impose.

*Our Response:* The DEA recognized that some landowners might spend a great deal of time investigating the implications of critical habitat, while others might not spend any time. The costs reported in the DEA reflect a reasonable estimate of total costs for all landowners, based on an estimate of the number of landowners who are likely to investigate the implications of critical habitat. The Addendum revised this number upwards in response to public comment. However, on further reflection, the estimate contained in the DEA better reflects an average estimate for all affected landowners for the following reasons. The estimate takes into account whether their land is in areas that are unsuitable for development due to mountainous terrain and/or being in the Conservation District. The analysis also assumes an average cost per landowner to investigate the implications of critical habitat. Public comment did not offer an alternative estimate of time or costs that would support changing the estimate in the DEA. Thus the estimates of hours spent and costs incurred remain the same as they appear in the DEA.

(51) *Comment:* One commenter stated the following: The DEA fails to consider the economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. The commenter suggested that *New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. Since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law, which prohibits destruction of plants in knowing violation of State law). Violations of these laws can trigger lawsuits.

*Our Response:* The DEA and the Addendum consider the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the DEA and the Addendum examine any indirect costs of critical habitat designation; however, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not occur because of critical habitat designations. There are not take prohibitions associated with the plants critical habitat.

(52) *Comment:* Multiple commenters opposed the designation of agricultural lands needed to support agriculture and ranching. They stated that critical habitat designation would reduce property values and the ability to develop lands that were previously planned for development. Approximately 77 percent of the proposed designated land is within the State Conservation District, which includes irrigation water essential to agriculture. The rest of the lands proposed for designation are in the State Agricultural District. Designation of agricultural lands could prevent a farmer or rancher from using those lands since the very nature of those uses would in all likelihood entail cutting, uprooting, or injuring plants to a certain extent. The DEA fails to examine the economic impact of a landowner not being able to use his own land for fear of injuring a species he doesn't even recognize. No protection is afforded to farmers who unwittingly ''harm'' the designated critical habitat. A careful cost-benefit analysis should conclude that agricultural lands should be excluded.

*Our Response:* There are no take provisions associated with critical habitat. The Act requires only that Federal agencies consult with the Service to ensure that activities they fund, authorize, or carry out do not result in destruction or adverse modification of critical habitat. Because consultation under section 7 only applies to activities that have Federal involvement, the designation of critical habitat does not afford any additional protections for listed species with respect to strictly private activities. As such, designation of critical habitat on agricultural lands would not prevent a private farmer or rancher from farming or ranching on their land, unless the activity had Federal involvement, such as through participation in federally sponsored agricultural or ranching programs.

Chapter VI, Section 3.g. of the DEA presents estimates of section 7 costs associated with participation in federally sponsored agricultural or ranching related programs, such as Farm Bill programs administered by NRCS. The DEA bases its estimate of two to eight consultations over the next 10 years on the amount of Agricultural land contained within the proposed designation; number of past projects located within the area proposed for designation; and the possibility that some landowners could decide not to participate in future programs to avoid Federal involvement in their activities.

The Service reduced the amount of Agricultural land designated from 29,175 ac (11,806 ha) to 21,670 ac (8,770 ha), a reduction of 25 percent. The designation contains approximately 10,980 ac (4,443 ha) of Agricultural land owned by those most likely to participate in NRCS programs. However, the majority of this land, approximately 9,028 acres, is owned by two landowners who indicated during public comment that they will not participate in future NRCS programs if their land was designated as critical habitat. Moreover, as noted in the DEA, not all of the Agricultural land designated is in active agricultural use. Finally, competition for NRCS funding is strong. Based upon the final critical habitat designation and the new information, the Addendum adjusts the direct section 7 costs accordingly. The Addendum estimates that the consultation cost can range from $0 to

$41,200, with a project modification cost ranging $0 to $100,000.

Other indirect impacts that could result from the designation of critical habitat are discussed in Chapter VI, Section 4 of the DEA and Section 5 of the Addendum. First, the critical habitat designation may reduce property value of these Agricultural lands. In the worst case scenario, one which is not envisioned, reduction in land values due to redistricting all Agricultural land to the Conservation District could range from $11 million to $110 million. In addition, critical habitat could result in the cessation of existing agricultural activities. While the likelihood of this being mandated as a result of critical habitat designation is low, the estimated costs resulting from stopping all ranching activities within the designation ranges form $110,000 to $825,000 per year.

(53) *Comment:* Many commenters stated that the DEA fails to adequately assess the scope of indirect costs associated with critical habitat designation. Indirect impacts cannot be dismissed just because it is difficult to assign a dollar value to them. Without acknowledging the full scope of direct and indirect costs, the Service cannot complete an accurate final determination of critical habitat. Another commenter also stated that the DEA should be amended to properly reflect all economic impacts, including the various indirect impacts, which would clearly show that the economic costs of critical habitat designation are significantly higher than the benefits.

*Our Response:* Chapter VI, Section 4 of the DEA and Section 5 of the Addendum discuss various indirect impacts that can result from the designation. There is considerable uncertainty on whether any or all of these indirect impacts may occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. Thus, based on the available information, these impacts were discussed qualitatively in the DEA and where possible, estimates were given of worst-case scenarios for illustrative purposes.

(54) *Comment:* Several commenters stated that critical habitat designation has the potential to decrease the amount of available hunting lands and game animals. Governmental officials seem to value plants and insects more than hunting, which is an important family and cultural tradition, a means of subsistence, and a way of life. Members of all ethnic groups hunt and depend on subsistence activities as a real part of their income. Hunting also contributes to the economy via money spent on pet foods, inter-island trips, gasoline, supplies, etc. Additionally, DLNR will lose money as the demand for hunting licenses and tag fees dwindles. The DEA does not adequately reflect the costs associated with management of game mammals and loss of hunting lands. Another commenter questioned why a cost was associated with project modifications to the management of game hunting on State managed lands because Maui does not have any State hunting areas that are managed to maintain or enhance game mammal populations. The commenters also questioned the methodology used to estimate the project modification cost.

*Our Response:* Chapter VI, Section 3.a.(2) and Section 4.a. of the Addendum discuss the direct economic impact of critical habitat designation on federally funded game management activities by estimating the direct section 7 costs associated with consultation and project modifications. The DEA makes the assumption that the cost of past project modifications only incorporates the portions of the hunting units that overlap with the occupied proposed critical habitat. However, information received during public comment noted that the prior consultation already modified the State's proposed game mammal program to address potential impacts to habitat everywhere on the island, including occupied and unoccupied habitat and areas inside and outside of critical habitat designation, based on the understanding that increasing game mammal populations in one location where the plants are not present may cause those mammals to move to areas where the plants are present and cause destruction. Upon further review of past consultations and past project modifications, the project modification costs are now estimated at $23,000 to $37,000. As noted in the DEA, because Maui does not have any State hunting areas that are managed to maintain or enhance game mammal populations, project modifications are anticipated to be similar to those in the past. They are not anticipated to include closure of hunting areas. In addition, as noted in the DEA, DLNR is likely to avoid costly project modifications by using Federal funds for game management projects that do not adversely affect listed species or their critical habitat, and if needed use only State funds on projects that the Service believes could have adverse impacts.

Chapter VI, Section 4.b. of the DEA and Section 5.a. of the Addendum discuss the potential indirect impact of critical habitat on the management of game mammals. The DEA notes that section 7 of the Act by itself does not require DLNR to manage State hunting lands to protect critical habitat; assure the survival and conservation of listed species, or participate in projects to recover species for which critical habitat has been established. Moreover, the DEA notes that critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters. However, the DEA recognizes that a change in game-management strategy is possible as a result of a lawsuit or as a voluntary decision by DLNR. For illustrative purposes, Chapter VI, Section 4.b. of the DEA and Section 5.a. of the Addendum present potential costs that could result if DLNR removed areas within the designation from the State-managed hunting units. Assuming that about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity on Maui could drop by about 14.5 percent. This drop in hunting activity would translate into a decrease in annual economic activity related to hunting on Maui of about $290,000 in direct sales (14.5 percent of $2 million); $510,000 in total direct and indirect sales (14.5 percent of $3.5 million); nine jobs (14.5 percent of 60 jobs); and $170,000 in income (14.5 percent of $1.2 million). However, the decrease in expenditures by the displaced hunters would probably be spent on other recreational activities, goods, and services, so these figures are likely to overstate the economic costs. In addition to the change in economic activity discussed above, a reduction in hunting activity in critical habitat would also result in a loss in value or benefit to hunters (consumers' surplus). Section 5.a. of the Addendum estimates this loss in value at $150,000 annually and recognizes that benefits derived from recreational activities that replace game mammal hunting would partially offset this loss.

(55) *Comment:* Three parcels (TMK (2) 1–8–001:003, TMK (2) 3–1–001:004, and TMK (2) 3–1–002:011) should be excluded from designation, because the DEA fails to establish that the benefits of including these parcels in the designation outweigh the costs of including these parcels in the designation.

*Our Response:* The Service removed two of the three parcels mentioned in the comment—*i.e.*, TMK (2) 3–1–001:004 and TMK (2) 3–1–002:011 from the proposed designation. The

remaining parcel—*i.e.*, TMK (2) 1–8–001:003—is approximately 710 acres (4 ha) in the Agricultural District, and this would remain within the designation. Chapter VI, Section 3.g. of the DEA and Section 4.e. of the Addendum discuss activities on Agricultural land and specifically recognizes that some of the State managed Agricultural land is leased out to private entities as pasturage. However, no direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

While section 4(b)(1)(A) of the Act stipulates that listing determinations must be made solely on the basis of biological evidence, section 4(b)(2) of the Act, which calls for the establishment of critical habitat for all listed species if it is prudent and determinable, adds that the Secretary should take into consideration the economic impact of the designation and any other relevant impacts before specifying any particular area as critical habitat. Hence, an economic analysis is part of the process of designating critical habitat. Section 4(b)(2) of the Act provides the Secretary with broad discretion to take into consideration the economic impacts of any proposed critical habitat designation and exclude areas where she finds that the benefits of exclusion outweigh the benefits of designation.

The Secretary may exclude any area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned (16 U.S.C. 1533(b)(2)).

Thus, the Secretary is not required to find that the benefits of inclusion outweigh the costs of inclusion before designating an area, nor is the Secretary required to exclude an area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of inclusion. Rather, the Act provides the Secretary with the discretion to take economic consideration into account when designating critical habitat.

As such, the DEA and the Addendum serve to illustrate possible impacts that can result from the designation, whether in form of costs or benefit. They provide information for the Secretary to exercise her discretion, but do not provide definitive conclusions or recommendations as to what areas, if any, should be excluded from the final designation.

(56) *Comment:* While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land, they fail to address the breadth of Federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements extend to all State agencies using Federal funds in connection with a proposed action and community actions for which Federal approval or review is necessary. For example, if the Federal government approves eligibility for flood insurance, flood plain development programs shall become subject to consultations under the Act. Federal agencies such as the U.S. Department of Agriculture and the Federal Farm Services Agency (FFSA) have numerous programs that provide funds or other assistance to farmers and ranchers in the form of loans, grants, loan deficiency, and subsidy payments for certain commodities, marketing assistance, disaster assistance, and other financial, technical, and educational assistance. Participation in any such programs would be subject to section 7 consultation, thus making Federal assistance unavailable to the types of operations that these programs are designed to assist.

*Our Response:* The analysis in the DEA, as revised by the Addendum, is based on a review of all ''reasonably foreseeable'' projects, land uses, and activities that may be directly affected by the implementation of section 7 for the plants. ''Reasonably foreseeable'' projects, land uses, and activities are defined in the DEA as those which are: (1) Currently authorized, permitted, or funded; (2) proposed in plans currently available to the public; or (3) projected or likely to occur within next 10 years based on (a) recent economic or land-use trends, development patterns, evolving technologies, competitive advantages, etc., and (b) limits imposed by land-use controls, access, terrain, infrastructure and other restrictions on development. After determining the ''reasonably foreseeable'' projects, land uses, and activities that could affect the physical and biological features of the proposed critical habitat units, the next step in the analysis was to determine Federal involvement. Thus, the DEA does not evaluate all potential activities with Federal nexus; instead, the DEA is limited to those activities that were ''reasonably foreseeable.'' The results of this analysis are presented in Table VI–3 in the DEA and Table Add-2 in the Addendum.

(57) *Comment:* Two commenters wrote that lands in Urban, Agricultural, and Rural Districts are designated, used, and intended for a wide variety of land use activities. These commenters stated that there is a much greater likelihood, therefore, that critical habitat designation will have an adverse economic impact on these landowners.

*Our Response:* None of the critical habitat units are in the Urban or Rural District. In fact, 86 percent of the critical habitat designation is in Conservation District and 14 percent in Agricultural District. As discussed above, designation of the Agricultural lands may result in direct section 7 costs through federally sponsored agricultural or ranching related programs, such as Farm Bill programs administered by NRCS. The DEA bases its estimate of two to eight consultations over the next 10 years on the amount of Agricultural land contained within the proposed designation, the number of past projects located within the area proposed for designation, and the possibility that some landowners could decide not to participate in future programs to avoid Federal involvement in their activities.

(58) *Comment:* Several commenters stated that although the Service has expressed that designation of critical habitat does not create a reserve, refuge, or wilderness area; require fencing for any reason; close off areas to hunters, hikers, or other land users; or create a land management plan, many are concerned that critical habitat designation could result in limitations or special management requirements (such as fencing, removal of grazing animals, or control of invasive species) being established on private lands at great expense to the private and public. The Service's own recovery plans for many of the species in the proposed rule specifically identify cattle grazing as a potential threat to the species or their habitats. Many feel that it is likely that private party litigation will force the implementation of ''special management considerations or protection.'' An example of this is the worrisome precedent of *Palila* v. *Hawaii Department of Land and Natural Resources* in which the Sierra Club Legal Defense Fund sued the State of Hawaii under the Endangered Species Act and resulted in a Federal court order specifying that sheep and goats should be permanently removed from critical habitat designated for palila on the Big Island. The argument against this case being relevant for the plants critical habitat is not persuasive when it argues that palila cases are irrelevant to

Hawaii ESA law because the Federal Act defines ''take'' as ''harm'' while the State law defines ''take'' as ''injure.'' ''Harm'' and ''injure'' are generally synonymous. The cost of such special management should be considered prior to a final determination on the proposed designations. Where costs are likely to outweigh the benefits of the proposed designation, designation of critical habitat should be determined not to be prudent, or at a minimum, areas proposed for designation should be significantly reduced so that any special management measures that may eventually be mandated through litigation are of a scale that is reasonable and cost-effective to implement.

Another commenter expressed concerns that the proposed critical habitat would bring private party lawsuits resulting in mandated protection for critical habitat. Another commenter also stated that in Hawaii it has long been established that landowners own all feral animals on their property. The commenter expressed concerns that plaintiffs who seek to compel a private landowner to spend money to protect critical habitat could argue that the landowner has a positive obligation to ensure that such animals do not harm the habitat.

*Our Response:* Section 4(a)(3)(A) of the Act directs the Secretary to designate critical habitat to the ''maximum extent prudent and determinable.'' Critical habitat is not prudent when one or both the following situations exist: (1) A species is threatened by taking or other human activity and identification of critical habitat would increase the degree of threat; or (2) designation would not be beneficial to the species (50 CFR 424.12(a)(1)). Thus the costs of designation are not considered in analyzing whether critical habitat is prudent. However, such costs are considered under section 4(b)(2) of the Act, which directs the Secretary to take into consideration the economic and other impacts of designation and authorizes the Secretary to exclude any area if she determines that the benefits of exclusion outweigh the benefits of designating it as critical habitat, unless it will result in extinction of the species.

The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established. However, Chapter VI, Section 4.c. of the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Maui. In addition, Chapter VI, Section 4.f. of the DEA, discusses the potential for adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc. The DEA concludes that it is impossible to quantify these potential costs, because there are no known development plans within the proposed designation. Furthermore, the following factors make future development projects in the proposed critical habitat highly unlikely: (1) 86 percent of the critical habitat is in Conservation District where development is severely limited; (2) the approximately 14 percent of the critical habitat in the Agricultural District is in remote areas, areas lined with gulches or steep cliffs, or areas with limited access to water; (3) there are no known plans for development within the designation; and (4) most of the critical habitat in the Special Management Area is also within the Conservation District. While it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, chance of success, or any other associated effect due to scant historical evidence for the plants.

(59) *Comment:* Several commenters were concerned that critical habitat designation will lead to unnecessary and costly litigation. Another commenter was concerned about the likelihood of private party lawsuits limiting current ranch operations.

*Our Response:* As discussed in the DEA and the Addendum, an undetermined probability exists that a Federal or State court could mandate certain indirect impacts as a result of critical habitat. However, it is beyond the scope of the economic analysis to assess the legal merits of the arguments for or against the various indirect impacts, to assess the probability that a lawsuit will be filed, and, if filed, to identify possible outcomes of a court decision and the associated probabilities. However, whenever possible, the DEA and the Addendum present the worst-case scenario of the costs associated with the potential outcomes of third party lawsuits.

(60) *Comment:* ML&P believes that designation of critical habitat would adversely impact the value of agricultural lands and lands proposed for future development, reduce the collateralized value of land holdings, and (due to State and county law) reduce the ability to develop lands previously planned for development. The impacted lands include areas described in the proposed units A, C1, C2 and C3.

*Our Response:* As discussed above, the Service removed Units C1 and C2 and reduced Units A and C3. After this modification, less than one acre of ML&P's land in Units A and C3 remains within the designation. As such, minimal impacts are anticipated for ML&P's Agricultural land in Units A and C3.

(61) *Comment:* The Maui County Department of Water Supply provided the following information on planned projects occurring in proposed units L, G, and B2. These projects include access improvements, intake improvements, reservoir design and construction, well construction, flume repair and maintenance, water distribution system maintenance, and identification of potential sources for future groundwater. Whether these or other projects would involve Federal lands, funding, or permits, it is important that water treatment plants, sources, and collection and distribution systems can continue to be established and maintained within these areas where they are needed for hydrogeological and security reasons.

*Our Response:* Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects include water source development in Unit B2, construction of a water reservoir adjacent to Unit L, access and intake improvements in Unit L, and repair and maintenance of existing flumes in Unit L. As noted earlier, the Service removed Unit B2 from the final designation. Thus, no section 7 costs would be anticipated to result from future DWS projects in that area. Moreover, most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation due to Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). The DEA estimates that the consultations can cost up to $68,000 with project modification that can range up to $200,000.

(62) *Comment:* Ulupalakua Ranch expressed concerns that the proposed critical habitat will: (1) Limit development of diversified agricultural operations due to the Ranch's interest in Federal cost share programs; (2) cause a loss in revenue; (3) create economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; and (4) lower economic returns and job loss due to critical habitat dividing up sections of the ranch, thus leading to inefficiency.

*Our Response:* Chapter III of the DEA notes that section 7 of the Act requires Federal agencies to consult with the Service to ensure that activities they fund, authorize, or carry out do not result in destruction or adverse modification of critical habitat. Because consultation under section 7 only applies to activities that have Federal involvement, the designation of critical habitat does not afford any additional protections for listed species with respect to strictly private activities.

Chapter VI, Section 3.g.(2) of the DEA and Section 4.e. of the Addendum present estimates of direct section 7 costs associated with participation in Federal cost-share programs with NRCS. The Addendum estimates that total consultation costs for all projects in the critical habitat designation range from $0 to $41,200, while project modification costs range from $0 to $100,000. The DEA and the Addendum both note that projects sponsored by NRCS programs are generally beneficial in nature and are likely to involve minimal project modifications. However, the DEA and the Addendum recognize that a landowner could decide to forego Federal funding and cancel the contract with NRCS to avoid making modifications identified through the section 7 consultation process. If Ulupalakua Ranch were to be one of the anticipated consultations over the next ten years, and if the section 7 consultation process resulted in project modifications that would limit the development of diversified agricultural operations, then Ulupalakua Ranch could avoid these project modifications by foregoing Federal funding, thus removing the Federal involvement. The cost of project modifications in that case would be the total amount of Federal funding foregone. If no Federal involvement exists, there can be no direct section 7 costs associated with critical habitat designation on Ulupalakua Ranch lands.

The remaining three concerns raised above by Ulupalakua Ranch, specifically that critical habitat designation will cause loss in revenue, create economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands, and lower economic returns and job loss caused by critical habitat dividing up sections of the ranch, are concerns about indirect impacts of critical habitat designation.

There is considerable uncertainty about whether any or all of these indirect impacts may occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. To the extent possible, the possible costs associated with these impacts are discussed in Chapter VI, Section 4 of the DEA and Section 5 of the Addendum. However, based on the limited information available, it is not possible to determine the probability that any of these impacts will actually occur as a result of critical habitat designation.

(63) *Comment:* The Department of Hawaiian Homelands (DHHL) opposes the designation of critical habitat on their land in Unit E and H because the currently degraded land is slated for development of homes for native Hawaiian beneficiaries. DHHL further noted that critical habitat designation will cause significant economic harm, because: (1) The designation of critical habitat would require hundreds of future beneficiaries to conduct an environmental assessment and section 7 consultation in order to construct homes and prepare ground for farming; (2) the identified areas have already been subdivided into individual lots and DHHL does not have the authority to retroactively impose management plans on individual lessees, meaning that any regulatory impact will fall on individual lessees; (3) DHHL's homesteading program uses Federal programs to guarantee and insure the mortgages of homesteaders; (4) Federal funds may be used construct site improvements and homes; and (5) to the extent that the use of these programs triggers consultation under section 7, lessees will be subject to additional filing requirements, delays in homebuilding, possible additional expenditures, and limitations on property use. DHHL supports the proposed designations in areas that are not subject to homestead development, such as the cliff face found in unit G4.

*Our Response:* As discussed earlier, the Service reduced Units E and H to exclude certain areas for biological reasons, including DHHL land subject to homestead development. As such, possible impacts discussed in the comment are not expected.

(64) *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Maui. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. In addition, the government may also take property by excessive regulation as was evidenced in *Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003 (1992).

*Our Response:* As noted above, none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. Also, Chapter VI, Section 4.e. of the DEA, the Addendum and our response to comment 43 address costs involved in redistricting lands proposed for critical habitat designation from the Agricultural to the Conservation District. Any redistricting of land to Conservation and any corresponding loss of economically beneficial use would be decided by the State Land Use Commission, not the Service, based on an array of state laws and other factors, including the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan; the extent to which the proposed reclassification conforms to the applicable district standards; and the impacts of the proposed reclassification on the following: preservation or maintenance of important natural systems or habitats; maintenance of valued cultural, historical, or natural resources; maintenance of other natural resources relevant to Hawaii's economy; commitment of state funds and resources; provision for employment opportunities and economic development; and provision for housing opportunities for all income groups; and the representations and commitments made by the petitioner in securing a boundary change.

(65) *Comment:* A Federal nexus exists for the non-point source water discharge program. If water discharge into critical habitat does not meet water quality standards, a permit could be denied. The effect on agriculture may be devastating since some run-off from agricultural activities is avoidable.

*Our Response:* The State Department of Health Polluted Runoff Control Program and the State Office of

Planning, Coastal Zone Management Program, work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create Statewide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to either water quality standards or to critical habitat. Until the State administrative rules are finalized, the economic impact caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative.

(66) *Comment:* The designation of critical habitat will impose costly procedural burdens on the Navy's ongoing efforts to clear ordnance at Kahoolawe. A careful analysis of the benefits and burdens of critical habitat designation may result in a determination that critical habitat designation on Kahoolawe is not prudent, especially in light of potential prescribed burns for clearing ordnance.

*Our Response:* Chapter VI, Section 3.e. of the DEA notes that November 2003 marks the end of the Navy's congressionally-mandated cleanup period. After that point, Kahoolawe Island Reserve Commission (KIRC) is likely to seek some form of Federal assistance. In the event that KIRC receives Federal funding in the future, the DEA estimates section 7 consultation costs at $10,400 to $78,500 including minor project modification costs (based on two to five consultations). However, as noted above, the Service reduced the designation on Kahoolawe for biological reasons, and the number of section 7 consultations over the next 10 years is expected to decrease to zero to three consultations as a result. As such, the Addendum revises future section 7 consultation costs to range from $0 to $47,100.

(67) *Comment:* Many commenters questioned the utility of critical habitat designation because it will not result in on-the-ground improvement of habitat or endangered species. Conversely, some commenters pointed out that critical habitat will prevent the Federal government from carrying out activities that destroy habitat or species in need of recovery and that it will benefit the people of Maui by preserving native forests, thus preventing erosion that pollutes water and smothers reefs.

*Our Response:* There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species (Bishop 1978, 1980; Brookshire and Eubanks 1983; Boyle and Bishop 1986; Hageman 1985, Samples *et al.* 1986; Stoll and Johnson 1984). Such benefits have also been ascribed to preservation of open space and biodiversity (see examples in Pearce and Moran (1994) and Fausold and Lilieholm (1999)), both of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for the plants, because no quantified data on the value of the Maui and Kahoolawe species exists, and the Service is unable to provide specific data on the change in the quality of the ecosystem and the species as a result of the designation (for example, how many fewer ungulates will roam into the critical habitat, how many fewer invasive plants will be introduced as a result, and therefore how many more of the plants will be present in the area). The discussion presented in the DEA and in the Addendum provides examples of potential benefits, which derive primarily from the listing of the species, based on information obtained in the course of developing the economic analysis. It is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat designation in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

(68) *Comment:* The State Department of Land and Natural Resources, Land Division, requests that 15 tax map parcels be excluded from critical habitat because they: (1) Are currently being leased for activities that could be adversely affected by the designation (*e.g.*, agricultural leases); (2) have been identified as parcels with possible lease or development potential; (3) could suffer a significant loss in value; or (4) include water sources of water systems.

*Our Response:* As noted earlier, the Service modified the critical habitat designation for biological reasons, and as a result of the changes, five of the 15 parcels were no longer within the designation. The ten parcels remaining in the designation are located in Units A, G1, G3, H, I1, I2, I3, I4, K, and L. These ten parcels overlap with the designation in the amount of approximately 7,015 ac (2,839 ha). Approximately 90 percent (6,305 ac (2,552 ha)) is within the Conservation District. The other 10 percent (710 ac (287 ha)) is within the Agricultural District.

Chapter VI, Section 3.g. of the DEA and Section 4.e. of the Addendum discuss activities on Agricultural land and specifically recognize that some of the State managed Agricultural land is leased out to private entities as pasturage. DLNR-Land Division specifically identified three parcels within the proposed critical habitat designation that are leased for pasture purpose. Two of these parcels are no longer within the designation. The third parcel, approximately 710 ac (287 ha) in the Agricultural District, remains within the designation. No direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

Indirect costs, specifically the possibility of restrictions on the State's ability to lease the land caused by the interplay between critical habitat designation and State law, are discussed in Section 5.b. of the Addendum. As noted in Section 5.b., the likelihood of a future lawsuit interfering with existing agricultural activity within the designated critical habitat is considered low, based upon review of the existing Federal and State law provisions and professional judgment. However, for illustration purposes, an estimate of the potential impact is $7,100 per year utilizing the land rents of $10 per acre per year (as used in the DEA) since DLNR did not provide any additional information regarding the value of the affected leases.

Of the remaining ten parcels, DLNR did not identify which have possible lease or development potential, could suffer a significant loss in value, or include water sources for water systems. As noted above, the portions of these

parcels that overlap with the designation are all located within the Conservation District, where development is severely limited. Without more information from DLNR, it is difficult to evaluate how these parcels could suffer a significant loss in value as these parcels are already subject to the restrictions of the Conservation District. Finally, no costs are expected to occur from impacts to water systems, because none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

**Summary of Changes From the Revised Proposed Rule**

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) We published 139 critical habitat units for 60 plant species on the islands of Maui and Kahoolawe.

(2) The scientific names were changed for the following non-listed associated plant species found in the ''*Supplementary Information: Discussion of the Plant Taxa*'' section: *Thelypteris cyatheoides* changed to *Christella cyatheoides* (Palmer in press) in the discussions of *Cyanea glabra, Phlegmariurus mannii,* and *Pteris lydgatei; Lipochaeta lavarum* changed to *Melanthera lavarum* (Wagner and Robinson 2001) in the discussion of *Kanaloa kahoolawensis, Hedyotis coriacea, Hibiscus brackenridgei,* and *Spermolepis hawaiiensis; Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* (Weiller 1999) in the discussion of *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Lysimachia lydgatei, Melicope adscendens, Neraudia sericea, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remyi mauiensis, Sanicula purpurea,* and *Schiedea haleakalensis; Lipochaeta integrifolia* changed to *Melanthera integrifolia* (Wagner and Robinson 2001) in the discussion of *Centaurium sebaeoides* and *Sesbania tomentosa; Pluchea symphytifolia* changed to *Pluchea carolinensis* (Wagner and Herbst 1995) in the discussions of *Cyrtandra munroi; Lycopodium cernuum* changed to *Lycopodiella cernua* ( Palmer 2003) in the discussions of *Platanthera holochila; Morelotia gahniiformis* changed to *Gahnia gahniiformis* in the discussions of *Platanthera holochila;* and *Sphenomeris chusana* changed to *Sphenomeris chinensis* in the discussion of *Pteris lydgatei.*

(3) We replaced the specific name of the associated native plant species, *Hibiscus arnottianus* (which is not reported to occur on Maui), with ''*Hibiscus* spp.'' in the discussion of *Gouania vitifolia* in the ''*Supplementary Information: Discussion of the Plant Taxa*'' and section 17.96.

(4) We removed the following species from the ''*Supplementary Information: Discussion of the Plant Taxa,*'' as they are not reported to occur on Maui: *Chloris barbata* was removed from the list of associated native plant species for *Kanaloa kahoolawensis; Andropogon virginicus* was removed from the list of associated native plant species for *Melicope balloui;* and *Pennisetum setaceum* was removed from the list of associated native plant species for *Colubrina oppositifolia.*

(5) For clarity regarding the number of location occurrences for each species (which do not necessarily represent viable populations) and the number of populations essential for the conservation of a species (*e.g.*, 8 to 10 populations with 100, 300, or 500 reproducing individuals), we changed the word ''population'' to ''occurrence'' and updated the number of occurrences in the ''*Supplementary Information: Discussion of the Plant Taxa*'' section and in ''Table 2.—Summary of existing occurrences and land ownership for 70 species reported from Maui and Kahoolawe'' for the species listed below. In this final critical habitat rule, we have used ''occurrence'' when reporting collections or observations of one or more plants in a specific location. We have used ''population'' when discussing conservation goals for the Maui and Kahoolawe plants. We made the following changes for these species: *Alectryon macrococcus* changed from seven populations to 13 occurrences; *Argyroxiphium sandwicense* ssp. *macrocephalum* changed from four populations to seven occurrences; *Asplenium fragile* var. *insulare* changed from one population to two occurrences; *Bidens micrantha* ssp. *kalealaha* changed from three populations to four occurrences; *Bonamia menziesii* changed from four populations to six occurrences; *Cenchrus agrimonioides* changed from two populations to one occurrence; *Clermontia samuelii* changed from four populations to seven occurrences; *Colubrina oppositifolia* changed from two populations to one occurrence; *Ctenitis squamigera* changed from six populations to 12 occurrences; *Cyanea copelandii* ssp. *haleakalaensis* changed from three populations to five occurrences; *Cyanea hamatiflora* ssp. *hamatiflora* changed from seven populations to nine occurrences; *Cyanea lobata* changed from four populations to five occurrences; *Cyanea mceldowneyi* changed from six populations to 11 occurrences; *Cyrtandra munroi* changed from four populations to five occurrences; *Dubautia plantaginea* ssp. *humilis* changed from one population to two occurrences; *Flueggea neowawraea* changed from three populations to four occurrences; *Geranium arboreum* changed from seven populations to 12 occurrences; *Geranium multiflorum* changed from eight populations to 13 occurrences; *Hesperomannia arborescens* changed from two populations to four occurrences; *Hesperomannia arbuscula* changed from two populations to eight occurrences; *Mariscus pennatiformis* changed from one population to two occurrences; *Melicope adscendens* changed from two populations to 16 occurrences; *Melicope balloui* changed from two populations to three occurrences; *Melicope knudsenii* changed from one population to four occurrences; *Melicope ovalis* changed from one population to two occurrences; *Neraudia sericea* changed from three populations to five occurrences; *Plantago princeps* changed from five populations to eight occurrences; *Platanthera holochila* changed from three populations to five occurrences; *Remya mauiensis* changed from three populations to five occurrences; *Sanicula purpurea* changed from five populations to seven occurrences; *Sesbania tomentosa* changed from eight populations to six occurrences; *Spermolepis hawaiiensis* changed from four populations to five occurrences; *Tetramolopium capillare* changed from four populations to five occurrences; *Tetramolopium remyi* changed from zero populations to one occurrence; *Vigna o-wahuensis* changed from four populations to two occurrences; and *Zanthoxylum hawaiiense* changed from four populations to nine occurrences.

(6) We changed ''flowering cycles, pollination vectors, seed dispersal agents'' to ''reproduction cycles, dispersal agents'' in the life history portion of the ''*Supplementary Information: Discussion of the Plant*

*Taxa*'' section for the fern or fern ally species, *Asplenium fragile* var. *insulare, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus mannii,* and *Pteris lydgatei.*

(7) We revised the list of excluded, manmade features in the ''*Criteria Used to Identify Critical Habitat*'' and section 17.96 to include additional features based on information received during the public comment periods.

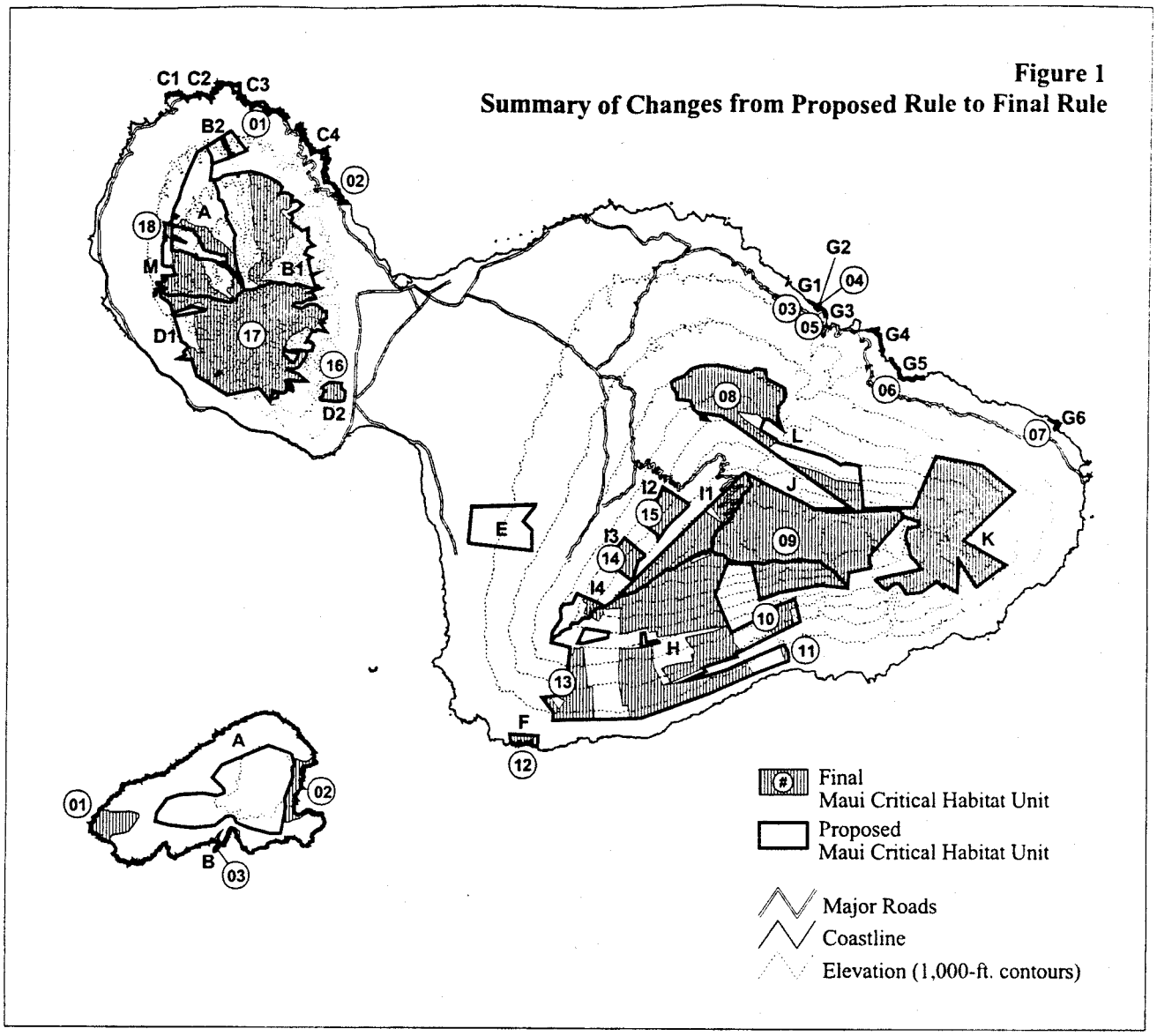
(8) We refined the elevation ranges for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Tetramolopium capillare, Tetramolopium remyi,* and *Vigna o-wahuensis.*

(9) We corrected the typographic error in the acreage published for the revised proposed rule of critical habitat on Kahoolawe from 713 ha (1,762 ac) to 7,683 ha (18,984 ac).

(10) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In addition, areas were excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (*see* ''*Economic Analysis*'').

(11) In the draft rule, we proposed that TNCH's Kapunakea and Waikamoi Preserves and the State's upper Hanawi NAR not be included as critical habitat pursuant to section 3(5)(A) of the Act, because they are not in need of special management or protection. The reasons for this were discussed in detail in the proposed rule. In this final rule we have determined that they should also be excluded under section 4(b)(2) of the Act, because we have determined that the benefits of exclusion exceed the benefits of inclusion due to the positive and voluntary conservation efforts underway there (*see* discussion under Analysis of Impacts Under Section 4(b)(2)).

A brief summary of the modifications made to each unit is given below (*see also* Figure 1).




*Maui A*

This unit was proposed as critical habitat for 16 species: *Alectryon macrococcus; Clermontia oblongifolia* ssp. *mauiensis; Colubrina oppositifolia; Ctenitis squamigera; Cyanea glabra; Cyanea lobata; Cyrtandra munroi; Gouania vitifolia; Hedyotis mannii; Hesperomannia arbuscula; Phlegmariurus mannii; Platanthera holochila; Plantago princeps; Pteris lydgatei; Remya mauiensis;* and *Sanicula purpurea.* We excluded the proposed critical habitat on ML&P lands because the benefits of excluding them outweighed the benefits of inclusion (*see ''Analysis of Impacts Under Section 4(b)(2): Other Impacts''*). Proposed critical habitat in Maui A for *Colubrina oppositifolia, Plantago princeps,* and *Pteris lydgatei,* all multi-island species, was excluded. This area is not essential to the conservation of these three species because it has a lower proportion of associated native species and more nonnative species than other areas we consider to be essential to the conservation of these three species. In addition, there are at least eight other locations for each of these species within their historical ranges on Maui and other islands which provide habitat essential for their conservation and which are either designated as critical habitat in this final rule or have been designated or proposed for designation in other rules.

The area designated as critical habitat for the Maui endemic species, *Remya mauiensis,* provides habitat within its historical range for two populations. The area designated as critical habitat for the following multi-island species provides habitat for two populations of *Alectryon macrococcus;* three populations each of *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera,* and *Cyanea glabra;* two populations of *Cyanea lobata;* four populations of *Cyrtandra munroi;* one population of *Gouania vitifolia;* two populations each of *Hedyotis mannii* and *Hesperomannia arbuscula;* one population each of *Phlegmariurus mannii* and *Platanthera holochila;* and three populations of *Sanicula purpurea* within their historical ranges.

These modifications resulted in the reduction from 3,884 ha (9,598 ac) to 1,632 ha (4,033 ac). This unit was renamed Maui 17—*Alectryon macrococcus*—d, 17—*Alectryon macrococcus*—e, 17—*Clermontia oblongifolia* ssp. *mauiensis*—a, 17—*Clermontia oblongifolia* ssp.

*mauiensis*—c, 17—*Ctenitis squamigera*—b, 17—*Ctenitis squamigera*—c, 17—*Cyanea glabra*—e, 17—*Cyanea glabra*—f, 17—*Cyanea lobata*—a, 17—*Cyrtandra munroi*—a, 17—*Cyrtandra munroi*—b, 17—*Gouania vitifolia*—a, 17—*Hedyotis mannii*—a, 17—*Hesperomannia arbuscula*—a, 17—*Phlegmariurus mannii*—d, 17—*Platanthera holochila*—c, 17—*Remya mauiensis*—b, 17—*Remya mauiensis*—c, 17—*Sanicula purpurea*—b, 18—*Alectryon macrococcus*—f, 18—*Ctenitis squamigera*—d, and 18—*Remya mauiensis*—d.

*Maui B*

This unit was proposed as critical habitat for 11 species: *Clermontia oblongifolia* ssp. *mauiensis; Ctenitis squamigera; Cyanea lobata; Cyrtandra munroi; Diplazium molokaiense; Hesperomannia arborescens; Phlegmariurus mannii; Platanthera holochila; Plantago princeps; Pteris lydgatei;* and *Sanicula purpurea.* We excluded the proposed critical habitat on ML&P lands because the benefits of excluding them outweighed the benefits of inclusion (*see ''Analysis of Impacts Under Section 4(b)(2): Other Impacts''*). As a result, no critical habitat was designated for *Hesperomannia arborescens,* a multi-island species, on Maui because all of the habitat proposed for this species is within these lands. However, we have proposed (67 FR 37108) and designated (68 FR 12981) critical habitat on other islands within its historical range. We excluded the proposed critical habitat for the multi-island species *Ctenitis squamigera* and *Platanthera holochila* in Maui B. Areas proposed for these two species were excluded because they are not essential to the conservation of these two species. We are designating adequate and more appropriate habitat elsewhere on Maui for these two species in this final rule and have designated or proposed for designation habitat on other islands within their historical ranges. There is a lower likelihood that the biological features essential to these species will persist there because these areas have a low likelihood of being managed by the landowner for conservation. In addition, there are at least eight other locations for each of these species within their historical ranges on Maui and other islands.

The area designated as critical habitat for the multi-island species provides habitat within historical range for six populations of *Clermontia oblongifolia* ssp. *mauiensis;* three populations each of *Cyanea lobata, Cyrtandra munroi,* and *Diplazium molokaiense;* one population each of *Phlegmariurus mannii* and *Plantago princeps;* two populations of *Pteris lidgatei;* and four populations of *Sanicula purpurea.*

These modifications resulted in the reduction from 4,736 ha (11,701 ac) to 1,760 ha (4,349 ac). This unit was renamed 17—*Clermontia oblongifolia* ssp. *mauiensis*—b, 17—*Clermontia oblongifolia* ssp. *mauiensis*—c, 17—*Cyanea lobata*—c, 17—*Cyrtandra munroi*—c, 17—*Diplazium molokaiense*—c, 17—*Phlegmariurus mannii*—d, 17—*Plantago princeps*—b, 17—*Pteris lidgatei*—a, 17—*Sanicula purpurea*—a, 17—*Sanicula purpurea*—b, and 17—*Sanicula purpurea*—c.

*Maui C*

This unit was proposed as critical habitat for three species: *Brighamia rockii; Centaurium sebaeoides;* and *Sesbania tomentosa.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

The area designated as critical habitat for these multi-island species provides habitat within their historical ranges for two populations of *Brighamia rockii* and one population each of *Centaurium sebaeoides* and *Sesbania tomentosa.*

These modifications resulted in the reduction from 356 ha (880 ac) to 110 ha (270 ac). This unit was renamed 2—*Brighamia rockii*—a, 2—*Brighamia rockii*—b, 2—*Centaurium sebaeoides*—b, and 1—*Sesbania tomentosa*—a.

*Maui D*

This unit was proposed as critical habitat for 28 species: *Cenchrus agrimonioides; Clermontia oblongifolia* ssp. *mauiensis; Ctenitis squamigera; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea lobata; Cyrtandra munroi; Diellia erecta; Diplazium molokaiense; Dubautia plantaginea* ssp. *humilis; Gouania vitifolia; Hedyotis coriacea; Hedyotis mannii; Hesperomannia arbuscula; Hibiscus brackenridgei; Isodendrion pyrifolium; Lysimachia lydgatei; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Plantago princeps; Platanthera holochila; Pteris lydgatei; Remya mauiensis; Sanicula purpurea; Spermolepis hawaiiensis; Tetramolopium capillare;* and *Tetramolopium remyi.* We excluded the proposed critical habitat in Maui D for *Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Isodendrion pyrifolium, Neraudia sericea, Tetramolopium capillare,* and *Tetramolopium remyi.* Areas proposed for these six species were excluded because they are not essential to the conservation of these species. There is a lower likelihood that the biological features essential to these species will persist there because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these six species and they have a low likelihood of being managed for conservation. In addition, there are at least eight other locations for each of these species designated elsewhere on Maui and proposed or designated on other islands within their historical ranges.

The area designated as critical habitat for the Maui endemic species provides habitat for six populations of *Dubautia plantaginea* ssp. *humilis* and four populations of *Remya mauiensis* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for one population of *Cenchrus agrimonioides;* two populations of *Ctenitis squamigera;* four populations of *Cyanea glabra;* two populations each of *Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata,* and *Diellia erecta;* three populations of *Diplazium molokaiense;* one population of *Gouania vitifolia;* two populations each of *Hedyotis coriacea* and *Hedyotis mannii;* five populations of *Hesperomannia arbuscula;* three populations of *Hibiscus brackenridgei;* eight populations of *Lysimachia lydgatei;* one population each of *Peucedanum sandwicense, Phlegmariurus mannii, Plantago princeps, Platanthera holochila,* and *Pteris lidgatei;* three populations of *Sanicula purpurea;* and one population of *Spermolepis hawaiiensis* within their historical ranges.

These modifications resulted in the reduction from 7,162 ha (17,698 ac) to 6,358 ha (15,709 ac). This unit was renamed 17—*Cenchrus agrimonioides*—b, 17—*Ctenitis squamigera*—a, 17—*Cyanea glabra*—d, 17—*Cyanea glabra*—e, 17—*Cyanea glabra*—g, 17—*Cyanea grimesiana* ssp. *grimesiana*—a, 17—*Cyanea lobata*—b, 17—*Diellia erecta*—c, 17—*Diellia erecta*—d, 17—*Diellia erecta*—e, 17—*Diellia erecta*—f, 17—*Diplazium molokaiense*—c, 17—*Dubautia plantaginea* ssp. *humilis*—a, 17—*Dubautia plantaginea* ssp. *humilis*—b, 17—*Dubautia plantaginea* ssp. *humilis*—c, 17—*Gouania vitifolia*—a, 17—*Hedyotis coriacea*—a, 17—*Hedyotis coriacea*—b, 17—*Hedyotis mannii*—a, 17—*Hesperomannia arbuscula*—a, 17—*Hesperomannia arbuscula*—b, 17—*Hibiscus brackenridgei*—b, 17—*Lysimachia lydgatei*—a, 17—*Lysimachia lydgatei*—b, 17—*Lysimachia lydgatei*—c, 17—*Lysimachia lydgatei*—d, 17—*Lysimachia lydgatei*—e, 17—*Peucedanum sandwicense*—b, 17—*Phlegmariurus mannii*—e, 17—*Plantago*

*princeps*—b, 17—*Platanthera holochila*—b, 17—*Pteris lidgatei*—b, 17—*Remya mauiensis*—a, 17—*Remya mauiensis*—b, 17—*Sanicula purpurea*—b, 17—*Spermolepis hawaiiensis*—b, and 16—*Hibiscus brackenridgei*—a.

*Maui E*

This unit was proposed as critical habitat for two multi-island species, *Bonamia menziesii* and *Hibiscus brackenridgei.* The entire unit is eliminated from the final rule. There is a lower likelihood that the biological features essential to these species will persist there because the area has a low likelihood of being managed for conservation and there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is also habitat designated elsewhere on Maui for *Bonamia menziesii* and *Hibiscus brackenridgei.* Exclusion of this unit from critical habitat for *Bonamia menziesii* and *Hibiscus brackenridgei* resulted in the overall reduction of 14,101 ha (34,843 ac) of critical habitat on Maui.

*Maui F*

No changes were made to Maui F. The area designated as critical habitat for the multi-island species *Vigna o-wahuensis* provides habitat within its historical range for one population. This unit remains 144 ha (357 ac) but was renamed 12—*Vigna o-wahuensis*—a.

*Maui G*

This unit was proposed as critical habitat for four species: *Brighamia rockii; Ischaemum byrone; Mariscus pennatiformis;* and *Peucedanum sandwicense.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. The portion excluded was not essential to the conservation of these four species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these four species, it has a low likelihood of being managed for conservation (Buck, *in litt.* 2002), and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for these multi-island species provides habitat for one population of *Brighamia rockii,* two populations each of *Ischaemum byrone* and *Mariscus pennatiformis,* and one population of *Peucedanum sandwicense* within their historical ranges.

These modifications resulted in the reduction from 83 ha (185 ac) to 52 ha (128 ac). This unit was renamed 3—*Brighamia rockii*—c, 4—*Brighamia rockii*—d, 5—*Brighamia rockii*—e, 5—*Ischaemum byrone*—a, 7—*Ischaemum byrone—b, 5— Mariscus pennatiformis*—a, and 4—*Peucedanum sandwicense*—a.

*Maui H*

This unit was proposed as critical habitat for 25 species: *Alectryon macrococcus; Argyroxiphium sandwicense* ssp. *macrocephalum; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Cenchrus agrimonioides; Clermontia lindseyana; Colubrina oppositifolia; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Geranium arboreum; Geranium multiflorum; Lipochaeta kamolensis; Melicope adscendens; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Nototrichium humile; Phlegmariurus mannii; Phyllostegia mollis; Plantago princeps; Sesbania tomentosa; Schiedea haleakalensis; Spermolepis hawaiiensis;* and *Zanthoxylum hawaiiense.* We excluded the proposed critical habitat on Ulupalakua and Haleakala Ranch lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see ''*Analysis of Impacts Under Section 4(b)(2)*''). We excluded the proposed critical habitat for the Maui endemics *Geranium arboreum* and *Schiedea haleakalensis,* and the multi-island species *Zanthoxylum hawaiiense.* Areas proposed for these three species were excluded because we have proposed adequate and more appropriate habitat elsewhere on Maui and, for *Z. hawaiiense,* on other islands within its historical ranges. The portion excluded was not essential to the conservation of these three species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these three species, it has a low likelihood of being managed for conservation (Urdman *in litt.,* 2002; Silva *in litt.,* 2002), and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is habitat designated elsewhere on Maui for *Geranium arboreum, Schiedea haleakalensis,* and *Zanthoxylum hawaiiense.*

The area designated as critical habitat for the Maui endemic species provides habitat for one population each of *Argyroxiphium sandwicense* ssp. *macrocephalum* and *Geranium multiflorum,* four populations of *Lipochaeta kamolensis,* and one population of *Melicope adscendens* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Alectryon macrococcus;* four populations of *Bidens micrantha* ssp. *kalealaha;* one population each of *Bonamia menziesii* and *Cenchrus agrimonioides;* two populations of *Clermontia lindseyana;* one population each of *Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense,* and *Flueggea neowawraea;* two populations each of *Melicope knudsenii* and *Melicope mucronulata;* three populations of *Neraudia sericea;* two populations of *Nototrichium humile;* one population of *Phlegmariurus mannii;* two populations of *Phyllostegia mollis;* and one population each of *Plantago princeps, Sesbania tomentosa,* and *Spermolepis hawaiiensis* within their historical ranges.

These modifications resulted in the reduction from 14,101 ha (34,843 ac) to 9,823 ha (24,270 ac). This unit was renamed 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Bidens micrantha* ssp. *kalealaha*—b, 9—*Clermontia lindseyana*—a, 9—*Clermontia lindseyana*—b, 9—*Diellia erecta*—b, 9—*Diplazium molokaiense*—b, 9—*Flueggea neowawraea*—a, 9—*Geranium multiflorum*—c, 9—*Lipochaeta kamolensis*—a, 9—*Melicope knudsenii*—a, 9—*Melicope mucronulata*—a, 9—*Neraudia sericea*—a, 9—*Nototrichium humile*—a, 9—*Phlegmariurus mannii*—b, 9—*Phyllostegia mollis*—b, 9—*Plantago princeps*—a, 10—*Alectryon macrococcus*—b, 11—*Lipochaeta kamolensis*—b, 13—*Alectryon macrococcus*—c, 13—*Bonamia menziesii*—a, 13—*Cenchrus agrimonioides*—a, 13—*Colubrina oppositifolia*—a, 13—*Flueggea neowawraea*—b, 13—*Melicope adscendens*—a, 13—*Melicope knudsenii*—b, 13—*Melicope mucronulata*—b, 13—*Sesbania tomentosa*—b, and 13—*Spermolepis hawaiiensis*—a.

*Maui I*

This unit was proposed as critical habitat for 11 species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana; Diellia erecta; Diplazium molokaiense; Geranium arboreum; Geranium multiflorum; Phlegmariurus mannii; Phyllostegia mollis;* and

*Plantago princeps.* We excluded the proposed critical habitat on Haleakala Ranch lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see 4(b)(2) exclusion section). We excluded the proposed critical habitat for the Maui endemic *Geranium arboreum* and the multi-island species *Diplazium molokaiense, Phlegmariurus mannii, Phyllostegia mollis,* and *Plantago princeps.* The portion excluded was not essential to the conservation of these five species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these five species. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (Silva *in litt.,* 2002). There is habitat designated elsewhere on Maui for *Diplazium molokaiense, Geranium arboreum, Phlegmariurus mannii, Phyllostegia mollis,* and *Plantago princeps.*

The area designated as critical habitat for the Maui endemic species provides habitat for one population of *Argyroxiphium sandwicense* ssp. *macrocephalum,* three populations of *Geranium arboreum,* and six populations of *Geranium multiflorum* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Asplenium fragile* var. *insulare,* four populations of *Bidens micrantha* ssp. *kalealaha,* and one population each of *Clermontia lindseyana* and *Diellia erecta* within their historical ranges.

These modifications resulted in the reduction from 3,491 ha (8,625 ac) to 2,961 ha (7,383 ac). This unit was renamed 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Asplenium fragile* var. *insulare*—a, 9—*Bidens micrantha* ssp. *kalealaha*—b, 9—*Clermontia lindseyana*—b, 9—*Diellia erecta*—a, 9—*Geranium multiflorum*—b, 14—*Geranium arboreum*—b, and 15—*Geranium arboreum*—c.

*Maui J*

This unit was proposed as critical habitat for eight species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Bidens micrantha* ssp. *kalealaha; Clermontia samuelii; Geranium multiflorum; Plantago princeps; Platanthera holochila;* and *Schiedea haleakalensis.* We excluded the proposed critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium multiflorum,* and *Platanthera holochila* in Maui J. This area is not essential to the conservation of these three species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these three species. For the Maui endemic *Argyroxiphium sandwicense* ssp. *macrocephalum,* the recovery goal is one population with more than 50,000 individuals. We are designating habitat essential for the conservation of this species in Maui unit 9. There are at least eight other locations on Maui which provide habitat for the endemic species *Geranium multiflorum* that are being designated as critical habitat. There are at least eight other locations in its historical range on Maui and other islands that provide habitat for the multi-island species *Platanthera holochila* that are being designated as critical habitat, have been designated as critical habitat, or have been proposed for designation.

The area designated as critical habitat for the Maui endemic species *Schiedea haleakalensis* provides habitat within its historical range for four populations. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Asplenium fragile* var. *insulare,* three populations of *Bidens micrantha* ssp. *kalealaha,* five populations of *Clermontia samuelii,* and one population of *Plantago princeps* within their historical ranges.

These modifications resulted in the reduction from 5,790 ha (14,308 ac) to 5,785 ha (14,295 ac). This unit was renamed 9—*Asplenium fragile* var. *insulare*—a, 9—*Bidens micrantha* ssp. *kalealaha*—a, 9—*Clermontia samuelii*—a, 9—*Plantago princeps*—a, 9—*Schiedea haleakalensis*—a, and 9—*Schiedea haleakalensis*—b.

*Maui K*

This unit was proposed as critical habitat for 11 species: *Alectryon macrococcus; Clermontia samuelii; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea hamatiflora* ssp. *hamatiflora; Geranium multiflorum; Melicope balloui; Melicope ovalis; Phlegmariurus mannii; Plantago princeps;* and *Platanthera holochila.* We excluded the proposed critical habitat for *Alectryon macrococcus, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora,* and *Plantago princeps.* This area is not essential to the conservation of these five species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these five species, and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for the Maui endemic species provides habitat for six populations of *Geranium multiflorum,* two populations of *Melicope balloui,* and three populations of *Melicope ovalis* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for five populations of *Clermontia samuelii,* three populations each of *Cyanea glabra* and *Phlegmariurus mannii,* and one population of *Platanthera holochila* within their historical ranges.

These modifications resulted in the reduction from 5,464 ha (13,502 ac) to 5,458 ha (13,487 ac). This unit was renamed 9—*Clermontia samuelii*—a, 9—*Cyanea glabra*—b, 9—*Cyanea glabra*—c, 9—*Geranium multiflorum*—b, 9—*Melicope balloui*—b, 9—*Melicope ovalis*—a, 9—*Phlegmariurus mannii*—c, and 9—*Platanthera holochila*—a.

*Maui L*

This unit was proposed as critical habitat for 16 species: *Alectryon macrococcus; Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia samuelii; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea mceldowneyi; Diplazium molokaiense; Geranium multiflorum; Melicope balloui; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Platanthera holochila;* and *Zanthoxylum hawaiiense.* We excluded the proposed critical habitat for the Maui endemic *Cyanea mceldowneyi,* and the multi-island species *Alectryon macrococcus* and *Asplenium fragile* var. *insulare.* The portion excluded has a lower likelihood that the biological features essential to these species will persist because it has a low likelihood of being managed for conservation. In addition, there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for the Maui endemic species provides habitat for one population of *Argyroxiphium sandwicense* ssp. *macrocephalum,* three populations of *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea hamatiflora* ssp. *hamatiflora,* seven populations of *Geranium multiflorum,* and one

population of *Melicope balloui* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for five populations of *Clermontia samuelii;* two populations each of *Cyanea glabra, Diplazium molokaiense, Phlegmariurus mannii,* and *Phyllostegia mannii;* and one population each of *Phyllostegia mollis, Platanthera holochila,* and *Zanthoxylum hawaiiense* within their historical ranges.

These modifications resulted in the reduction from 4,612 ha (11,396 ac) to 3,608 ha (8,916 ac). This unit was renamed 8—*Cyanea copelandii* ssp. *haleakalaensis*—a, 8—*Cyanea glabra*—a, 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a, 8—*Diplazium molokaiense*—a, 8—*Geranium multiflorum*—a, 8—*Melicope balloui*—a, 8—*Phlegmariurus mannii*—a, 8—*Phyllostegia mannii*—a, 8—*Phyllostegia mollis*—a, 8—*Zanthoxylum hawaiiense*—a, 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Clermontia samuelii*—a, 9—*Geranium multiflorum*—b, and 9—*Platanthera holochila*—a.

*Maui M*

This unit was proposed as critical habitat for *Spermolepis hawaiiense.* The entire area proposed for this species is eliminated from this final rule. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (Buck, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is habitat designated elsewhere on Maui for *Spermolepis hawaiiense.*

*Kahoolawe A*

This unit was proposed as critical habitat for four species: *Hibiscus brackenridgei; Kanaloa kahoolawensis; Sesbania tomentosa;* and *Vigna o-wahuensis.* We excluded the proposed critical habitat for *Hibiscus brackenridgei, Sesbania tomentosa,* and *Vigna o-wahuensis.* There is a lower likelhood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements for *Kanaloa kahoolawensis.*

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for seven populations.

These modifications resulted in the reduction from 7,683 ha (18,984 ac) to 1,175 ha (2,903 ac). This unit was renamed Kahoolawe 1—*Kanaloa kahoolawensis*—a and Kahoolawe 2—*Kanaloa kahoolawensis*—b.

*Kahoolawe B*

This unit was proposed as critical habitat for two species: *Kanaloa kahoolawensis* and S*esbania tomentosa.* We excluded the proposed critical habitat for the multi-island species *Sesbania tomentosa.* There is a lower likelihood that the biological features essential to this species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and there are10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands.

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for one population.

There was no change in the area proposed in the final designation. It remains at 5 ha (12 ac). This unit was renamed Kahoolawe 3—*Kanaloa kahoolawensis*—c.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, areas within the geographical range of the species at the time of listing must contain the physical or biological features essential to the conservation of the species or, for an area outside the geographical area occupied by the species at the time of listing, the area itself must be essential to the conservation of the species (16 U.S.C. 1532(5)(A)).

Section 4 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas that have features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the

area should not be included in the critical habitat designation.

Our regulations state that ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

*Prudency*

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. In the final critical habitat rule published for Kauai and Niihau plants, we determined that designation of critical habitat was not prudent for *Acaena exigua,* a species reported from Maui as well as from Kauai because it had not been seen recently in the wild, and no genetic material of this species was known to exist (68 FR 9115). In other final rules, we have found that critical habitat would be prudent for the following 45 species that are reported from Maui and Kahoolawe as well as from Lanai, Kauai, Niihau, and Molokai: *Adenophorus periens; Alectryon macrococcus; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Brighamia rockii; Cenchrus agrimonioides; Centaurium sebaeoides; Clermontia oblongifolia* ssp. *mauiensis; Clermontia samuelii; Ctenitis squamigera; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea lobata; Cyrtandra munroi; Delissea undulata; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Hedyotis mannii; Hesperomannia arborescens; Hibiscus brackenridgei; Ischaemum byrone; Isodendrion pyrifolium; Kanaloa kahoolawensis; Mariscus pennatiformis; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Phyllostegia parvilfora; Plantago princeps; Platanthera holochila; Pteris lidgatei; Schiedea nuttallii; Sesbania tomentosa; Solanum incompletum; Spermolepis hawaiiensis; Tetramolopium remyi; Vigna o-wahuensis;* and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1219, 68 FR 9115, 68 FR 12981).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 24 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. However, we examined the evidence available for these taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 24 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur; (2) focusing conservation activities on the most essential area; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 24 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirteen of these species are reported on or near Federal lands (see Table 2 above, under ''Discussion of Plant Taxa''), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of

these species and dissemination of information regarding their essential habitat requirements.

Therefore, we believe that the designation of critical habitat is prudent for these 24 plant species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia lindseyana; Clermontia peleana; Colubrina oppositifolia; Cyanea mceldowneyi; Dubautia plantaginea* ssp. *humilis; Geranium arboreum; Geranium multiflorum; Gouania vitifolia; Hedyotis coriacea; Hesperomannia arbuscula; Lipochaeta kamolensis; Lysimachia lydgatei; Melicope adscendens; Melicope balloui; Melicope ovalis; Nototrichium humile; Remya mauiensis; Sanicula purpurea; Schiedea haleakalensis; Schiedea hookeri; Tetramolopium arenarium;* and *Tetramolopium capillare* because the potential benefits of critical habitat designation outweigh the potential threats.

*Methods*

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Clermontia peleana, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense.* This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 69 species; the December 18, 2000, proposal; the April 3, 2002, revised proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; any species and management information received from landowners, land managers, and interested parties for the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 66808; 67 FR 3940; CPC, *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

*Primary Constituent Elements*

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea*

*neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* is described in the ''Background'' section of this final rule.

We are unable to identify these features for *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium,* which no longer occur on the islands of Maui and Kahoolawe, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these eight species on Maui and Kahoolawe is not known. Therefore, we are not designating critical habitat for these species on Maui. We are able to identify these features for *Hesperomannia arborescens,* but we are not designating critical habitat for this species on Maui for the reasons given in the ''*Analysis of Impacts Under Section 4(b)(2): Other Impacts*'' section.

All areas designated as critical habitat are within the historical range of the 60 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the 60 species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, mesic *Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the ''*Supplementary Information: Discussion of the Plant Taxa*'' section above, constitute the primary constituent elements for these species on the islands of Maui and Kahoolawe.

**Criteria Used To Identify Critical Habitat**

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). However, based on the best information available at this time, including information on which the listing of these species was based, as well as their recovery plans, we have concluded that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species.

For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations; (2) protection and management of habitat; (3) enhancement of existing small populations and reestablishment of new populations within historic range; and (4) research on species biology and ecology (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials, 300 mature, reproducing individuals per population for short-lived perennials, and 500 mature, reproducing individuals per population for annuals. (There is one specific exception to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island. The recovery goal for *Argyroxiphium sandwicense* ssp. *macrocephalum* is one population of more than 50,000 individuals, and the critical habitat designations reflect this exception for this species.)

To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and that contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, which could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk

of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of a species' life history are typically considered to determine guidelines for its interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.,* long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of population viability analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving 8 to10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and conservation, based on currently available information.

In summary, the long-term survival and conservation of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it is essential to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the 60 plant species.

Our approach to delineating critical habitat units was applied in the following manner:

(1) Critical habitat was proposed and will be designated on an island by island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

(2) We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

(3) We designated critical habitat units to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potentially suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.,* not containing the primary constituent elements) were avoided. The resulting shape files for each species were then considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the suitable habitat units identified as containing the

appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were included as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996).

The resulting critical habitat units were further refined by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 61 plant species for which critical habitat was proposed on April 3, 2002. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries.

Following publication of the proposed critical habitat rules, some of which were revised, for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we re-evaluated proposed critical habitat, Statewide, for each species using the applicable recovery guidelines (generally 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals) to determine if we had inadvertently proposed for designation too much or too little habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999).

Based on comments and information we received during the comment periods, we assessed the proposed critical habitat in order to ascertain which areas contained the highest quality habitat, had the highest likelihood of species conservation, and were geographically distributed within the species' historical range and located a sufficient distance from each other such that populations of a single species are unlikely to be impacted by a single catastrophic event. We ranked areas of the proposed critical habitat by the quality of the primary constituent elements (*e.g.,* intact native plant communities, predominance of associated native plants versus nonnative plants), potential as a conservation area (*e.g.,* whether the land is zoned for conservation or whether the landowner is already participating in plant conservation actions), and current or expected management of known threats (*e.g.,* ungulate control; weed control; nonnative insect, slug, and snail control). Areas that are zoned for conservation or have been identified as a State Forest Reserve, NAR, Wildlife Preserve, State Park, or are managed for conservation by a private landowner have a high likelihood of providing conservation benefit to the species and are therefore more essential than other comparable habitat outside of those types of areas.

Areas that contain high quality primary constituent elements and conservation potential (*e.g.,* are zoned for conservation and have ongoing or expected threat abatement actions) were ranked the most essential. This ranking process also included determining which habitats were representative of the historic geographical and ecological distributions of the species (see ''Primary Constituent Elements''). Of these most essential areas, we selected adequate area to provide for 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that were not ranked most essential to provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and were excluded from the final designation.

In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 60 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications towers and associated structures and equipment; electrical transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars, and telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded under the terms of the final regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the essential habitat on Maui and Kahoolawe to provide for the recovery of these 60 species.

The approximate areas of the designated critical habitat by land ownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII

| Unit name | State/local | Private | Federal | Total |
|---|---|---|---|---|
| Maui 1—*Centaurium sebaeoides*—a | 70 ha (174 ac) | <1 ha (<1 ac) | | 70 ha (174 ac) |
| Maui 1—*Sesbania tomentosa*—a | 38 ha (94 ac) | <1 ha (<1 ac) | | 38 ha (94 ac) |
| Maui 2—*Brighamia rockii*—a | 5 ha (14 ac) | <1 ha (<1 ac) | | 5 ha (14 ac) |
| Maui 2—*Brighamia rockii*—b | 17 ha (42 ac) | <1 ha (<1 ac) | | 17 ha (42 ac) |
| Maui 2—*Centaurium sebaeoides*—b | 14 ha (35 ac) | 12 ha (30 ac) | | 26 ha (65 ac) |
| Maui 3—*Brighamia rockii*—c | <1 ha (<1 ac) | 3 ha (9 ac) | | 3 ha (9 ac) |
| Maui 4—*Brighamia rockii*—d | 1 ha (2 ac) | | | 1 ha (2 ac) |
| Maui 4—*Peucedanum sandwicense*—a. | 1 ha (2 ac) | | | 1 ha (2 ac) |
| Maui 5—*Brighamia rockii*—e | 7 ha (16 ac) | | | 7 ha (16 ac) |
| Maui 6—*Ischaemum byrone*—a | 15 ha (35 ac) | 3 ha (7 ac) | | 18 ha (42 ac) |
| Maui 6—*Mariscus pennatiformis*—a | 17 ha (40 ac) | 13 ha (34 ac) | | 30 ha (74 ac) |
| Maui 7—*Ischaemum byrone*—b | 11 ha (27 ac) | | | 11 ha (27 ac) |
| Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a. | 5 ha (13 ac) | 496 ha (1,225 ac) | | 501 ha (1,238 ac) |
| Maui 8—*Cyanea glabra*—a | 448 ha (1,108 ac) | 2 ha (4 ac) | | 450 ha (1,112 ac) |
| Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a. | 48 ha (119 ac) | 563 ha (1,390 ac) | | 611 ha (1,509 ac) |
| Maui 8—*Cyanea mceldowneyi*—a | 489 ha (1,208 ac) | 1,638 ha (4,047 ac) | | 2,127 ha (5,255 ac) |
| Maui 8—*Diplazium molokaiense*—a | 87 ha (214 ac) | 488 ha (1,206 ac) | | 575 ha (1,420 ac) |
| Maui 8—*Geranium multiflorum*—a | | 46 ha (113 ac) | | 46 ha (113 ac) |
| Maui 8—*Melicope balloui*—a | 73 ha (181 ac) | 78 ha (192 ac) | | 151 ha (373 ac) |
| Maui 8—*Phlegmariurus mannii*—a | 101 ha (251 ac) | 120 ha (297 ac) | | 221 ha (548 ac) |
| Maui 8—*Phyllostegia mannii*—a | 2 ha (4 ac) | 568 ha (1,404 ac) | | 570 ha (1,408 ac) |
| Maui 8—*Phyllostegia mollis*—a | 128 ha (316 ac) | | | 128 ha (316 ac) |
| Maui 8—*Zanthoxylum hawaiiense*—a | 362 ha (894 ac) | 1 ha (1 ac) | | 363 ha (895 ac) |
| Maui 9—*Alectryon macrococcus*—a | 1,893 ha (4,678 ac) | <1 ha (<1 ac) | | 1,893 ha (4,678 ac) |
| Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a. | 2,117 ha (5,232 ac) | 852 ha (2,105 ac) | 5,996 ha (14,816 ac) | 8,965 ha (22,153 ac) |
| Maui 9—*Asplenium fragile* var. *insulare*—a. | | | 362 ha (894 ac) | 362 ha (894 ac) |
| Maui 9—*Bidens micrantha* ssp. *kalealaha*—a. | 390 ha (965 ac) | 629 ha (1,554 ac) | 543 ha (1,343 ac) | 1,562 ha (3,862 ac) |
| Maui 9—*Bidens micrantha* ssp. *kalealaha*—b. | 2,115 ha (5,229 ac) | | | 2,115 ha (5,229 ac) |
| Maui 9—*Clermontia lindseyana*—a | 177 ha (438 ac) | | | 177 ha (438 ac) |
| Maui 9—*Clermontia lindseyana*—b | 60 ha (149 ac) | | | 60 ha (149 ac) |
| Maui 9—*Clermontia samuelii*—a | 2,777 ha (6,863 ac) | | 353 ha (872 ac) | 3,130 ha (7,735 ac) |
| Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b. | 391 ha (966 ac) | | 1,318 ha (3,258 ac) | 1,709 ha (4,224 ac) |
| Maui 9—*Cyanea glabra*—b | | | 649 ha (1,605 ac) | 649 ha (1,605 ac) |
| Maui 9—*Cyanea glabra*—c | 363 ha (897 ac) | | | 363 ha (897 ac) |
| Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b. | 203 ha (503 ac) | | 1,107 ha (2,732 ac) | 1,310 ha (3,235 ac) |
| Maui 9—*Diellia erecta*—a | 2 ha (6 ac) | | | 2 ha (6 ac) |
| Maui 9—*Diellia erecta*—b | 174 ha (432 ac) | | | 174 ha (432 ac) |
| Maui 9—*Diplazium molokaiense*—b | 162 ha (401 ac) | | | 162 ha (401 ac) |
| Maui 9—*Flueggea neowawraea*—a | 52 ha (128 ac) | | | 52 ha (128 ac) |
| Maui 9—*Geranium arboreum*—a | 731 ha (1,806 ac) | | | 731 ha (1,806 ac) |
| Maui 9—*Geranium multiflorum*—b | 322 ha (795 ac) | 297 ha (735 ac) | 4,198 ha (10,372 ac) | 4,817 ha (11,902 ac) |
| Maui 9—*Geranium multiflorum*—c | 183 ha (450 ac) | | | 183 ha (450 ac) |
| Maui 9—*Lipochaeta kamolensis*—a | 1,472 ha (3,638 ac) | 2 ha (6 ac) | | 1,474 ha (3,644 ac) |
| Maui 9—*Melicope balloui*—b | | | 394 ha (972 ac) | 394 ha (972 ac) |
| Maui 9—*Melicope knudsenii*—a | 28 ha (69 ac) | | | 28 ha (69 ac) |
| Maui 9—*Melicope mucronulata*—a | 34 ha (83 ac) | | | 34 ha (83 ac) |
| Maui 9—*Melicope ovalis*—a | 1 ha (2 ac) | | 933 ha (2,304 ac) | 934 ha (2,306 ac) |
| Maui 9—*Neraudia sericea*—a | 623 ha (1,539 ac) | | | 623 ha (1,539 ac) |
| Maui 9—*Nototrichium humile*—a | 382 ha (944 ac) | 15 ha (38 ac) | | 397 ha (982 ac) |
| Maui 9—*Phlegmariurus mannii*—b | 383 ha (947 ac) | | | 383 ha (947 ac) |
| Maui 9—*Phlegmariurus mannii—c* | 224 ha (554 ac) | | 252 ha (622 ac) | 476 ha (1,176 ac) |
| Maui 9—*Phyllostegia mollis*—b | 509 ha (1,256 ac) | | | 509 ha (1,256 ac) |
| Maui 9—*Plantago princeps*—a | | | 164 ha (406 ac) | 164 ha (406 ac) |
| Maui 9—*Platanthera holochila*—a | 32 ha (80 ac) | | 208 ha (516 ac) | 240 ha (596 ac) |
| Maui 9—*Schiedea haleakalensis*—a | | | 26 ha (64 ac) | 26 ha (64 ac) |
| Maui 9—*Schiedea haleakalensis*—b | | | 77 ha (189 ac) | 77 ha (189 ac) |
| Maui 10—*Alectryon macrococcus*—b | 372 ha (918 ac) | 30 ha (75 ac) | | 402 ha (993 ac) |
| Maui 11—*Lipochaeta kamolensis*—b | 42 ha (105 ac) | | | 42 ha (105 ac) |
| Maui 12—*Vigna o-wahuensis*—a | 144 ha (356 ac) | | | 144 ha (356 ac) |
| Maui 13—*Alectryon macrococcus*—c | 419 ha (1,033 ac) | | | 419 ha (1,033 ac) |
| Maui 13—*Bonamia menziesii*—a | 536 ha (1,325 ac) | | | 536 ha (1,325 ac) |

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII—Continued

| Unit name | State/local | Private | Federal | Total |
|---|---|---|---|---|
| Maui 13—*Cenchrus agrimonioides*—a. | 237 ha (585 ac) | | | 237 ha (585 ac) |
| Maui 13—*Colubrina oppositifolia*—a | 739 ha (1,827 ac) | | | 739 ha (1,827 ac) |
| Maui 13—*Flueggea neowawraea*—b | 50 ha (124 ac) | | | 50 ha (124 ac) |
| Maui 13—*Melicope adscendens*—a | 160 ha (398 ac) | | | 160 ha (398 ac) |
| Maui 13—*Melicope knudsenii*—b | 163 ha (403 ac) | | | 163 ha (403 ac) |
| Maui 13—*Melicope mucronulata*—b | 194 ha (481 ac) | | | 194 ha (481 ac) |
| Maui 13—*Sesbania tomentosa*—b | 78 ha (193 ac) | 1 ha (2 ac) | | 79 ha (195 ac) |
| Maui 13—*Spermolepis hawaiiensis*—a. | 91 ha (224 ac) | | | 91 ha (224 ac) |
| Maui 14—*Geranium arboreum*—b | 282 ha (697 ac) | 170 ha (418 ac) | | 452 ha (1,115 ac) |
| Maui 15—*Geranium arboreum*—c | 177 ha (437 ac) | 490 ha (1,211 ac) | | 667 ha (1,648 ac) |
| Maui 16—*Hibiscus brackenridgei*—a | | 212 ha (524 ac) | | 212 ha (524 ac) |
| Maui 17—*Alectryon macrococcus*—d | 209 ha (517 ac) | 181 ha (448 ac) | | 390 ha (965 ac) |
| Maui 17—*Alectryon macrococcus*—e | 110 ha (270 ac) | <1 ha (1 ac) | | 110 ha (271 ac) |
| Maui 17—*Cenchrus agrimonioides*—b. | 118 ha (292 ac) | <1 ha (1 ac) | | 118 ha (293 ac) |
| Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a. | 16 ha (40 ac) | <1 ha (<1 ac) | | 16 ha (40 ac) |
| Maui 17—*Clermontia oblongifolia* ssp. *mauniensis*—b. | 696 ha (1,720 ac) | <1 ha (<1 ac) | | 696 ha (1,720 ac) |
| Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c. | 293 ha (726 ac) | <2 ha (6 ac) | | 295 ha (732 ac) |
| Maui 17—*Colubrina oppositifolia*—b | 132 ha (327 ac) | 44 ha (108 ac) | | 176 ha (435 ac) |
| Maui 17—*Ctenitis squamigera*—a | 953 ha (2,356 ac) | 1,026 ha (2,534 ac) | | 1,979 ha (4,890 ac) |
| Maui 17—*Ctenitis squamigera*—b | 478 ha (1,181 ac) | 338 ha (837 ac) | | 816 ha (2,018 ac) |
| Maui 17—*Ctenitis squamigera*—c | 137 ha (336 ac) | <1 ha (1 ac) | | 137 ha (337 ac) |
| Maui 17—*Cyanea glabra*—d | 255 ha (630 ac) | | | 255 ha (630 ac) |
| Maui 17—*Cyanea glabra*—e | 264 ha (652 ac) | 207 ha (511 ac) | | 471 ha (1,163 ac) |
| Maui 17—*Cyanea glabra*—f | 188 ha (463 ac) | <1 ha (1 ac) | | 188 ha (464 ac) |
| Maui 17—*Cyanea glabra*—g | | 79 ha (194 ac) | | 79 ha (194 ac) |
| Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a. | 10 ha (24 ac) | 911 ha (2,249 ac) | | 921 ha (2,273 ac) |
| Maui 17—*Cyanea lobata*—a | 132 ha (322 ac) | <1 ha (1 ac) | | 132 ha (323 ac) |
| Maui 17—*Cyanea lobata*—b | 112 ha (276 ac) | 2 ha (5ac) | | 114 ha (281 ac) |
| Maui 17—*Cyanea lobata*—c | 578 ha (1,427 ac) | <1 ha (<1 ac) | | 578 ha (1,427 ac) |
| Maui 17—*Cyrtandra munroi*—a | 156 ha (385 ac) | <1 ha (1 ac) | | 156 ha (386 ac) |
| Maui 17—*Cyrtandra munroi*—b | 25 ha (62 ac) | 213 ha (528 ac) | | 238 ha (590 ac) |
| Maui 17—*Cyrtandra munroi*—c | 603 ha (1,490 ac) | <1 ha (<1 ac) | | 603 ha (1,490 ac) |
| Maui 17—*Diellia erecta*—c | 22 ha (55 ac) | | | 22 ha (55 ac) |
| Maui 17—*Diellia erecta*—d | | 70 ha (172 ac) | | 70 ha (172 ac) |
| Maui 17—*Diellia erecta*—e | 12 ha (30 ac) | | | 12 ha (30 ac) |
| Maui 17—*Diellia erecta*—f | 14 ha (34 ac) | | | 14 ha (34 ac) |
| Maui 17—*Diplazium molokaiense*—c | 30 ha (74 ac) | 1,465 ha (3,619 ac) | | 1,495 ha (3,693 ac) |
| Maui 17—*Dubautia plantaginea* ssp. *humilis*—a. | 66 ha (164 ac) | 227 ha (550 ac) | | 293 ha (723 ac) |
| Maui 17—*Dubautia plantaginea* ssp. *humilis*—b. | 68 ha (168 ac) | 46 ha (115 ac) | | 114 ha (283 ac) |
| Maui 17—*Dubautia plantaginea* ssp. *humulis*—c. | 27 ha (66 ac) | 68 ha (168 ac) | | 95 ha (234 ac) |
| Maui 17—*Gouania vitifolia*—a | 446 ha (1,103 ac) | 40 ha (95 ac) | | 486 ha (1,198 ac) |
| Maui 17—*Hedyotis coriacea*—a | 106 ha (262 ac) | <1 ha (<1 ac) | | 106 ha (262 ac) |
| Maui 17—*Hedyotis coriacea*—b | 138 ha (340 ac) | | | 138 ha (340 ac) |
| Maui 17—*Hedyotis mannii*—a | 572 ha (1,414 ac) | 1,662 ha (4,107 ac) | | 2,234 ha (5,521 ac) |
| Maui 17—*Hesperomannia arbuscula*—a. | 378 ha (933 ac) | 14 ha (35 ac) | | 392 ha (968 ac) |
| Maui 17—*Hesperomannia arbuscula*—b. | | 436 ha (1,076 ac) | | 436 ha (1,076 ac) |
| Maui 17—*Hibiscus brackenridgei*—b | 593 ha (1,463 ac) | 74 ha (182 ac) | | 667 ha (1,645 ac) |
| Maui 17—*Isodendrion pyrifolium*—a | 224 ha (555 ac) | <1 ha (<1 ac) | | 224 ha (555 ac) |
| Maui 17—*Lysimachia lydgatei*—a | 64 ha (157 ac) | 26 ha (64 ac) | | 90 ha (221 ac) |
| Maui 17—*Lysimachia lydgatei*—b | 42 ha (104 ac) | 116 ha (287 ac) | | 158 ha (391 ac) |
| Maui 17—*Lysimachia lydgatei*—c | 19 ha (46 ac) | 28 ha (70 ac) | | 47 ha (116 ac) |
| Maui 17—*Lysimachia lydgatei*—d | 28 ha (70 ac) | 70 ha (172 ac) | | 98 ha (242 ac) |
| Maui 17—*Lysimachia lydgatei*—e | 18 ha (44 ac) | | | 18 ha (44 ac) |
| Maui 17—*Neraudia sericea*—b | 1,026 (2,538 ac) | ha 162 ha (400 ac) | | 1,188 ha (2,938 ac) |
| Maui 17—*Peucedanum sandwicense*—b. | | 117 ha (289 ac) | | 117 ha (289 ac) |
| Maui 17—*Phlegmariurus mannii*—d | 57 ha (141 ac) | <1 ha (<1 ac) | | 57 ha (141 ac) |
| Maui 17—*Phlegmariurus mannii*—e | 29 ha (72 ac) | 6 ha (15 ac) | | 35 ha (87 ac) |
| Maui 17—*Plantago princeps*—b | 23 ha (57 ac) | 304 ha (750 ac) | | 327 ha (807 ac) |

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII—Continued

| Unit name | State/local | Private | Federal | Total |
|---|---|---|---|---|
| Maui 17—*Platanthera holochila*—b | 4 ha (10 ac) | 4 ha (9 ac) | | 8 ha (19 ac) |
| Maui 17—*Platanthera holochila*—c | 189 ha (466 ac) | <1 ha (<1 ac) | | 189 ha (466 ac) |
| Maui 17—*Pteris lidgatei*—a | 504 ha (1,246 ac) | 664 ha (1,641 ac) | | 1,168 ha (2,887 ac) |
| Maui 17—*Pteris lidgatei*—b | | 163 ha (403 ac) | | 163 ha (403 ac) |
| Maui 17—*Remya mauiensis*—a | 227 ha (562 ac) | 1 ha (2 ac) | | 228 ha (564 ac) |
| Maui 17—*Remya mauiensis*—b | 366 ha (904 ac) | 201 ha (496 ac) | | 567 ha (1,400 ac) |
| Maui 17—*Remya mauiensis*—c | 31 ha (78 ac) | <1 ha (<1 ac) | | 31 ha (78 ac) |
| Maui 17—*Sanicula purpurea*—a | 29 ha (70 ac) | 5 ha (13 ac) | | 34 ha (83 ac) |
| Maui 17—*Sanicula purpurea*—b | 97 ha (240 ac) | 209 ha (516 ac) | | 306 ha (756 ac) |
| Maui 17—*Sanicula purpurea*—c | | 8 ha (19 ac) | | 8 ha (19 ac) |
| Maui 17—*Spermolepis hawaiiensis*—b. | 23 ha (56 ac) | | | 23 ha (56 ac) |
| Maui 17—*Tetramolopium capillare*—a. | 1,106 ha (2,732 ac) | 676 ha (1,672 ac) | | 1,782 ha (4,404 ac) |
| Maui 17—*Tetramolopium remyi*—a | 216 ha (536 ac) | 71 ha (176 ac) | | 287 ha (712 ac) |
| Maui 18—*Alectryon macrococcus*—f | 5 ha (11 ac) | 3 ha (6 ac) | | 8 ha (17 ac) |
| Maui 18—*Colubrina oppositifolia*—c | 38 ha (92 ac) | 26 ha (63 ac) | | 64 ha (155 ac) |
| Maui 18—*Ctenitis squamigera*—d | 10 ha (24 ac) | 4 ha (10 ac) | | 14 ha (34 ac) |
| Maui 18—*Remya mauiensis*—d | 1 ha (3 ac) | 1 ha (3 ac) | | 2 ha (6 ac) |
| Kahoolawe 1—*Kanaloa kahoolawensis*—a. | 562 ha (1,388 ac) | | | 562 ha (1,388 ac) |
| Kahoolawe 2—*Kanaloa kahoolawensis*—b. | 613 ha (1,515 ac) | | | 613 ha (1,515 ac) |
| Kahoolawe 3—*Kanaloa kahoolawensis*—c. | 5 ha (12 ac) | | | 5 ha (12 ac) |
| Total* | 21,229 ha (52,458 ac) | 8,858 ha (21,890 ac) | 8,805 ha (21,757 ac) | 38,897 ha (96,115 ac) |

*Totals take into consideration overlapping individual species units.

TABLE 5.—APPROXIMATE FINAL CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA ON MAUI AND KAHOOLAWE

| | |
|---|---|
| Area considered essential on Maui | 48,352 ha (119,480 ac) |
| Area not included because of special management or protection (State upper Hanawi NAR, ML&P Puu Kukui WMA, and TNCH Kupunukea and Waikamoi Preserves) on Maui. | 6,741 ha (16,657 ac) |
| Area excluded under 4(b)(2) (Haleakala and Ulupalakua Ranches) on Maui | 3,894 ha (9,622 ac) |
| Final Critical Habitat on Maui | 37,717 ha (93,200 ac) |
| Final Critical Habitat on Kahoolawe | 1,180 ha (2,915 ac) |
| Total Critical Habitat on Maui and Kahoolawe | 38,897 ha (96,115) |

Critical habitat includes habitat for 59 species primarily in the upland portions of Maui, and for one species on Kahoolawe. Lands designated as critical habitat have been divided into a total of 139 units. A brief description of each unit is presented below.

**Descriptions of Critical Habitat Units**

Maui 9—*Alectryon macrococcus*—a

This unit is critical habitat for *Alectryon macrococcus* and is 1,893 ha (4,678 ac) on State and privately owned lands. The unit contains Auwahi and Manawainui gulches including portions of Lualailua Hills, Puu Kao, and Kamole and Kepuni gulches. It, in combination with Maui 10—*Alectryon macrococcus*—b, Maui 13—*Alectryon macrococcus*—c, and land on Ulupalakua and Haleakala ranches, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 10—*Alectryon macrococcus*—b

This unit is critical habitat for *Alectryon macrococcus* and is 402 ha (993 ac) on State (Kahikinui Forest Reserve) and privately owned land. The unit contains land from Pahihi Gulch to Kahalulu Gulch. It, in combination with Maui 9—*Alectryon macrococcus*—a, Maui 13—*Alectryon macrococcus*—c, and Haleakala and Ulupalakua ranches, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Alectryon macrococcus*—c

This unit is critical habitat for *Alectryon macrococcus* and is 419 ha (1,033 ac) on State-owned land (Kanaio NAR). The unit contains the area below

Puu Ouli. It, in combination with Ulupalakua and Haleakala ranches, and Maui 9—*Alectryon macrococcus*—a and Maui 10—*Alectryon macrococcus*—b, provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Alectryon macrococcus*—d

This unit is critical habitat for *Alectryon macrococcus* and is 390 ha (965 ac) on State (West Maui Forest Reserve and the Panaewa Section of West Maui NAR) and privately owned land. The unit contains portions of Wahikuli and Kealii gulches and Puuiki, Kahoma, and Kanaha streams. It, in combination with Maui 17—*Alectryon macrococcus*—e, Maui 18—*Alectryon macrococcus*—f, and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Alectryon macrococcus*—e

This unit is critical habitat for *Alectryon macrococcus* and is 110 ha (271 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokowai Stream. It, in combination with Maui 17—*Alectryon macrococcus*—d, Maui 18—*Alectryon macrococcus*—f and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently occupied by three plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Alectryon macrococcus*—f

This unit is critical habitat for *Alectryon macrococcus* and is 8 ha (17 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokawai Valley. It, in combination with Maui 17—*Alectryon macrococcus*—d, Maui 17—*Alectryon macrococcus*—e, and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a

This unit is critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* and is 8,965 ha (22,153 ac) on State (Kula and Kahikinui Forest Reserve), Federal (Haleakala National Park), and privately owned land. The unit contains portions of Halalii Summit, Haleakala Summit, Haleakala Crater, Hanakauhi Summit, Haupaakea Peak Summit, Hina Summit, Honokahua Summit, Ka Moa o Pele Summit, Kalahaku Pali, Kalepeamoa Summit, Kalua Awa Summit, Kaluaiki Crater, Kaluanui Crater, Kaluu o ka Oo Crater, Kamaolii Summit, Kanahau Summit, Keoneheehee Ridge, Kilohana Summit, Kolekole Summit, Koolau Gap, and Kumuiilahi. It provides habitat for one population of greater than 50,000 mature, reproducing individuals of the long-lived perennial *A. sandwicense* ssp. *macrocephalum* and is currently occupied by 39,000 to 44,000 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in). This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat designatied to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic in terms of its alpine habitat requirement, and probably never naturally occurred in more than a single or a few populations.

Maui 9—*Asplenium fragile* var. *insulare*—a

This unit is critical habitat for *Asplenium fragile* var. *insulare* and is 362 ha (894 ac) on federally owned land (Haleakala National Park). The unit contains Koolau Gap. This unit, in combination with Waikamoi Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *A. fragile* var. *insulare* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, streamside hollows and grottos in gulches. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Bidens micrantha* ssp. *kalealaha*—a

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 1,562 ha (3,862 ac) on State (Kahikinui Forest Reserve), Federal, and privately owned land. The unit contains portions of Kumuiilahi and Haleakala summits, Pukai, Pahihi, and Waioale gulches, Haleakala Crater, and Kumuiliahi. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *B. micrantha* ssp. *kalealaha* and is currently occupied by two plants. The habitat features

contained in this unit that are essential for this species include, but are not limited to, blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Bidens micrantha* ssp. *kalealaha*—b

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 2,115 ha (5,229 ac) on State-owned land (Kahikinui Forest Reserve). The unit is between Kanaio and Auwahi. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *B. micrantha* ssp. *kalealaha* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Bonamia menziesii*—a

This unit is critical habitat for *Bonamia menziesii* and is 536 ha (1,325 ac) on State (Kanaio NAR) land. The unit lies in the area between Kanaio and Auwahi. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *B. menziesii* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, aa lava in mixed open dry forest; *Erythrina sandwicensis* lowland dry forest, or mesic mixed *Metrosideros polymorpha* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Brighamia rockii*—a

This unit is critical habitat for *Brighamia rockii* and is 5 ha (14 ac) on State and privately owned land. The unit lies near Lahoole Cape. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Brighamia rockii*—b

This unit is critical habitat for *Brighamia rockii* and is 17 ha (42 ac) on State and privately owned land. The unit contains Kaemi, Lahoole, and Moho capes, Makalina Valley, Waiokila and Waiolai gulches, Makamakaole Stream, and Puu Makawana Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 3—*Brighamia rockii*—c

This unit is critical habitat for *Brighamia rockii* and is 3 ha (9 ac) on State and privately owned land. The unit contains Waikamoi Stream, Waihanepee Stream, and Puohokamoa Stream. This unit in combination with Maui 4—*Brighamia rockii*—d and Maui 5—*Brighamia rockii*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 4—*Brighamia rockii*—d

This unit is critical habitat for *Brighamia rockii* and is 1 ha (2 ac) on State-owned land. The unit contains all of Keopuka Rock. This unit provides habitat for one population in combination with Maui 3—*Brighamia rockii*—c and Maui 5—*Brighamia rockii*—e, of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 5—*Brighamia rockii*—e

This unit is critical habitat for *Brighamia rockii* and is 7 ha (16 ac) on State-owned land. The unit contains Moiki Point and Haipuaena Stream. This unit provides habitat for one population in combination with Maui 3—*Brighamia rockii*—c and Maui 4—*Brighamia rockii*—d, of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the

island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Cenchrus agrimonioides*—a

This unit is critical habitat for *Cenchrus agrimonioides* and is 237 ha (585 ac) on State (Kanaio NAR) land. The unit contains land between Kanaio and Auwahi. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. agrimonioides* and is currently occupied by between one and 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cenchrus agrimonioides*—b

This unit is critical habitat for *Cenchrus agrimonioides* and is 118 ha (293 ac) on State (West Maui Forest Reserve and Manawainui Plant Sanctuary) and privately owned land. The unit contains Papalaua and Manawainui gulches and Hanaulaiki. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. agrimonioides* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 1—*Centaurium sebaeoides*—a

This unit is critical habitat for *Centaurium sebaeoides* and is 70 ha (174 ac) on non-managed State and privately owned land. The unit contains Alapapa Gulch, Honanana Gulch, Mokolea Point, Owaluhi Gulch, Papanahoa Gulch, Papanalahoa Point, Poelua Bay, and Poelua Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. sebaeoides* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Centaurium sebaeoides*—b

This unit is critical habitat for *Centaurium sebaeoides* and is 26 ha (65 ac) on State and privately owned land. The unit contains Alapapa Gulch, Honanana Gulch, Lahoole Cape, Makamakaole Stream, Moho Cape, Mokolea Point, Owaluhi Gulch, Papanahoa Gulch, Papanalahoa Point, Poelua Bay, Poelua Gulch, Waihee Stream, Waihee Valley, Waiokila Gulch, and Waiolai Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. sebaeoides* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Clermontia lindseyana*—a

This unit is critical habitat for *Clermontia lindseyana* and is 177 ha (438 ac) on State-owned land. The unit contains Manawainui Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. lindseyana* and is currently occupied by 330 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Clermontia lindseyana*—b

This unit is critical habitat for *Clermontia lindseyana* and is 60 ha (149 ac) on State-owned land (Kula Forest Reserve). The unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. lindseyana* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* mesic forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia ssp. mauiensis*—a

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 16 ha (40 ac) on State and privately owned land. The unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 696 ha (1,720 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater, Konanano Gulch, and Kahakuloa Valley. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of

the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to conservation of the species because it provides for four populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 295 ha (732 ac) on State (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Violet Lake, Amalu and Kapaloa streams, and Honokowai Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Clermontia samuelii*—a

This unit is critical habitat for *Clermontia samuelii* and is 3,130 ha (7,735 ac) on State (Hana and Koolau Forest Reserve) and federally (Haleakala National Park) owned land. The unit contains Anapanapa Lake, Heleleikeoha Stream, Kawakoe Valley, and Kawaipapa Stream. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. samuelii* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* forest or wet *M. polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population important for the conservation of the species within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 13—*Colubrina oppositifolia*—a

This unit is critical habitat for *Colubrina oppositifolia* and is 739 ha (1,827 ac) on State (Kanaio NAR) land. The unit contains land between Kanaio and Auwahi. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis.* This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Colubrina oppositifolia*—b

This unit is critical habitat for *Colubrina oppositifolia* and is 176 ha (435 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Kahoma and Kanaha Valleys and Halona Stream. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis.* This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Colubrina oppositifolia*—c

This unit is critical habitat for *Colubrina oppositifolia* and is 64 ha (155 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokowai Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis.* This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—a

This unit is critical habitat for *Ctenitis squamigera* and is 1,979 ha (4,890 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Hokuula and Puu Lio summits, Nakalaloa and Poohahoahoa streams, and Kapilau Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—b

This unit is critical habitat for *Ctenitis squamigera* and is 816 ha (2,018 ac) on State (Panaewa Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Wahikuli, Hahakea and

Puuiki gulches, and Kanaha Stream. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—c

This unit is critical habitat for *Ctenitis squamigera* and is 137 ha (337 ac) on State (Honokowai Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Kapaloa and Amalu Streams. This unit provides habitat for one population, in combination with Maui 18—*Ctenitis squamigera*—d and Kapunakea Preserve, of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by 21 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Ctenitis squamigera*—d

This unit is critical habitat for *Ctenitis squamigera* and is 14 ha (34 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains no named natural features and provides habitat for one population in combination with Maui 17—*Ctenitis squamigera*—c and Kapunakea Preserve of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a

This unit is critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* and is 501 ha (1,238 ac) on State and privately owned land. The unit contains Opana Gulch, Kailua Stream, and Haiku Uka. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. copelandii* ssp. *haleakalaensis* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and wet talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b

This unit is critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* and is 1,709 ha (4,224 ac) on State (Hana Forest Reserve) and federally (Haleakala National Park) owned land. The unit contains Kaumakani Summit, Puu Kue Summit, Kipahulu Valley, Kaukaui Gulch, and Palikea Stream. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. copelandii* ssp. *haleakalaensis* and is currently occupied by 200 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and wet talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea glabra*—a

This unit is critical habitat for *Cyanea glabra* and is 450 ha (1,112 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Wiohiwi Gulch. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea glabra*—b

This unit is critical habitat for *Cyanea glabra* and is 649 ha (1,605 ac) on federally owned land (Haleakala National Park). The unit contains Kipahulu Valley, Palikea Stream, and Kaukaui Gulch. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea glabra*—c

This unit is critical habitat for *Cyanea glabra* and is 363 ha (897 ac) on State (Hana Forest Reserve) land. The unit contains Waihoi Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream

banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—d

This unit is critical habitat for *Cyanea glabra* and is 255 ha (630 ac) on State (West Maui Forest Reserve) land. The unit contains Olowalu Valley and Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—e

This unit is critical habitat for *Cyanea glabra* and is 471 ha (1,163 ac) on State (Panaewa Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Waihikuli, Hahakea and Puuiki gulches, and Kanaha and Halona streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra—f*

This unit is critical habitat for *Cyanea glabra* and is 188 ha (464 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Amalu and Kapaloa streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—g

This unit is critical habitat for *Cyanea glabra* and is 79 ha (194 ac) on privately owned land. The unit contains Kauaula Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea grimesiana ssp. grimesiana*—a

This unit is critical habitat for *Cyanea grimesiana* ssp. *grimesiana* and is 921 ha (2,273 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains the Needle Summit, Poohahouhoa Stream, Nakalaloa Stream, and Iao Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. grimesiana* ssp. *grimesiana* and is currently occupied by fewer than 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky or steep slopes of stream banks in wet forest gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea hamatiflora ssp. hamatiflora*—a

This unit is critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* and is 611 ha (1,509 ac) on State (Koolau Forest Reserve) and privately owned land. The unit contains Haipuaena Stream, Puohokamoa Stream, and Waikamoi Stream. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. hamatiflora* ssp. *hamatiflora* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet forest dominated by *Metrosideros polymorpha* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea hamatiflora ssp. hamatiflora*—b

This unit is critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* and is 1,310 ha (3,235 ac) on State (Kipahulu and Hana Forest Reserve) and federally owned (Haleakala National Park) land. The unit contains Puu Ahulili Summit, Kipahulu Valley, Kaumakani Summit, Kaukaui Gulch, and Palikea Stream. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. hamatiflora* ssp. *hamatiflora* and is currently occupied by 13 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet forest dominated by *Metrosideros polymorpha* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for

the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—a

This unit is critical habitat for *Cyanea lobata* and is 132 ha (323 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Kapaloa and Amalu Streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—b

This unit is critical habitat for *Cyanea lobata* and is 114 ha (281 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Kauaula Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—c

This unit is critical habitat for *Cyanea lobata* and is 578 ha (1,427 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Honanana and Kahakuloa Streams. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea mceldowneyi*—a

This unit is critical habitat for *Cyanea mceldowneyi* and is 2,127 ha (5,255 ac) on State (Makawao and Koolau Forest Reserves) and privately owned land. The unit contains area from Kahakapau Gulch to the rim of Keanae Valley. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. mceldowneyi* and is currently occupied by 33 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa.* This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population important for the conservation of the species within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—a

This unit is critical habitat for *Cyrtandra munroi* and is 156 ha (386 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Amalu Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—b

This unit is critical habitat for *Cyrtandra munroi* and is 238 ha (590 ac) on State and privately owned land. The unit contains Hahakea and Puuiki gulches and Kahoma Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—c

This unit is critical habitat for *Cyrtandra munroi* and is 603 ha (1,490 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Kahakuloa Valley, Honanana Gulch, Keahikauo, and Makamakaole Stream. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diellia erecta*—a

This unit is critical habitat for *Diellia erecta* and is 2 ha (6 ac) on State-owned land (Kula Forest Reserve). The unit contains no named natural features. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are

not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diellia erecta*—b

This unit is critical habitat for *Diellia erecta* and is 174 ha (432 ac) on State-owned land. The unit contains Puu Pane. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—c

This unit is critical habitat for *Diellia erecta* and is 22 ha (55 ac) on State (West Maui Forest Reserve) land. The unit contains Papalaua Gulch. It provides habitat for one population;in combination with Maui 17—*Diellia erecta*—e and Maui 17—*Diellia erecta*—f, f 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—d

This unit is critical habitat for *Diellia erecta* and is 70 ha (172 ac) on privately owned land. The unit contains Iao Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by 20 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—e

This unit is critical habitat for *Diellia erecta* and is 12 ha (30 ac) on State (Manawainui Plant Sanctuary) land. The unit contains no named natural features. It provides habitat for one population,in combination with Maui 17—*Diellia erecta*—c and Maui 17—*Diellia erecta*—f, of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—f

This unit is critical habitat for *Diellia erecta* and is 14 ha (34 ac) on State-owned land (West Maui Forest Reserve). The unit contains Hanaulaiki. It provides habitat for one population in combination with Maui 17—*Diellia erecta*—c and Maui 17—*Diellia erecta*—e, of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Diplazium molokaiense*—a

This unit is critical habitat for *Diplazium molokaiense* and is 575 ha (1,420 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae, Waikamoi, Honomanu, and Piinaau streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diplazium molokaiense*—b

This unit is critical habitat for *Diplazium molokaiense* and is 162 ha (401 ac) on State-owned land. The unit contains Manawainui Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the

island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diplazium molokaiense*—c

This unit is critical habitat for *Diplazium molokaiense* and is 1,495 ha (3,693 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains the Needle Summit, Poohahouhoa and Nakalaloa streams, and Iao Valley). It provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—a

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 293 ha (723 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Kauaula Valley and Stream and Niupoko. It provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species this unit is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—b

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 114 ha (283 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit and Olowalu Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—c

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 95 ha (234 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Iao Valley and Needle and Au Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently occupied by 65 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit some distance away from the other critical habitat for this species in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Flueggea neowawraea*—a

This unit is critical habitat for *Flueggea neowawraea* and is 52 ha (128 ac) on State-owned land (Department of Hawaiian Home Lands (DHHL)). The unit contains Lualailua Hills. It provides habitat for one population in combination with Ulupalakua Ranch of 100 mature, reproducing individuals of the long-lived perennial *F. neowawraea* and is currently occupied by 4 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Flueggea neowawraea*—b

This unit is critical habitat for *Flueggea neowawraea* and is 50 ha (124 ac) on State-owned land. The unit contains land west of Auwahi Gulch and south of Puu Ouli. In combination with Ulupalakua Ranch and Maui 9—*Flueggea neowawraea*—a, it provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *F. neowawraea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forest. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium arboreum*—a

This unit is critical habitat for *Geranium arboreum* and is 731 ha (1,806 ac) on State (Kula Forest Reserve) land. The unit contains Polipoli Summit. It provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate

distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 14—*Geranium arboreum*—b

This unit is critical habitat for *Geranium arboreum* and is 452 ha (1,115 ac) on State (Kula Forest Reserve) and privately owned land. The unit contains Waiohuli Gulch. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by 22 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 15—*Geranium arboreum*—c

This unit is critical habitat for *Geranium arboreum* and is 667 ha (1,648 ac) on State (Kula Forest Reserve) and privately owned land. The unit contains land from Waiakoa to Kamehamenui. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 8—*Geranium multiflorum*—a

This unit is critical habitat for *Geranium multiflorum* and is 46 ha (113 ac) on privately owned land. The unit contains Honomanu and Piihaau streams. It provides habitat for one population in combination with Waikamoi Preserve of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium multiflorum*—b

This unit is critical habitat for *Geranium multiflorum* and is 4,817 ha (11,902 ac) on State (Koolau Forest Reserve), Federal (Haleakala National Park), and privately owned land. The unit contains Anapanapa Lake, Halalii Summit, Haleakala Crater, Hanakauhi Summit, Hina, Mauna Summit, Honokahua Summit, Ka Moa o Pele Summit, Kalapawili Ridge, Kalua Awa Summit, Kaluaiki Crater, Kaluanui Crater, Koolau Gap, Kuiki Summit, Laie Cave, Laie Puu Summit, Lauulu Summit, Namana o ke Akua Summit, Oili Puu Summit, Pohaku Palaha Summit, Puu Alaea Summit, Puu Kauaua Summit, Puu Kumu Summit, Puu Maile Summit, Puu Mamane Summit, Puu Naue Summit, Puu Nole Summit, and Waikekeehia. It provides habitat for 6 populations of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently occupied by 122 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the establishment of additional populations. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium multiflorum*—c

This unit is critical habitat for *Geranium multiflorum* and is 183 ha (450 ac) on State-owned land. The unit contains Manawainui Gulch. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Gouania vitifolia*—a

This unit is critical habitat for *Gouania vitifolia* and is 486 ha (1,198 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Paupau Summit and Halona and Kanaka streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *G. vitifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of ridges and gulches in dry to mesic forests. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis coriacea*—a

This unit is critical habitat for *Hedyotis coriacea* and is 106 ha (262 ac) on State (Lihau Section of the West Maui NAR) and privately owned land. The unit contains Olowalu Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. coriacea* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep,

rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis coriacea*—b

This unit is critical habitat for *Hedyotis coriacea* and is 138 ha (340 ac) on State-owned land (West Maui Forest Reserve). The unit contains Ukumehame Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. coriacea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis mannii*—a

This unit is critical habitat for *Hedyotis mannii* and is 2,234 ha (5,521 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains the Needle Summit, Poohahouhoa Stream, Nakalaloa Stream, Iao Valley, Kauaula, Makila Stream, and Kanaha Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *H. mannii* and is currently occupied by fewer than 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris* linearis montane wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hesperomannia arbuscula*—a

This unit is critical habitat for *Hesperomannia arbuscula* and is 392 ha (968 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Panaewa Valley and Halona and Kanaha streams. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *H. arbuscula* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis.* This is essential to the conservation of the species because it unit provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hesperomannia arbuscula*—b

This unit is critical habitat for *Hesperomannia arbuscula* and is 436 ha (1,076 ac) on privately owned land. The unit contains Iao Valley and Needle, and Poohahaonao, Nakalaloa, and Kinihapai streams. It provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *H. arbuscula* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis.* This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 16—*Hibiscus brackenridgei*—a

This unit is critical habitat for *Hibiscus brackenridgei* and is 212 ha (524 ac) on privately owned land. The unit contains Paleaanu and Kaonohoa gulches and Kaunoahua Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. brackenridgei* and is currently occupied by 8 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry forest, sometimes with *Erythrina sandwicensis* as the dominant tree. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hibiscus brackenridgei*—b

This unit is critical habitat for *Hibiscus brackenridgei* and is 667 ha (1,645 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Olowalu Stream, and Ukumehame. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *H. brackenridgei* and is currently occupied by 14 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry forest, sometimes with *Erythrina sandwicensis* as the dominant tree. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 6—*Ischaemum byrone*—a

This unit is critical habitat for *Ischaemum byrone* and is 18 ha (42 ac) on State and privately owned land. The unit contains Kopiliula Stream, Kapaula Gulch, Waiaaka Stream, Waiohue Bay and Paakea Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *I. byrone* and is currently occupied by fewer than 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the

expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 7—*Ischaemum byrone*—b

This unit is critical habitat for *Ischaemum byrone* and is 11 ha (27 ac) on State-owned land (Waianapanapa State Park). The unit contains Pailoa and Keawaiki Bays, and Pukaulaa Point. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *I. byrone* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the speciess on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Isodendrion pyrifolium*—a

This unit is critical habitat for *Isodendrion pyrifolium* and is 224 ha (555 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Olowalu Stream, and Ukumehame. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *I. pyrifolium* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Lipochaeta kamolensis—a*

This unit is critical habitat for *Lipochaeta kamolensis* and is 1,474 ha (3,644 ac) on State and privately owned land. The unit contains Lualailua Hills and Manawainui, Kamole, and Palaha gulches. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *L. kamolensis* and is currently occupied by 100 to 200 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or gentle slopes outside gulches in dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 11—*Lipochaeta kamolensis*—b

This unit is critical habitat for *Lipochaeta kamolensis* and is 42 ha (105 ac) on State-owned land. The unit contains Pahihi Gulch. It, in combination with Haleakala Ranch lands, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *L. kamolensis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or gentle slopes outside gulches in dry shrubland. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—a

This unit is critical habitat for *Lysimachia lydgatei* and is 90 ha (221 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit and Olowalu Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—b

This unit is critical habitat for *Lysimachia lydgatei* and is 158 ha (391 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Pohakea Gulch and Hanaula Summit. It, in combination with Haleakala Ranch lands, provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for four populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—c

This unit is critical habitat for *Lysimachia lydgatei* and is 47 ha (116 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains no named natural features. It, in combination with Haleakala Ranch Lands, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for

one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—d

This unit is critical habitat for *Lysimachia lydgatei* and is 98 ha (242 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Helu Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 40 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—e

This unit is critical habitat for *Lysimachia lydgatei* and is 18 ha (44 ac) on State-owned land (West Maui Forest Reserve). The unit contains Halepohaku Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 6—*Mariscus pennatiformis*—a

This unit is critical habitat for *Mariscus pennatiformis* and is 30 ha (74 ac) on State and privately owned land. The unit contains Pahiha Point, Kopiliula Stream, Paakea Gulch, Waiohue Bay, Waiaaka Stream, Kapaula Gulch, and Hanawi Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *M. pennatiformis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs with brown soil and talus within reach of ocean spray. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope adscendens*—a

This unit is critical habitat for *Melicope adscendens* and is 160 ha (398 ac) on State (Kanaio NAR) land. The unit contains no named natural features. It, in combination with Ulupalakua Ranch land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. adscendens* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

Maui 8—*Melicope balloui*—a

This unit is critical habitat for *Melicope balloui* and is 151 ha (373 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae. It, in combination with Waikamoi Preserve land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. balloui* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Melicope balloui*—b

This unit is critical habitat for *Melicope balloui* and is 394 ha (972 ac) on federally owned land (Haleakala National Park). The unit contains Kipahulu Valley and Palikea Stream. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *M. balloui* and is currently occupied by 10 to 50 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope knudsenii*—a

This unit is critical habitat for *Melicope knudsenii* and is 28 ha (69 ac) on State-owned land (Kanaio NAR). The unit contains no named natural features. It, in combination with Ulupalakua Ranch land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. knudsenii* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests. This unit is essential to the conservation of the species because it supports an extant

colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope knudsenii*—b

This unit is critical habitat for *Melicope knudsenii* and is 163 ha (403 ac) on State-owned land. The unit contains no named natural features. This unit is essential to the conservation of the species because, in combination with Ulupalakua Ranch, it provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. knudsenii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests. This unit, in combination with Ulupalakua Ranch, provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope mucronulata*—a

This unit is critical habitat for *Melicope mucronulata* and is 34 ha (83 ac) on State-owned land (Kanaio NAR). The unit contains no named natural features. It, in combination with Ulupalakua Ranch, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. mucronulata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle south-facing slopes in lowland dry to mesic forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope mucronulata*—b

This unit is critical habitat for *Melicope mucronulata* and is 194 ha (481 ac) on State-owned land. The unit contains no named natural features. It, in combination with Ulupalakua Ranch, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. mucronulata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle south-facing slopes in lowland dry to mesic forest. This unit is essential to the conservation of the species because, in combination with Ulupalakua Ranch, it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope ovalis*—a

This unit is critical habitat for *Melicope ovalis* and is 934 ha (2,306 ac) on State and Federal (Haleakala National Park) land. The unit contains Kipahulu Valley, Palikea Stream, and Kaukaui Gulch. It provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *M. ovalis* and is currently occupied by 250 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential populations important for the conservation of the specie within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Neraudia sericea*—a

This unit is critical habitat for *Neraudia sericea* and is 623 ha (1,539 ac) on State-owned land. The unit contains Manawainui Gulch, Kamole Gulch and Puu Pane. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *N. sericea* and is currently occupied by 4 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Neraudia sericea*—b

This unit is critical habitat for *Neraudia sericea* and is 1,188 ha (2,938 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Pohakea, and Lihau, Hokuula, and Halepohaku summits. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *N. sericea* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

*Maui 9—Nototrichium Humile—a*

This unit is critical habitat for *Nototrichium humile* and is 397 ha (982 ac) on State (DHHL) and privately owned land. The unit contains Lualailua Hills. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *N. humile* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, old cinder cones in dry shrubland. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being

destroyed by one naturally occurring catastrophic event.

Maui 4—*Peucedanum sandwicense*—a

This unit is critical habitat for *Peucedanum sandwicense* and is 1 ha (2 ac) on State-owned land. The unit contains all of Keopuka Rock. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. sandwicense* and is currently occupied by 20 to 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Peucedanum sandwicense*—b

This unit is critical habitat for *Peucedanum sandwicense* and is 117 ha (289 ac) on privately owned land. The unit contains Iao Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. sandwicense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phlegmariurus mannii*—a

This unit is critical habitat for *Phlegmariurus mannii* and is 221 ha (548 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae and Opana Gulch. It, in combination with Waikamoi Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phlegmariurus mannii*—b

This unit is critical habitat for *Phlegmariurus mannii* and is 383 ha (947 ac) on State-owned land. The unit contains Manawainui Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phlegmariurus mannii*—c

This unit is critical habitat for *Phlegmariurus mannii* and is 476 ha (1,176 ac) on State (Kipahulu Forest Reserve) and federally owned land (Haleakala National Park). The unit contains Puu Anulili and Manawainui Gulch. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Phlegmariurus mannii*—d

This unit is critical habitat for *Phlegmariurus mannii* and is 57 ha (141 ac) on Dtate (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Amahu and Kanaha streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Phlegmariurus mannii*—e

This unit is critical habitat for *Phlegmariurus mannii* and is 35 ha (87 ac) on State (Lihau Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present

population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phyllostegia mannii*—a

This unit is critical habitat for *Phyllostegia mannii* and is 570 ha (1,408 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Opana Gulch and Waikamoi, Honomanu, Haipuaena, and Puohakamau streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha.* This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phyllostegia mollis*—a

This unit is critical habitat for *Phyllostegia mollis* and is 128 ha (316 ac) on State-owned land (Makawao Forest Reserve). The unit contains Opana Gulch. It provides habitat for one population in combination with Haleakala Ranch land of 300 mature, reproducing individuals of the short-lived perennial *P. mollis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa.* This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phyllostegia mollis*—b

This unit is critical habitat for *Phyllostegia mollis* and is 509 ha (1,256 ac) on State-owned land. The unit contains Puu Pane. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mollis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa.* This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Plantago princeps*—a

This unit is critical habitat for *Plantago princeps* and is 164 ha (406 ac) on federally owned land (Haleakala National Park). The unit contains Haleakala Summit and Kaopo Gap. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. princeps* and is currently occupied by 44 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M. polymorpha* montane wet shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Plantago princeps*—b

This unit is critical habitat for *Plantago princeps* and is 327 ha (807 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Iao Valley and Kahoolewa Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. princeps* and is currently occupied by 51 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M. polymorpha* montane wet shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Platanthera holochila*—a

This unit is critical habitat for *Platanthera holochila* and is 240 ha (596 ac) on State (Hana Forest Reserve) and federally owned land (Haleakala National Park). The unit contains Anapanapa Lake and Kalapawili Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. holochila* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Platanthera holochila*—b

This unit is critical habitat for *Platanthera holochila* and is 8 ha (19 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains no named natural features. It, in combination with Maui 17–*Platanthera holochila*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. holochila* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the

conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Platanthera holochila*—c

This unit is critical habitat for *Platanthera holochila* and is 189 ha (466 ac) on State (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Kapaloa and Amala streams. It, in combination with Maui 17–*Platanthera holochila*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. holochila* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest. This unit, in combination with Maui 17–*Platanthera holochila*—b, is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Pteris lidgatei*—a

This unit is critical habitat for *Pteris lidgatei* and is 1,168 ha (2,887 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater, Keahikauo Summit, and Mananole Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. lidgatei* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Pteris lidgatei*—b

This unit is critical habitat for *Pteris lidgatei* and is 163 ha (403 ac) on privately owned land. The unit contains Kauaula Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. lidgatei* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—a

This unit is critical habitat for *Remya mauiensis* and is 228 ha (564 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Ukumehame Valley and Hanaulaiki. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—b

This unit is critical habitat for *Remya mauiensis* and is 567 ha (1,400 ac) on State (West Maui Forest Reserve and Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Wahikuli and Puuiki Gulches and Kula Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—c

This unit is critical habitat for *Remya mauiensis* and is 31 ha (78 ac) on State (West Maui Forest Reserve and Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Honokowai Valley. It, in combination with Maui 18—*Remya mauiensis*—d and Kapunakea Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 18—*Remya mauiensis*—d

This unit is critical habitat for *Remya mauiensis* and is 2 ha (6 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains no named natural features. It, in combination with Maui 17—*Remya mauiensis*—c and Kapunakea Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because

they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—a

This unit is critical habitat for *Sanicula purpurea* and is 34 ha (83 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater. It, in combination with Maui 17—*Sanicula purpurea*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it, in combination with Maui 17—*Sanicula purpurea*—c, provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—b

This unit is critical habitat for *Sanicula purpurea* and is 306 ha (756 ac) on State (Panaewa and Honokowai Sections of the West Maui NAR) and privately owned land. The unit contains Kahoolewa, Kahoolewa Ridge, Puu Kukui Summit, and Violet Lake. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently occupied by 70 to 150 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—c

This unit is critical habitat for *Sanicula purpurea* and is 8 ha (19 ac) on privately owned land. The unit contains no named natural features. It, in combination with Maui 17—*Sanicula purpurea*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently occupied by 50 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Schiedea haleakalensis*—a

This unit is critical habitat for *Schiedea haleakalensis* and is 26 ha (64 ac) on federally owned land (Haleakala National Park). The unit is located in Haleakala Crater. It provides habitat for one population of 300 mature, reproducing individuals of the long-lived perennial *S. haleakalensis* and is currently occupied by 20 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock cracks on sheer cliffs adjacent to barren lava; subalpine shrublands and grasslands with cinder, weathered volcanic ash; or bare lava substrate with little or no soil development and periodic freezing temperatures. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Schiedea haleakalensis*—b

This unit is critical habitat for *Schiedea haleakalensis* and is 77 ha (189 ac) on federally owned land (Haleakala National Park). The unit is located in Haleakala Crater. It provides habitat for one population of 300 mature, reproducing individuals of the long-lived perennial *S. haleakalensis* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock cracks on sheer cliffs adjacent to barren lava; subalpine shrublands and grasslands with cinder, weathered volcanic ash; or bare lava substrate with little or no soil development and periodic freezing temperatures. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 1—*Sesbania tomentosa*—a

This unit is critical habitat for *Sesbania tomentosa* and is 38 ha (94 ac) on non-managed State and privately owned land. The unit contains Honanana Gulch, Alapapa Gulch, Mokolea Point, and Papanahoa Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied by 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Sesbania tomentosa*—b

This unit is critical habitat for *Sesbania tomentosa* and is 79 ha (195 ac) on State-owned land. The unit contains Pimoe and Pohakea summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied by 13 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the

island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Spermolepis hawaiiensis*—a

This unit is critical habitat for *Spermolepis hawaiiensis* and is 91 ha (224 ac) on State (Kanaio NAR) land. The unit contains no named natural features. It provides habitat for one population of 500 mature, reproducing individuals of the annual *S. hawaiiensis* and is currently occupied by 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady spots in *Dodonaea viscosa* lowland dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Spermolepis hawaiiensis*—b

This unit is critical habitat for *Spermolepis hawaiiensis* and is 23 ha (56 ac) on State-owned land (Lihau Section of the West Maui NAR). The unit contains Olowalu Valley. It provides habitat for one population of 500 mature, reproducing individuals of the annual *S. hawaiiensis* and is currently occupied by 300 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady spots in *Dodonaea viscosa* lowland dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Tetramolopium capillare*—a

This unit is critical habitat for *Tetramolopium capillare* and is 1,782 ha (4,404 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Halepohaku, Hanaulaiki, Helu, Koai, Lihau, Luakoi, and Ulaula summits. It provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *T. capillare* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky substrates in *Heteropogon contortus* lowland dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species, includes habitat that is important for the expansion of the present population, and is the only habitat essential for the conservation of this species on Maui. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential populations important for the conservation of the specie within the unit is geographically separated enough to avoid their destruction by one naturally occurring event.

Maui 17—*Tetramolopium remyi*—a

This unit is critical habitat for *Tetramolopium remyi* and is 287 ha (712 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Stream and Valley. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *T. remyi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, red sandy loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 12—*Vigna o-wahuensis*—a

This unit is critical habitat for *Vigna o-wahuensis* and is 144 ha (356 ac) on State-owned land. The unit contains area east of Kamanamana Point. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *V. o-wahuensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic grassland or shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Zanthoxylum hawaiiense*—a

This unit is critical habitat for *Zanthoxylum hawaiiense* and is 363 ha (895 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Kahakapao Stream. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Z. hawaiiense* and is currently occupied by 3 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests or *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Kahoolawe 1—*Kanaloa kahoolawensis*—a

This unit is critical habitat for *Kanaloa kahoolawensis* and is 562 ha (1,388 ac) on State (KIRC) land. The unit contains Keana Keiki, Laa o Kealaikahiki, Honukanaenae, and Wai Honu Gulch. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kahoolawe 2—*Kanaloa kahoolawensis*—b

This unit is critical habitat for *Kanaloa kahoolawensis* and is 613 ha (1,515 ac) on State (KIRC) land. The unit contains Aleale, Kunaka Cave, Kamohio Bay, Iliililoa, Lae o Kuakaiwa, Lae O Kaka, Lae o Halona, Keoheuli Bay,

Kaukamaka Gulch, Pali o Kalapakea, Kalua o Kamohoalii, Hula Kao, and Lae o ka Ule. This unit provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kahoolawe 3—*Kanaloa kahoolawensis*—c

This unit is critical habitat for *Kanaloa kahoolawensis* and is 5 ha (12 ac) on State (KIRC) land. The unit contains the entirety of Puu Koae Islet. This unit, in combination with a portion of Kahoolawe 2—*Kanaloa kahoolawensis*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us 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. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect the critical habitat of one or more of the 60 plant species from Maui and Kahoolawe will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.,*) the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action, including funding (*e.g.,* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy), regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission, may also be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted would not require section 7 consultation as a result of this rule designating critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include manipulation of vegetation, such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(7) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated deleterious effects on the listed species and the primary constituent elements of their habitats.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

*Analysis of Managed Lands Under Section 3(5)(A)*

Pursuant to the definition of critical habitat in section 3(5)(A) of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.,* the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.,* those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.,* it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management or protection.

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 60 plant species were examined to determine the adequacy of special management considerations or protection are required and, consequently, whether such areas meet the definition of critical habitat under section 3(5)(A). We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, we contacted the major private landowners on Maui and Kahoolawe by mail and we met with several landowners between the publication of the revised proposal on April 3, 2002, and the end of the comment period on September 30, 2002, to discuss their current management for the plants on their lands. We also met with Maui District DOFAW staff to discuss management activities they are conducting on Maui. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

In determining whether a management plan or agreement provides adequate management or protection, we first consider whether that plan provides a conservation benefit to the species. We considered the following threats and associated recommended management actions:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999, 2001; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include nonnative grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including axis deer, goats, cattle, and pigs); direct and indirect effects of nonnative plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be negatively affected by fruit- and flower-eating pests such as non-native arthropods, molluscs, and rats, and photosynthesis and water transport are affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of nonnative plants, and numerous nonnative insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in their 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of these plants. These actions are described in our recovery plans for these 60 species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are important in providing a conservation benefit to the species: Feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). On a case-by-case basis, these actions may rise to different levels of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 60 species of plants are found on Federal, State, and private lands on the islands of Maui and Kahoolawe. Information received in response to our public notices; meetings with landowners of Maui County and Maui District DOFAW staff; the December 18, 2000, and April 3, 2002, proposals; public comment periods; and the March 20, 2001, and September 12, 2002, public hearings; as well as information in our files, indicated that there is limited on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the other areas do require special management or protection. The following discussion analyzes current management plans that provide a conservation benefit to the species to assess whether they meet the Service's requirements for adequate management or protection

*Federal Lands*

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

One species, *Sesbania tomentosa,* occurs on Kanaio Training Area (Hawaii Army National Guard) lands on the island of Maui, and we believe this land is essential for the conservation of this species. In 1998, funds were provided for protective fencing and monitoring of *Sesbania tomentosa* on this land. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Because appropriate conservation management strategies have not been adequately funded or effectively implemented for *Sesbania tomentosa* on this land, we cannot at this time find that management of this land under Federal jurisdiction is sufficient to find that they do not meet the definition of critical habitat. Therefore, this area has been included within the critical habitat units.

Contractors for the U.S. Navy are clearing the state-owned island of Kahoolawe of military ordnance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Act to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that special management is not required for the listed plant species, and areas on the island are included within the critical habitat units for *Kanaloa kahoolawensis.*

**State of Hawaii Lands**

*The Upper Areas of Hanawi Natural Area Reserve (HNAR)*

Three plant species, *Geranium multiflorum,* and *Clermontia samuelii* ssp. *hanaensis,* and Cyanea mceldowneyi are reported from the upper areas of HNAR (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 3,035 ha (7,500 ac) of diverse native ecosystems and endangered forest bird habitat. The Department of Land and Natural Resources (DLNR) manages Natural Area Reserves, except that any use must be specifically approved by the Natural Area Reserve System Commission. The State holds Natural Area Reserves in trust and they may not be non-nativeated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. sections 195–1—195–11). The primary goals of the HNAR are to: (1) Protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 809 ha (2,000 ac) has been fenced and pigs removed. Fences have been constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on State land. The Haleakala National

Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the ''middle forest unit'' (Willian Evanson, DLNR, pers. comm., 1999).

The nonnative plant control program within HNAR focuses on habitat-modifying nonnative plants (weeds). A weed priority list has been compiled for HNAR, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects help locate developing populations of other priority weed species and, if necessary, removal of these populations is conducted (DLNR 1989).

Because *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaenis* and their habitats within the upper areas of HNAR (above 1,525 m (5,000 ft) elevation) are permanently protected and managed by State law and because the continued successful management of this area is assured by State funding, HRS 195–9 (Natural Area Reserve Fund; Heritage Program; established) establishes in the state treasury a special fund known as the natural area reserve fund to implement the purposes of this chapter, including the identification, establishment, and management of natural area reserves * * * the fund shall be administered by the department [DLNR]. Since its establishment, DLNR has received funding for this program each year from the Legislature and funding for natural resource programs such as this is a high priority and unlikely to be discontinued (Randy Kennedy, Native Resource Program Manager, DOFAW, pers. comm. 2003). This area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of HNAR does not meet the definition of critical habitat in the Act, and we are not designating this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)) as workload and resources allow.

**Private Lands**

*The Nature Conservancy of Hawaii's Waikamoi and Kapunakea Preserves, which are located on the northeastern slopes of Haleakala and in the West Maui mountains, respectively*

Lands within The Nature Conservancy of Hawaii's (TNCH) Maui preserves were not included within proposed critical habitat. Sixteen species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remya mauiensis,* and *Sanicula purpurea*) are reported from TNCH's Waikamoi and Kapunakea Preserves, which are located on the northeastern slopes of Haleakala and in the West Maui mountains, respectively (TNCH 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual conservation easements from the private landowners to TNCH and are included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the DLNR and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. sections 195–1—195–11; Hawaii Administrative Rules section 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the ten species including control of nonnative species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in

conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extends the length of the preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The nonnative plant control program within both preserves focuses on controlling habitat-modifying nonnative plants (weeds) in intact native communities and preventing the introduction of additional non-native plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventive measures (prevention protocol) are required by all who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of nonnative plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the State Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of nonnative invertebrates and small mammals on native Hawaiian ecosystems are poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long-term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokowai section of the West Maui NAR. TNCH currently acts as a consultant to Maui Land and Pineapple Company, managers of Puu Kukui WMA, and has a Master Cooperative Agreement with DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, Koolau Forest Reserve, and the State's Hanawi NAR. An agreement between the DLNR, East Maui Irrigation Company, Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, TNCH, and Haleakala National Park was signed in order to implement a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi complement the objectives of the plan as much as possible. The partnership agreement is being used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provide a conservation benefit to the species and because they are permanently protected and managed, these lands are not in need of special management or protection. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not designating these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

**Maui Land and Pineapple Co., Ltd.**

*Maui Pineapple Company's Puu Kukui WMA, Located in The West Maui Mountains*

Lands within Maui Land and Pineapple Co.'s Puu Kukui Watershed Management Area, located in the West Maui Mountains, were included in proposed critical habitat on Maui. Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea*) are reported from the Puu Kukui WMA (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). In the December 18, 2000, proposal we proposed that lands within the Puu Kukui WMA were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we proposed that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui WMA was not adequate nor assured. However, during the comment periods for the April 3, 2002, proposal we received yet more information from the Watershed Supervisor that, contrary to the previous comments submitted, funding for Puu Kukui WMA was indeed secure. In his September 30, 2002, letter to us the Puu Kukui Watershed Supervisor stated that since 1988 Maui Land and Pineapple has proactively managed Puu Kukui Watershed and that they are currently in their second, six-year contract with the State of Hawaii's NAP Program to preserve the native biodiversity of their conservation lands. They are also receiving funding from the Service to survey for rare plants on their lands and build feral ungulate control fences for the protection of listed plants. In other words, they have a history of self-funding and conducting proactive conservation efforts in Puu Kukui, they are enrolled in the State's NAP Program and they receive funding from the Service to support their conservation efforts. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act as discussed below, and we are not designating critical habitat on this land.

At just over 3,483 ha (8,600 ac), the Puu Kukui WMA is the largest privately owned preserve in the State. In 1993, the Puu Kukui WMA became the first private landowner participant in the NAP program. In the NAP program, Puu Kukui WMA staff are pursuing four management programs stipulated in

their Long Range Management Plan with an emphasis on reducing nonnative species that immediately threaten the management area (Maui Pineapple Company 1999).

The primary management goals within Puu Kukui WMA are to (1) eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of non-native invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed.

Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the Puu Kukui WMA.

The nonnative plant control program within Puu Kukui WMA focuses on habitat modifying weeds, prioritizing them according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and manual/mechanical control. Biological control of *Clidemia hirta* was tried by releasing *Antiblemma acclinalis* moth larvae.

Natural resource monitoring and research address the need to track biological and physical resources of the Puu Kukui WMA and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photo points, nonnative species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Additionally, logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed is provided.

For these reasons, Puu Kukui WMA meets the three criteria for determining that an area is not in need of special management as discussed above. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act, and we are not designating this land as critical habitat. Should the status of this reserve change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, Puu Kukui WMA, and the upper area (above 1,525 m (5,000 ft)) of Hanawi NAR, are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not designating these lands as critical habitat.

**Analysis of Impacts Under Section 4(b)(2)**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when exclusion will result in the extinction of the species concerned.

**Economic Impacts**

Following the publication of the revised proposed critical habitat designation on April 5, 2002, a draft economic analysis (DEA) was prepared to estimate the potential economic impact of the proposed designation in accordance with the Court's decision in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on October 2, 2002 (67 FR 61845). We accepted comments on the draft analysis until November 2, 2002.

Our draft economic analysis evaluated the potential direct and indirect economic impacts of section 7 associated with the proposed critical habitat designation for the 61 plant species from the islands of Maui and Kahoolawe over the next ten years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits that could occur coextensively with critical habitat designation, but are not necessarily directly related to the Act. Examples of indirect impacts include potential effects to property values, potential effects of redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations including incremental consultations and technical assistance; (2) Modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) Uncertainty and public perceptions resulting from the designation of critical habitat including potential indirect costs resulting from the loss of hunting opportunities and the interaction of State and local laws; and (4) Potential offsetting beneficial impacts associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

The analysis in the DEA incorporates two baselines: one which addresses the impact of critical habitat designation that may be ''attributable co-extensively'' to the listing of the species and one which addresses the incremental impact of the critical habitat designation itself.

This Addendum utilizes one baseline and analyzes the impacts of critical habitat designation that may be attributable co-extensively to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting solely from critical habitat designations, the Service believes that it is reasonable to estimate the effects of the designation utilizing this approach to avoid understating potential economic impacts. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision.

The addendum incorporates public comments on the draft analysis and makes other changes in the draft. These changes were primarily the result of modifications made to the proposed critical habitat designation based on biological information received during the comment periods. In addition, we have completed an amendment to the addendum in which we have examined the potential economic impacts of a critical habitat designation in areas that were not included in the original proposal because we believed they were areas essential to the conservation of the species but did not require special management considerations or protection and thus could be excluded from designation under section 3(5)(a) of the Act.

Together, the draft economic analysis, the addendum and the addendum amendment constitute our final economic analysis. The draft economic analysis estimated the total direct cost of the designation of critical habitat on Maui and Kahoolawe for the 60 plant species co-extensive with the listing to be between $418,700 and $2,075,600 over 10 years. This direct cost was revised in the addendum to $241,700 to $1,441,200 over 10 years. The reduction of $177,000 to $634,400 from the costs estimated in the draft economic analysis is primarily due to the exclusion of some proposed units and the significant reduction in size of other proposed units. Using a seven percent discount rate and assuming these direct costs are distributed evenly over the 10-year period, the annualized direct costs range from $24,170 to $144,120 per year.

Certain costs identified the final economic analysis are based on ''worst-case'' scenarios that, while possible, do not seem likely based on past consultation histories for these species. In particular, the final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 60 plant species on Maui and Kahoolawe. These reported costs are speculative and, in general, thought to have a low probability of occurrence. In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

The likely direct cost impact of designating critical habitat on Maui and Kahoolawe for the 60 plant species is estimated to be between $24,170 to $144,120 per year over the next 10 years. This estimate, however, includes areas that were proposed as critical habitat, but have been excluded under sections 3(5)(a) and/or 4(b)(2) of the Act. Therefore, the direct cost of designating critical habitat for these 60 plant species is likely to be somewhat less than this amount.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

**Other Impacts**

As described in the ''Analysis of Managed Lands Under Section 3(5)(A)'' section above, based on our evaluation of the adequacy of special management and protection that is provided in current management plans involving *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia oblongifolia ssp. mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hesperomannia arborescens, Melicope balloui, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remya mauiensis,* and *Sanicula purpurea* in accordance with section 3(5)(A)(i) of the Act, we have not included TNCH's Waikamoi and Kapunakea Preserves, Maui Land and Pineapple's Puu Kukui WMA, and the State's upper Hanawi NAR lands, in this final designation of critical habitat. However, to the extent that special management considerations and protection may be required for these areas, and they therefore meet the definition of critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

In addition, approximately 3,894 ha (9,622 ac) within five proposed critical habitat units (Maui units H, I1, I2, and I4) located on private lands owned by Ulupalakua and Haleakala Ranches are excluded from designation under section 4(b)(2) because the benefits provided by these two landowners' voluntary conservation activities within and adjacent to these units outweigh the benefits provided by a designation of critical habitat.

The Service believes that designation of critical habitat on these lands would be a disincentive to those that have demonstrated a willingness to manage their lands in a manner compatible with the conservation of listed and non-listed species on Maui and Kahoolawe. Designation, therefore, would have a strong possibility of having a detrimental effect on the recovery of the listed species on these lands. The exclusion of these lands from critical habitat, on the other hand, will help improve and maintain our positive relationship with the landowners involved and it will also provide incentives to other landowners on Maui and Kahoolawe to consider implementing similar voluntary conservation activities, conservation partnerships, and beneficial natural resource programs on their lands.

TNCH's Waikamoi and Kapunakea Preserves contain occupied habitat for 13 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea*) and unoccupied habitat for three species (*Melicope balloui, Phlegmariurus mannii,* and *Remya mauiensis*). The State's upper Hanawi NAR contains occupied habitat for *Clermontia samuelii* and *Geranium multiflorum,* and unoccupied habitat for *Cyanea mceldowneyi.* Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea*) occur within the Maui Land and Pineapple Company's Puu Kukui WMA. For a more detailed description of the management activities conducted on TNCH's Waikamoi and Kapunakea Preserves, the State's Hanawi NAR and Maui Land and Pineapple's Puu Kukui WMA, see the ''Analysis of Managed Lands Under Section 3(5)(A)'' section.

The portion of proposed unit Maui H on Ulupalakua Ranch lands is occupied habitat for nine species: *Alectryon macrococcus; Bonamia menziesii; Cenchrus agrimonioides; Flueggea neowawraea; Geranium arboreum; Lipochaeta kamolensis; Melicope adscendens; Melicope knudsenii;* and *Melicope mucronulata.* It is unoccupied habitat for three species: *Clermontia lindseyana; Colubrina oppositifolia;* and *Diellia erecta.*

Ulupalakua Ranch is involved in several important voluntary conservation agreements and is currently carrying out some of these activities for the conservation of these species. For example, the Partners for Fish and Wildlife Auwahi and Puu Makua agreements were entered into in fiscal year 1997 and 1998 with the stated purpose of protecting and restoring dryland forest including construction of exclosure fences, a greenhouse, access road, and propagation and outplanting of native plants. Preservation of these areas conserves critically endangered species of plants and animals in one of Hawaii's most degraded ecosystem types (lowland dry forest). This management strategy is consistent with recovery of these species. The Auwahi agreement (Auwahi I Project) is between Ulupalakua Ranch, USGS–BRD, and the Service. The Service provided funding ($64,388) for fence materials, plant

propagation and outplanting, and weed control, Ulupalakua Ranch provided labor and materials valued at $18,000, and USGS–BRD provided materials and technical assistance as well as staff and volunteer labor. In the 4 ha (10 ac) Auwahi project area, Ulupalakua Ranch has built the exclosure fence, outplanted native plants grown in the greenhouse including *Alectryon macrococcus* var. *auwahiensis* and *Zanthoxylum hawaiiense,* removed the majority of nonnative alien species within the fence, and removed all ungulates. The Service provided $31,675 through an agreement with Ulupalakua Ranch for restoration work at Puu Makua. Ulupalakua Ranch has provided in-kind labor and materials valued at $37,055 to construct a fence around the 40-ha (100-ac) exclosure, removal of ungulates, control of nonnative plants and out-planting of native plants. The first two tasks have been completed, with weed control and out-planting ongoing.

A third voluntary partnership project undertaken in cooperation with the Ulupalakua Ranch is the Auwahi II Dryforest Restoration Project. The Service provided $76,500 (matched by in-kind services valued at $52,000) for this 8-ha (20-ac) restoration effort adjacent to the Auwahi I project. This project is ongoing, and will employ the same methods used at Auwahi I: construct of ungulate exclosure fence; remove ungulates; control nonnative plants; and out-plant native species (including listed species).

In addition, Ulupalakua Ranch entered a partnership with Ducks Unlimited, a private conservation organization, and the Natural Resources Conservation Service's (NRCS) Wetland Reserve Program in 2000, to create wetland complexes suitable for two endangered birds, the Hawaiian Goose, nene (*Branta sandvicensis*) and Hawaiian duck, koloa (*Anas wyvilliana*). NRCS Wetland Reserve Program (WRP) provided $100,000 for funding and technical support to develop the wetland complex, Ducks Unlimited provided matching funds and provided full survey, design, construction management and completion of wetland development practices, and Ulupalakua Ranch provided fencing, equipment, labor or other in-kind services as required to match the WRP funds. Ducks Unlimited also conducted waterfowl monitoring at the four ponds for one full year after pond construction. In 2001, a 14 ha (35 ac) area was fenced and encompassed four constructed artificial ponds and associated upland habitat at a 1,585 m (5,200 ft) elevation site. The ponds were created to attract nene and koloa pairs to forage and nest within the protected pond/wetland area, which totals approximately 0.4 ha (1 ac) of surface water, with 1–2 m (3–6 ft) depths filled and maintained by natural hydrology and rainfall. Nene may naturally disperse to Ulupalakua Ranch from Haleakala National Park and the few koloa now present on Maui may disperse to potential higher elevation habitat at the ranch. Normal grazing and management of pasture lands throughout Ulupalakua Ranch will also provide additional foraging areas for nene.

As endangered species are anticipated on the ranch, Ulupalakua Ranch is developing a Safe Harbor Agreement with the Service and the State through the Safe Harbor program. The Safe Harbor program encourages proactive management to benefit endangered and threatened species on non-Federal lands by providing regulatory assurances to landowners that no additional Endangered Species Act restrictions will be imposed on future land, water, or resource use for enrolled lands. The intended purpose of the ranch's Safe Harbor Agreement is to restore and enhance foraging and breeding habitat for two endangered Hawaiian waterbirds at Ulupalakua Ranch in East Maui. Under this Agreement, Ulupalakua Ranch will create a fenced 14-ha (35-ac) pond/wetland area and maintain it for 20 years. If endangered species are attracted to the area, Ulupalakua Ranch's voluntary conservation activities will contribute to recovery by increasing their reproduction, survival, and distribution on Maui.

The portion of proposed units Maui H, I1, I2, and I4 on Haleakala Ranch Company lands is occupied habitat for seven species: *Alectryon macrococcus; Cyanea mceldowneyi; Diellia erecta; Diplazium molokaiense; Geranium arboreum; Melicope balloui;* and *Phlegmariurus mannii.* It is unoccupied habitat for 11 species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia lindseyana; Cyanea glabra; Geranium multiflorum; Lipochaeta kamolensis; Neraudia sericea; Phyllostegia mannii; Phyllostegia mollis; Plantago princeps; and Platanthera holochila.*

Haleakala Ranch Company is involved in several important voluntary conservation agreements that benefit the species included in the proposed critical habitat. For example, in the mid-1980s, Haleakala Ranch Company granted TNCH a perpetual conservation easement that included over 19,000 ha (47,000 ac) (Waikamoi Preserve) on Maui in order to protect its native forest resources and watershed from damage caused by pigs and cattle. Haleakala Ranch Company has been working with the Central Maui Soil and Water Conservation District to address soil and resource issues. In cooperation with the NRCS Environmental Quality Incentives Program (EQIP), Haleakala Ranch Company has implemented a weed control program that has been on-going for over 80 years. Eight years ago, the Haleakala Ranch Company Directors created and filled a Land Steward position in order to shepherd the ranch's conservation efforts and update the conservation plans for all Haleakala Ranch Company lands.

In addition, the Service's Partners for Fish and Wildlife Puu Pahu agreement with Haleakala Ranch Co. and NRCS within proposed unit Maui I1 was entered into in fiscal year 2001 with the stated purpose of protecting and restoring native subalpine dry shrubland. This agreement included construction of a 6.9 km (4.3 mi) exclosure fence and removal of ungulates within the area in order to allow the already semi-intact native vegetation to regenerate. Preservation of this area conserves critically endangered species of plants and animals in one of Hawaii's most restricted ecosystem types (subalpine dry shrubland). This management strategy is consistent with the recovery of these species. The Service and NRCS provided funding for fencing materials ($91,418 from the Service) and are providing technical assistance on the conservation of *Geranium arboreum* and restoration of the subalpine dry shrubland. Haleakala Ranch Co. is building the fence and removing the ungulates (in-kind cost-share valued at $28,875). This work is planned for completion by August 30, 2003. Haleakala Ranch Co. has also worked with DOFAW for the past 2 years on an ungulate-free reserve for native habitat regeneration in the Waiopae area. Haleakala Ranch Co. is fencing the area to improve grazing management from the forest to the shoreline. These actions will include riparian protection to improve habitat for native plants, especially *Lipochaeta kamolensis* and *Alectryon macrococcus,* and watershed management.

According to our published recovery plans, recovery of the species addressed in this rule will require self-sustaining populations distributed across the landscape of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). The highest priority recovery tasks include active management such as plant

propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of these species. Many of these types of conservation actions in these areas of Maui are carried out as part of TNCH's, the State's, ML&P's, and Ulupalakua and Haleakala Ranch's participation in landowner incentive-based programs, and by actions taken on the landowner's initiative, as well as by actions taken on the State's prioritization and initiative, and Ulupalakua Ranch's and Haleakala Ranch's participation with the Service's Partners for Fish and Wildlife. These activities, which are described in more detail above, require substantial voluntary cooperation by each entity and other cooperating landowners and local residents.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. In particular we considered: to what extent a critical habitat designation would confer additional regulatory conservation benefits on these species; to what extent the designation would provide an educational benefit to the members of the public that would lead to enhanced conservation; and whether the critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on each landowner's lands as well as other non-Federal lands on Maui that could contribute to recovery.

*(1) Benefits of Inclusion*

These areas contain habitat essential to the conservation of the species listed for each area as described above. The primary direct benefit of inclusion of these lands as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

The benefit of a critical habitat designation would ensure that any actions authorized, funded or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act to determine if the action is likely to jeopardize the continued existence of the listed species.

Much of the area on TNCH's lands is already occupied habitat for 13 of the 16 listed species. Therefore, any Federal activities that may affect these areas will likely require section 7 jeopardy consultation. Historically, we have conducted only one informal consultation under section 7 regarding Federal actions on TNCH's land on Maui. This consultation was conducted with the U.S. Department of Agriculture to review the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. Thirteen of the 60 species, *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea,* are known to occur within the preserves.

Much of the area on State lands is already occupied habitat for two of the three listed species. Therefore, any Federal activities that may affect these areas will likely require section 7 jeopardy consultation. Historically, we have conducted one formal consultation and 16 informal consultations under section 7 on the islands of Maui and Kahoolawe for one or more of the 60 plant species. None of these consultations involved this State land.

Much of the area in the ML&P's Puu Kukui WMA is already occupied by *Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea.* Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 jeopardy consultation. Historically, we have conducted one informal consultation for this property. It addressed the beneficial effects of Federal funding for ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area.

On Maui, historically we have conducted only one formal consultation and 16 informal consultations under section 7 for any of the plant species found on Maui. Of these, only two informal consultations were conducted on Ulupalakua Ranch. These were intra-Service consultations on the effects of fencing and outplanting within the Puu Makua Partnership Project area and the Auwahi Partnership Project area (see discussion below).

We have never completed a section 7 consultation on Haleakala Ranch Company's lands (although one is in the process of being completed for the Puu Pahu project that the Service is funding in part).

As a result of the low level of previous Federal activity on these lands, and after considering the future Federal activities that might occur on these lands, it is the Service's opinion that there is likely to be a low number of future Federal activities that would adversely affect habitat on the lands described above. Therefore, we anticipate little additional regulatory benefits from including these areas in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed extant species.

Another possible benefit of designating critical habitat is that the designation can educate the public regarding the potential conservation value of an area, which may contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Information about the species for which suitable habitat was identified on these lands on Maui, including other parties engaged in conservation activities, could have a positive conservation benefit for the species.

While we believe this educational outcome is important for the conservation of these species, we believe it has already been achieved through the existing management, education, and public outreach efforts carried out by land owners and their conservation partners. The Nature Conservancy of Hawaii has a well-developed public outreach infrastructure that includes magazines, newsletters, and well-publicized public events on Maui and throughout Hawaii. The State has a well-developed public outreach infrastructure that includes websites, newsletters, and well-publicized public events on Maui and throughout Hawaii. ML&P features the Puu Kukui Watershed preserve on its Web site (*http://www.maui.net/mauilnp/puu_kukui.html*) and the Puu Kukui Watershed department staff hold monthly volunteer weed service trips throughout the year. An annual boardwalk hike ($1,500/person) for a dozen people is held in August/September with one free ''prize'' slot reserved for the student winner of an environmental essay contest from Maui County high schools (Randy Bartlett, Watershed Management Supervisor, ML&P, in litt., 2002). Through the

critical habitat designation process, the portion of unit Maui H that lies within Ulupalakua Ranch and the portion of units Maui H, I1, I2, and I4 that lie within Haleakala Ranch have been identified as essential to the conservation of 25 of the 60 Maui plant species addressed in this rule. In addition, the existing conservation activities being conducted within proposed unit Maui H that lies within Ulupalakua Ranch and the portion of proposed units Maui H, I1, I2, and I4 that lie within Haleakala Ranch, as well as other portions of each ranch, by the Service and other Federal agencies (*e.g.*, USDA NRCS), the State, and private organizations (*e.g.*, Ducks Unlimited) demonstrate that the public is already aware of the importance of this area for the conservation of the species located on each ranch. These examples and other media extol and explain the conservation importance of these lands and their conservation value. A final designation of critical habitat would simply affirm what is already widely accepted by Hawaii's conservationists, public agencies, and most of the public concerning the conservation value of these lands.

In sum, we believe that a critical habitat designation for listed plants on these lands on Maui would provide a relatively low level of additional regulatory conservation benefit to each of the plant species beyond what is already provided by existing section 7 consultation requirements due to the physical presence of the listed species. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this land that would trigger section 7 consultation. The Service also believes that a final critical habitat designation provides little additional educational benefits since the conservation value is already well known by the landowner, the State, Federal agencies, private organizations, and the public.

*(2) Benefits of Exclusion*

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these listed plant species on Maui and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts (Bean 2002, Wilcove *et al.* 1998). For example, three of the 16 species associated with Waikamoi and Kapunakea Preserve are extirpated from TNCH lands, *Cyanea mceldownei* associated with Hawaii NAR lands, three of the 12 species associated with proposed unit Maui H on Ulupalakau Ranch, and 11 of the 18 species associated with proposed units Maui H, I1, I2, and I4 on Haleakala Ranch Company are extirpated from these respective lands, and repopulation is likely not possible without human assistance and landowner cooperation. Although none of the species associated with ML&P lands are extirpated, augmentation of existing populations and establishment of new populations are also likely not possible without human assistance and landowner cooperation.

As described earlier, TNCH, the State, and ML&P have a history of entering into conservation agreements with various Federal and State agencies and other private organizations on their lands. The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The State's NAR mission is to preserve and protect representative samples of the Hawaiian biological ecosystems and geological formations. One of ML&P's missions is to practice prudent stewardship of their land and water resources ensuring the protection of crucial water resources for the community, as well as the rare and endangered species of plants and animals.

To address the conservation needs of the species in a larger area, Ulupalakua Ranch has expanded their Partners for Fish and Wildlife projects with the Service, in cooperation with the State NAR program for conserving additional areas, which include the following important voluntary actions by Ulupalakua Ranch: (1) Construction of exclosure fencing around a portion of Ulupalakua Ranch and the Kanaio NAR (a portion of proposed Maui unit H) with $50,000 provided by Service, matched by in-kind services (*e.g.*, labor and materials) valued at $50,000; (2) Active management of feral ungulates that are negatively impacting listed plants within the fenced areas; (3) Active management of nonnative grasses and other fire hazards, and development of fire control measures; and (4) Nursery propagation and planting of native flora, including some of the 12 species, within the fenced areas.

Haleakala Ranch Company informed the Service that they are currently devising management plans for conserving resources, which include the following important voluntary actions by Haleakala Ranch Company: (1) Construction of a 9 ha (22 ac) exclosure fence around Keokea Gulch in Kihei to reduce sedimentation on the shoreline and reef and to reduce the fire hazard in the area by using R–1 reclaimed water to irrigate a riparian buffer. construction of an exclosure fence for a dryland lava flow in the Keokea area. In cooperation with DOFAW, fence construction of an exclosure in the Waiopae area for habitat protection of native forest and riparian areas (proposed units H, I1, I2, and I4); (2) Control of feral ungulates that are negatively impacting listed plants within the fenced areas; (3) Control of nonnative grasses and other fire hazards, and development of fire control measures; and (4) Habitat protection for natural regeneration of native flora within the fenced areas.

The Service believes that each of the listed species within these areas is benefitting substantially from the landowner's proactive management actions. Voluntary management actions include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the reintroduction of species currently extirpated from various areas, and for which the technical ability to propagate these species currently exists or will be developed in the near future.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on Maui, simply preventing ''harmful activities'' alone will not slow the extinction of listed plant species (Bean 2002). Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of these species to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners on Maui who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management

authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, James 2002, Knight 1999, Main *et al.* 1999, Norton 2000, Shogren *et al.* 1999, Wilcove *et al.* 1998). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species' (Crouse *et al.* 2002). Because the Federal government manages relatively little land on Maui, and because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on Maui is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

Therefore, the Service believes that excluding these lands from critical habitat will help maintain and improve our partnership relationship with these landowners by recognizing their positive contribution to conservation on Maui. It will also reduce the cost and logistical burden of unnecessary regulatory oversight. We also believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions.

*(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion*

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the following areas as critical habitat for the Maui plant species concerned that occur on these lands as described above: TNCH's Maui preserves, the State's Hawaii NAR, ML&P's Kukui WMA, the Ulupalakua Ranch portion of proposed unit Maui H, and the Haleakala Ranch portion of proposed units Maui H, I1, I2, and I4.

This conclusion is based on the following factors:

(i) TNCH's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Therefore, all of their preserve lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals. In the past, TNCH has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

The State's NAR mission is to preserve and protect representative samples of the Hawaiian biological ecosystems and geological formations. Therefore, the Hanawi NAR lands are currently being managed on a proactive basis in cooperation with the Service, the National Park, and private organizations to achieve important conservation goals. In the past, the State has cooperated with Federal agencies, and private organizations to implement proactive conservation activities on their lands that have resulted in tangible conservation benefits.

One of ML&P's missions is to practice prudent stewardship of their land and water resources ensuring the protection of crucial water resources for the community, as well as the rare and endangered species of plants and animals. Therefore, all of their Puu Kukui WMA lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals. In the past, ML&P has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

A substantial amount of the Ulupalakua Ranch portion of proposed unit Maui H are currently being managed by the landowner on a voluntary basis in cooperation with us, the State of Hawaii, and USGS–BRD to achieve important conservation goals. In the past, Ulupalakua Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

A substantial amount of the Haleakala Ranch Co. portion of proposed units H, I1, I2, and I4 is currently being managed by the landowner on a voluntary basis in cooperation with us, the State of Hawaii, USGS–BRD, and TNCH to achieve important conservation goals. In the past, Haleakala Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

(ii) Simple regulation of ''harmful activities'' is not sufficient to conserve these species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of all of the listed species on Maui due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, plant propagation, and outplanting.

The need for TNCH's cooperation is especially acute because 3 of the 16 reported species are not currently found on the preserves. Future conservation efforts, such as translocation of these three plant species on to these lands and expansion of the extant species, will require the cooperation of TNCH and other non-Federal landowners on Maui. Exclusion of TNCH lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of TNCH to plant recovery, and by streamlining or reducing redundant regulatory oversight.

The need for the State's cooperation is also especially acute because the upper Hanawi NAR is unoccupied by *Cyanea mceldowneyi.* Future conservation efforts, such as translocation of this plant species back into unoccupied habitat on this land and expansion of the extant species, will require the cooperation of the State and other non-Federal landowners on Maui. Exclusion of the State's Hanawi NAR lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of the State NAR to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

The need for ML&P's cooperation is necessary because future conservation efforts, such as expansion of the extant species, will require the cooperation of ML&P and other non-Federal landowners on Maui. Exclusion of ML&P lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of ML&P to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

The need for Ulupalakua Ranch's cooperation is important because the proposed unit Maui H is unoccupied by 3 of the 12 species. Future conservation efforts, such as translocation of these three plant species back into unoccupied habitat on these lands, will require the cooperation of Ulupalakua Ranch.

The need for Haleakala Ranch Co.'s cooperation is especially acute because the proposed units Maui H, I1, I2, and I4 are unoccupied by 11 of the 18 species. Future conservation efforts,

such as reintroduction of these 11 plant species back into unoccupied habitat on these lands, will require the cooperation of Haleakala Ranch Co.

(iii) The Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The current partnership agreements between TNCH and many organizations, the State and many organizations, ML&P and many organizations, and current agreements between the Service and Ulupalakua Ranch and Haleakala Ranch already provide significant conservation and educational benefits.

The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above and through public outreach efforts. Likewise, there will be little additional Federal regulatory benefit to the species because (a) there is a low likelihood that these proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) on land owned by TNCH, the State, Ulupalakua and Haleakala Ranches, and ML&P much of the areas are already occupied by listed species and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these proposed units.

(iv) It is documented that publicly and privately owned lands and lands owned by conservation organizations such as these, alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002, Crouse *et al.* 2002). Excluding these lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on Maui who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000, Main *et al.* 1999, Shogren *et al.* 1999, Wilcove and Chen 1998). As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation.

As described above, the overall benefits to these species of a critical habitat designation for these areas are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with each landowner and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. There is a higher likelihood of beneficial conservation activities occurring in these and other areas of Maui without designated critical habitat than there would be with designated critical habitat in these areas. In conclusion, we find that the designation of critical habitat on the TNCH Maui preserves, the State's Hawaii upper Hanawi NAR, ML&P's Kukui WMA, the Ulupalakua Ranch portion of proposed unit Maui H, and the Haleakala Ranch portion of proposed units Maui H, I1, I2, and I4 would most likely have a negative effect on the recovery and conservation of the Maui plant species concerned. Therefore, the Service's conclusion is that the net benefits of excluding these areas from critical habitat outweigh the benefits of including these areas.

*(4) Exclusion of This Unit Will Not Cause Extinction of the Species*

In considering whether or not exclusion of the TNCH preserve lands might result in the extinction of any of the 16 reported species, the Service first considered the impacts to the five species endemic to Maui (*Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium arboreum, Geranium multiflorum, Melicope balloui,* and *Remya mauiensis*).

For both the five endemic and the 11 ''multi-island'' species, it is the Service's conclusion that the TNCH's mission and management plans will provide as much or more net conservation benefits as would be provided if these preserves were designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these preserves due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. The DEA indicates that there may be future programmatic consultations. These management actions were designed to protect and provide for the conservation of these species and will not create any threats or risks of extinction to these species. Further, these areas are already occupied by 13 of the 16 species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of these preserves will not increase the risk of extinction to any of these species, and it may increase the likelihood that these species will recover by encouraging other landowners to implement voluntary conservation activities as TNCH has done.

In addition, critical habitat is being designated on other areas of Maui for all five of the endemic species (9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, Maui 15—*Geranium arboreum*—c, Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, Maui 9—*Geranium multiflorum*—c, Maui 8—*Melicope balloui*—a, Maui 9—*Melicope balloui*—b, Maui 17—*Remya mauiensis*—a, Maui 17—*Remya mauiensis*—b, Maui 17—*Remya mauiensis*—c, and Maui 18—*Remya mauiensis*—d), and critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining 11 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations and are sufficient to prevent extinction of the species concerned.

In considering whether or not exclusion of the State's upper Hanawi NAR might result in the extinction of *Clermontia samuelii, Cyanea mceldowneyi,* and *Geranium multiflorum* the Service considered potential impacts. For all three endemic species, it is the Service's conclusion that the State's NAR mission and management provide a significant conservation benefit. The management will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in the NAR due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this area is already occupied by two of the three species and thereby benefits from the section 7 protections of the Act, should such an unlikely Federal threat actually

materialize. The exclusion of this NAR will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as the State has done.

In addition, critical habitat is being designated on another area of Maui for all three endemic species (Maui 9—*Clermontia samuelii*—a, Maui 8—*Cyanea mceldowneyi*—a, Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, and Maui 9—*Geranium multiflorum*—c). These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of the Puu Kukui WMA might result in the extinction of any of the eight species, the Service first considered the impacts to the Maui endemic, *Hesperomannia arborescens.*

For both the endemic *Hesperomannia arborescens* and the seven ''multi-island'' species, it is the Service's conclusion that ML&P's mission and management programs will provide as much or more net conservation benefits as would be provided if this area was designated as critical habitat. These management programs, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in Puu Kukui WMA due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this area is already occupied by all of the eight species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of Puu Kukui WMA will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as ML&P has done.

In addition, critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining seven multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of Ulupalakua Ranch's proposed unit Maui H might result in the extinction of any of the 12 species, the Service first considered the impacts to the three species endemic to Maui (*Geranium arboreum, Lipochaeta kamolensis,* and *Melicope adscendens*), and second to the nine species known from Maui and one or more other Hawaiian islands.

For both the three endemic and the nine ''multi-island'' species, it is the Service's conclusion that the partnership agreements developed by Ulupalakua Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed unit Maui H as critical habitat. These agreements, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed unit Maui H due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service and the exclusion of the portion of proposed unit Maui H have the highest likelihood of preventing extinction of these 12 species, especially the species endemic to the island of Maui.

In addition, critical habitat is being designated on another area of Maui for all three of the endemic species (Maui 9—*Geranium arboreum*—a, Maui 9—*Lipochaeta kamolensis*—a, and Maui 13—*Melicope adscendens*—a). These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of Haleakala Ranch Company's portions of proposed units Maui H, I1, I2, and I4 might result in the extinction of any of the 18 species, the Service first considered the impacts to the six species endemic to Maui (*Argyroxiphium sandwicense* ssp. *macrocephalum, Cyanea mceldowneyi, Geranium arboreum, Geranium multiflorum, Lipochaeta kamolensis,* and *Melicope balloui*), and second to the 12 species known from Maui and one or more other Hawaiian islands.

For both the six endemic and the 12 ''multi-island'' species, it is the Service's conclusion that the partnership agreements developed by Haleakala Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed units H, I1, I2, and I4 as critical habitat. These agreements, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these portions of proposed units Maui H, I1, I2, and I4 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed units Maui H, I1, I2, and I4, have the highest likelihood of preventing extinction of these 18 species, especially the species endemic to the island of Maui.

In addition, critical habitat is being designated on other areas of Maui for all six of the endemic species (Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, Maui 8—*Cyanea mceldowneyi*—a, Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, Maui 14—*Geranium arboreum*—c, Maui 8—*Geranium multiflorum*—a, Maui 8—*Geranium multiflorum*—b, Maui 9—*Geranium multiflorum*—c, Maui 9—*Lipochaeta kamolensis*—a, Maui 8—*Melicope balloui*—a, and Maui 8—*Melicope balloui*—b), and critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining 12 multi-island species consistent with the guidance in the recovery plans for these species. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In addition, § 195D–4 (Hawaii Revised Statutes, Endangered species and threatened species) stipulates that species determined to be endangered or threatened under the Federal ESA shall be deemed endangered or threatened under the state law. It is unlawful under the state law, with some exceptions, to ''take'' such species, or to possess, sell, carry or transport them. For plants, take is defined in the State statute as to ''cut, collect, uproot, destroy, injure, or possess''. The statutory protections for these plants provide additional assurances that exclusion of these areas from critical habitat will not result in extinction of the species in question.

In sum, the above analysis concludes that an exclusion of these areas from final critical habitat on Maui will have a net beneficial impact with little risk of

negative impacts. Therefore the exclusion of these lands will not cause extinction and should in fact improve the chance of recovery for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hesperomannia arborescens, Lipochaeta kamolensis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis,* and *Sanicula purpurea.*

**Taxonomic Changes**

At the time we listed *Clermontia peleana*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Delissea undulata*, *Mariscus pennatiformis*, *Phyllostegia parviflora*, and *Phyllostegia mollis*, we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. For *Phlegmariurus mannii*, we used the ''Revised Checklist of Hawaiian Pteridophytes'' (Wagner and Wagner 1994). Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, in the recently published *Hawaii's Ferns and Fern Allies* (Plamer 2003), the family name for *Ctenitis squamigera* has changed (from Aspleniaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for these nine species. We plan to publish a taxonomic change notice for these nine species after we have published the final critical habitat designations on Maui and Kahoolawe.

**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*

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, supplement, and addendum), we are certifying that the critical habitat designation for 60 Maui and Kahoolawe 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.'' Federal courts and Congress have indicated that an RFA/SBREFA analysis should be limited to all impacts to entities directly subject to the requirements of the regulation (*See Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*). As such, entities indirectly impacted by the plant listings and critical habitat and, therefore, 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 non-profit organizations, and small governmental jurisdictions, such as school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Refer to the draft economic analysis for a further discussion of the definition of small entities.

The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district with a population of less than 50,000. By this definition, Federal government agencies are not small business under SBA guidelines, and State agencies are not considered small governments under the RFA. The County of Maui is also not a small governmental jurisdiction because its population was approximately 128,240 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. The East Maui Watershed Partnership and the West Maui Watershed Partnership are not independently owned but are public-private partnerships between Federal agencies, State agencies, private landowners, and community organizations that are dominant in setting policy for watershed protection. While the definition of ''small organization'' leaves some room for interpretation, based on the above factors, the economic analysis does not consider either partnership to be a ''small organization.'' Our draft economic analysis further identified one other organization that may be affected by the critical habitat designation on Maui, although, to this point, we have never consulted with them directly or indirectly, as Hawaii Television Broadcasters Association (HTBA). The HTBA is a Hawaii nonprofit corporation that represents the common interests of Hawaii's television broadcasters, each of which has annual revenues in excess of $750,000. As the entity representing all the local broadcast stations, HTBA appears to be dominant in its field and therefore does not appear to meet SBREFA's definition of a ''small organization.''

The RFA/SBREFA 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 cattles 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 thant $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 are 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 consultations 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 reinitiate 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

requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Kahoolawe.

In addition, on Maui, nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. Approximately 86 percent of this land, and all of the land on Kahoolawe, is within the State Conservation District where State land-use controls severely limit development and most activities, and approximately 14 percent of this land is within the State Agricultural District.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis, the final addendum and the supplement to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more per year, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to OMB, this rule is not a significant regulatory action under Executive Order 12866, and we do not expect to significantly affect energy production supply and distribution facilities because no significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the 60 species on Maui and Kahoolawe will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

*Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 60 species from Maui and Kahoolawe in a takings implications assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

*Federalism*

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization, so it does not have Federal implications. In addition, this rule will not have substantial direct compliance costs because many of the planned projects that could affect critical habitat have no Federal involvement.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interiors's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 60 plant species from Maui and Kahoolawe.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 60 plant species. Therefore, designation of critical habitat for these 60 species does not involve any Tribal lands.

**References Cited**

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

**Authors**

The primary authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, as set forth below:

■ a. Under the table's heading FLOWERING PLANTS, by revising the entries for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* to read as follows: and

■ b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Asplenium fragile* var. *insulare, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense,* and *Pteris lidgatei;* by removing the entry for *Huperzia* (=*Phlegmariurus,* =*Lycopodium*) *mannii;* and by adding an entry for *Phlegmariurus* (=*Lycopodum,* =*Huperzia*) *mannii* to read as follows.

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | * | |
| *Alectryon macrococcus* | Mahoe | U.S.A. (HI) | Sapindaceae | E | 467 | 17.99(a)(1), (c) and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Argyroxiphium sandwicense* ssp. *macrocephalum.* | Ahinahina | U.S.A. (HI) | Asteraceae | T | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Bidens micrantha* ssp. *kalealaha* | Kookoolau | U.S.A. (HI) | Asteraceae | E | 467 | 17.96(b) and 17.99(e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Bonamia menziesii* | None | U.S.A. (HI) | Convolvulaceae | E | 559 | 17.99(a)(1) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Brighamia rockii* | Pua ala | U.S.A. (HI) | Campanulaceae | E | 480 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cenchrus agrimonioides* | Kamanomano | U.S.A. (HI) | Poaceae | E | 592 | 17.99(e)(1) | NA |

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| (=Sandbur, agrimony) | | | | | | | |
| * | * | * | * | * | * | * | |
| *Centaurium sebaeoides* | Awiwi | U.S.A. (HI) | Gentianaceae | E | 448 | 17.99(a)(1), (c) and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Clermontia lindseyana* | Oha wai | U.S.A. (HI) | Campanulaceae | E | 532 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Clermontia oblongifolia* ssp. *mauiensis* | Oha wai | U.S.A. (HI) | Campanulaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Clermontia samuelii* | Oha wai | U.S.A. (HI) | Campanulaceae | E | 666 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Colubrina oppositifolia* | Kauila | U.S.A. (HI) | Rhamnaceae | E | 532 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea copelandii* ssp. *haleakalaensis* | Haha | U.S.A. (HI) | Campanulaceae | E | 666 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea glabra* | Haha | U.S.A. (HI) | Campanulaceae | E | 666 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea grimesiana* ssp. *grimesiana* | Haha | U.S.A. (HI) | Campanulaceae | E | 592 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea hamatiflora* ssp. *hamatiflora* | Haha | U.S.A. (HI) | Campanulaceae | E | 666 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea lobata* | Haha | U.S.A. (HI) | Campanulaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyanea mceldowneyi* | Haha | U.S.A. (HI) | Campanulaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Cyrtandra munroi* | Haiwale | U.S.A. (HI) | Gesneriaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Dubautia plantaginea* ssp. *humilis* | Naenae | U.S.A. (HI) | Asteraceae | E | 666 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Flueggea neowawraea* | Mehamehame | U.S.A. (HI) | Euphorbiaceae | E | 559 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Geranium arboreum* | Hawaiian red-flowered geranium. | U.S.A. (HI) | Geraniaceae | E | 465 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Geranium multiflorum* | Nohoanu | U.S.A. (HI) | Geraniaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Gouania vitifolia* | None | U.S.A. (HI) | Rhamnaceae | E | 541 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Hedyotis coriacea* | Kioele | U.S.A. (HI) | Rubiaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Hedyotis mannii* | Pilo | U.S.A. (HI) | Rubiaceae | E | 480 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Hesperomannia arbuscula* | None | U.S.A. (HI) | Asteraceae | E | 448 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Hibiscus brackenridgei* | Mao hau hele | U.S.A. (HI) | Malvaceae | E | 559 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Ischaemum byrone* | Hilo ischaemum | U.S.A. (HI) | Poaceae | E | 532 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Isodendrion pyrifolium* | Wahine noho kula | U.S.A. (HI) | Violaceae | E | 532 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Kanaloa kahoolawensis* | Kohe malama malama o kanaloa. | U.S.A. (HI) | Fabaceae | E | 666 | 17.99(e)(2) | NA |
| * | * | * | * | * | * | * | |
| *Lipochaeta kamolensis* | Nehe | U.S.A. (HI) | Asteraceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Lysimachia lydgatei* | None | U.S.A. (HI) | Primulaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Mariscus pennatiformis* | None | U.S.A. (HI) | Cyperaceae | E | 559 | 17.99(a)(1) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Melicope adscendens* | Alani | U.S.A. (HI) | Rutaceae | E | 565 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Melicope balloui* | Alani | U.S.A. (HI) | Rutaceae | E | 565 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Melicope knudsenii* | Alani | U.S.A. (HI) | Rutaceae | E | 530 | 17.99(a)(1) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Melicope mucronulata* | Alani | U.S.A. (HI) | Rutaceae | E | 467 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Melicope ovalis* | Alani | U.S.A. (HI) | Rutaceae | E | 565 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Neraudia sericea* | None | U.S.A. (HI) | Urticaceae | E | 559 | 17.99(c) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Nototrichium humile* | Kului | U.S.A. (HI) | Amaranthaceae | E | 448 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Peucedanum sandwicense* | Makou | U.S.A. (HI) | Apiaceae | T | 530 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Phyllostegia mannii* | None | U.S.A. (HI) | Lamiaceae | E | 480 | 17.99(c) and (e)(1) | NA |

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| * | * | * | * | * | * | * | |
| *Phyllostegia mollis* | None | U.S.A. (HI) | Lamiaceae | E | 448 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Plantago princeps* | Laukahi kuahiwi | U.S.A. (HI) | Plantaginaceae | E | 559 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Platanthera holochila* | None | U.S.A. (HI) | Orchidaceae | E | 592 | 17.99(a)(1) and (e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Remya mauiensis* | Maui remya | U.S.A. (HI) | Asteraceae | E | 413 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Sanicula purpurea* | None | U.S.A. (HI) | Apiaceae | E | 592 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Schiedea haleakalensis* | None | U.S.A. (HI) | Caryophyllaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Sesbania tomentosa* | Ohai | U.S.A. (HI) | Fabaceae | E | 559 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Spermolepis hawaiiensis* | None | U.S.A. (HI) | Apiaceae | E | 559 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Tetramolopium capillare* | Pamakani | U.S.A. (HI) | Asteraceae | E | 555 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Tetramolopium remyi* | None | U.S.A. (HI) | Asteraceae | E | 435 | 17.96(b) and 17.99(e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Vigna o-wahuensis* | None | U.S.A. (HI) | Fabaceae | E | 559 | 17.99(e)(1) | NA |
| *Zanthoxylum hawaiiense* | Ae | U.S.A. (HI) | Rutaceae | E | 532 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| FERNS AND ALLIES | | | | | | | |
| *Asplenium fragile* var. *insulare* | None | U.S.A. (HI) | Aspleniaceae | E | 553 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Ctenitis squamigera* | Pauoa | U.S.A. (HI) | Aspleniaceae | E | 553 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Diellia erecta* | Asplenium-leaved diellia. | U.S.A. (HI) | Aspleniaceae | E | 559 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Diplazium molokaiense* | None | U.S.A. (HI) | Aspleniaceae | E | 553 | 17.99(a)(1), (c), and (e)(1). | NA |
| * | * | * | * | * | * | * | |
| *Phlegmariurus* (=*Lycopodium*,=*Huperzia*) *mannii*. | Wawaeiole | U.S.A. (HI) | Lycopodiaceae | E | 467 | 17.99(e)(1) | NA |
| * | * | * | * | * | * | * | |
| *Pteris lidgatei* | None | U.S.A. (HI) | Adiantaceae | E | 553 | 17.99(c) and (e)(1) | NA |

■ 3. Amend § 17.99 as set forth below:
■ a. By revising the section heading to read as follows: and
■ b. By adding paragraphs (e) and (f) to read as follows:

**§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui and Kahoolawe, HI.**

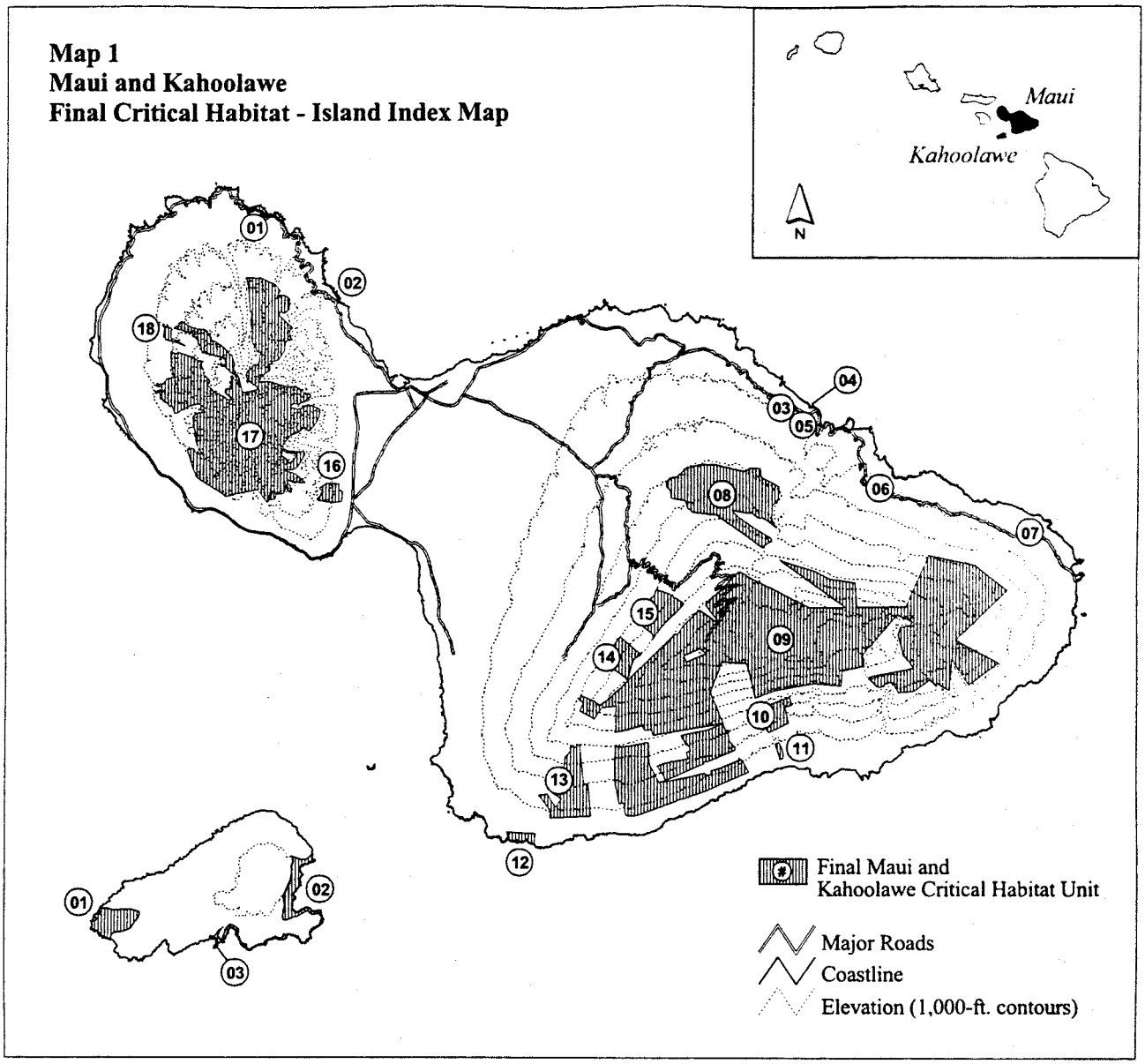
* * * * *

(e) *Maps and critical habitat unit descriptions for the islands of Maui and Kahoolawe, HI.* The following sections contain the legal descriptions of the critical habitat units designated for the islands of Maui and Kahoolawe, HI. Existing manmade features and structures within the boundaries of the mapped areas, such as buildings; roads; aqueducts and other water system features—including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications towers and associated structures and equipment; electrical transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars and telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain the primary constituent elements described for each species in paragraph (f) of this section, except for the elevation primary constituent element, and therefore are not included in the critical habitat designations.

(1) *Maui.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 136 critical habitat units designated on the island of Maui.

(i) **Note:** Map 1—Index map—follows:

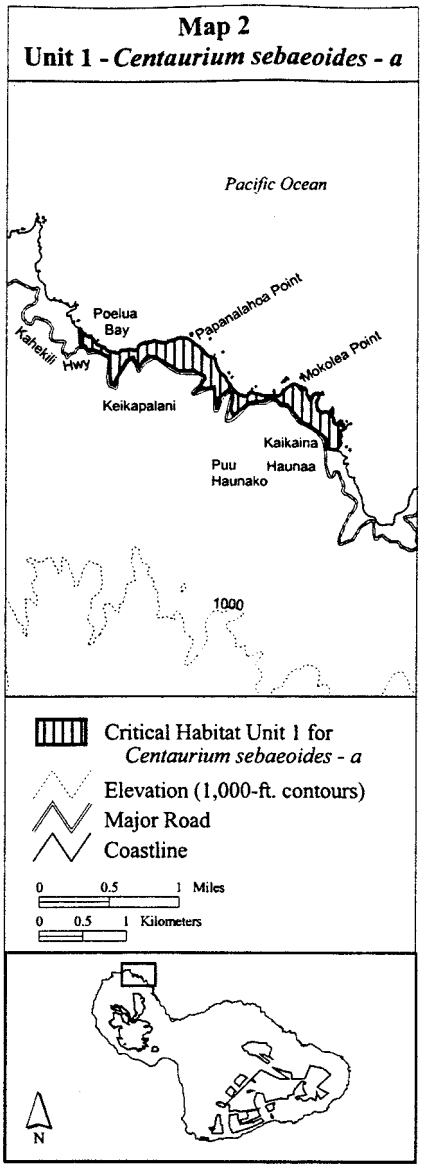
BILLING CODE 4310–55–P




(ii) Maui 1—*Centaurium sebaeoides*—a (71 ha; 174 ac).

(A) Unit consists of the following 93 boundary points and the intermediate coastline: Start at 751112, 2326166; 754099, 2324756; 754053, 2324754; 754053, 2324754; 753973, 2324765; 753966, 2324891; 753771, 2325042; 753692, 2325076; 753669, 2325092; 753524, 2325277; 753446, 2325286; 753446, 2325286; 753388, 2325342; 753388, 2325342; 753381, 2325348; 753372, 2325347; 753367, 2325346; 753332, 2325352; 753325, 2325353; 753299, 2325342; 753270, 2325329; 753238, 2325323; 753221, 2325320; 753189, 2325314; 753085, 2325303; 753085, 2325303; 753085, 2325303; 753077, 2325294; 753069, 2325293; 752894, 2325153; 752865, 2325227; 752886, 2325361; 752884, 2325378; 752893, 2325419; 752878, 2325426; 752833, 2325446; 752831, 2325447; 752829, 2325444; 752827, 2325442; 752732, 2325363; 752732, 2325363; 752732, 2325363; 752725, 2325288; 752717, 2325268; 752711, 2325276; 752692, 2325301; 752671, 2325491; 752670, 2325500; 752591, 2325471; 752535, 2325474; 752535, 2325474; 752535, 2325474; 752475, 2325438; 752566, 2325581; 752580, 2325602; 752559, 2325613; 752455, 2325669; 752444, 2325674; 752441, 2325676; 752268, 2325670; 751992, 2325839; 751990, 2325840; 751898, 2325842; 751835, 2325769; 751804, 2325709; 751734, 2325826; 751730, 2325834; 751715, 2325826; 751714, 2325826; 751713, 2325825; 751653, 2325794; 751526, 2325562; 751530, 2325511; 751525, 2325510; 751492, 2325530; 751475, 2325549; 751475, 2325549; 751461, 2325680; 751461, 2325835; 751461, 2325837; 751461, 2325837; 751461, 2325837; 751273, 2325927; 751251, 2325921; 751218, 2325911; 751187, 2325954; 751173, 2325973; 751154, 2325968; 751123, 2325981; 751122, 2325980; 751117, 2326075; 751115, 2326111; 751112, 2326166; return to starting point.

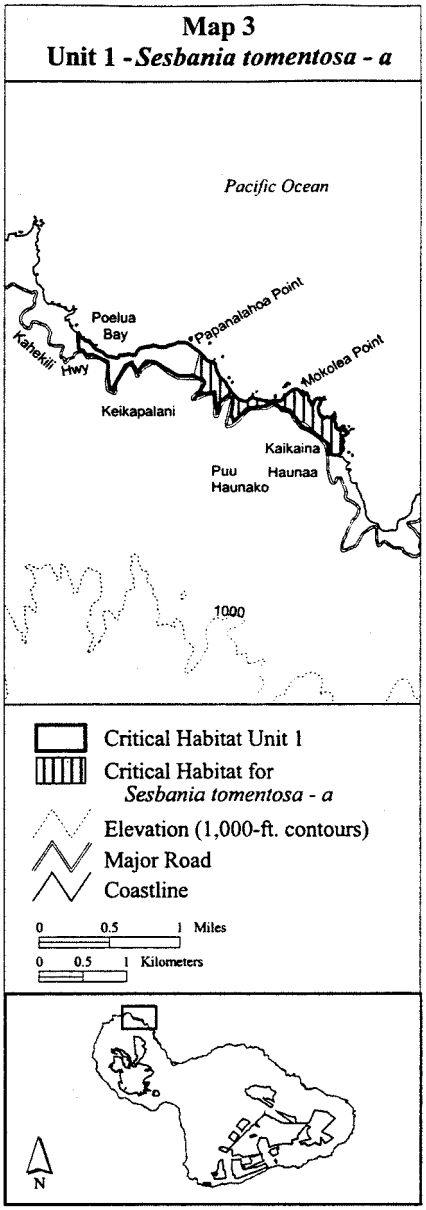
(B) **Note:** Map 2 follows:




(iii) Maui 1—*Sesbania tomentosa*—a (38 ha; 94 ac).

(A) Unit consists of the following 54 boundary points and the intermediate coastline: Start at 752505, 2325951; 754099, 2324756; 754053, 2324754; 754053, 2324754; 753994, 2324762; 753966, 2324896; 753718, 2325117; 753656, 2325144; 753550, 2325285; 753389, 2325341; 753388, 2325342; 753384, 2325343; 753372, 2325347; 753346, 2325356; 753332, 2325352; 753332, 2325352; 753325, 2325353; 753300, 2325342; 753299, 2325342; 753238, 2325323; 753231, 2325321; 753221, 2325320; 753036, 2325303; 752894, 2325153; 752865, 2325227; 752886, 2325361; 752882, 2325396; 752886, 2325418; 752878, 2325426; 752850, 2325454; 752833, 2325446; 752829, 2325444; 752753, 2325409; 752739, 2325369; 752739, 2325369; 752732, 2325363; 752730, 2325339; 752708, 2325279; 752708, 2325280; 752700, 2325498; 752671, 2325491; 752593, 2325471; 752535, 2325474; 752535, 2325474; 752487, 2325446; 752567, 2325578; 752566, 2325581; 752559, 2325613; 752549, 2325657; 752455, 2325669; 752443, 2325670; 752444, 2325674; 752504, 2325951; 752505, 2325951; return to starting point.

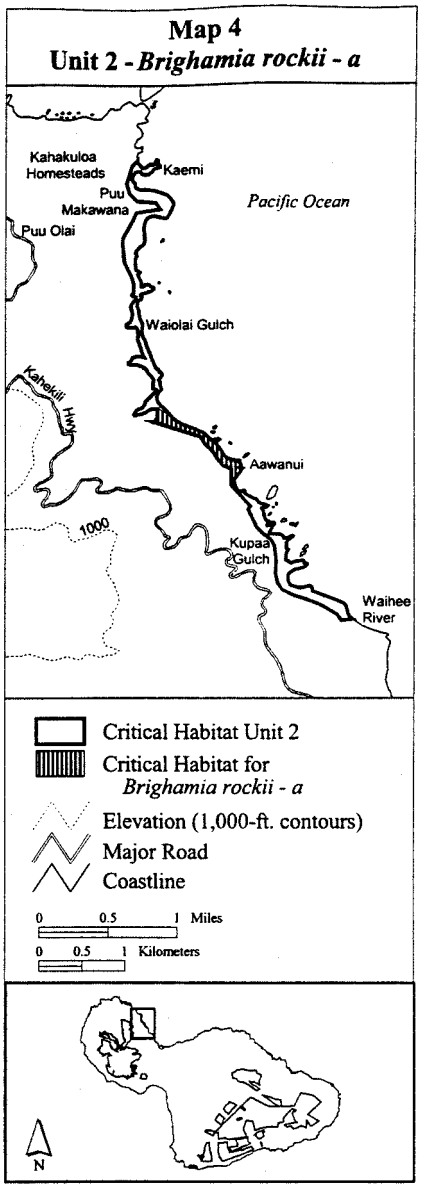
(B) **Note:** Map 3 follows:




(iv) Maui 2—*Brighamia rockii*—a (6 ha; 14 ac).

(A) Unit consists of the following 29 boundary points and the intermediate coastline: Start at 757892, 2319612; 757868, 2319613; 757861, 2319624; 757862, 2319690; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757765, 2319756; 757726, 2319818; 757700, 2319852; 757688, 2319868; 757645, 2319908; 757645, 2319908; 757626, 2319942; 757626, 2319942; 757371, 2320024; 757371, 2320024; 757333, 2320052; 757268, 2320058; 757266, 2320058; 757272, 2320064; 757278, 2320070; 757288, 2320086; 757296, 2320107; 757292, 2320137; 757312, 2320161; 757387, 2320119; 757388, 2320120; 757892, 2319612; return to starting point.

(B) **Note:** Map 4 follows:

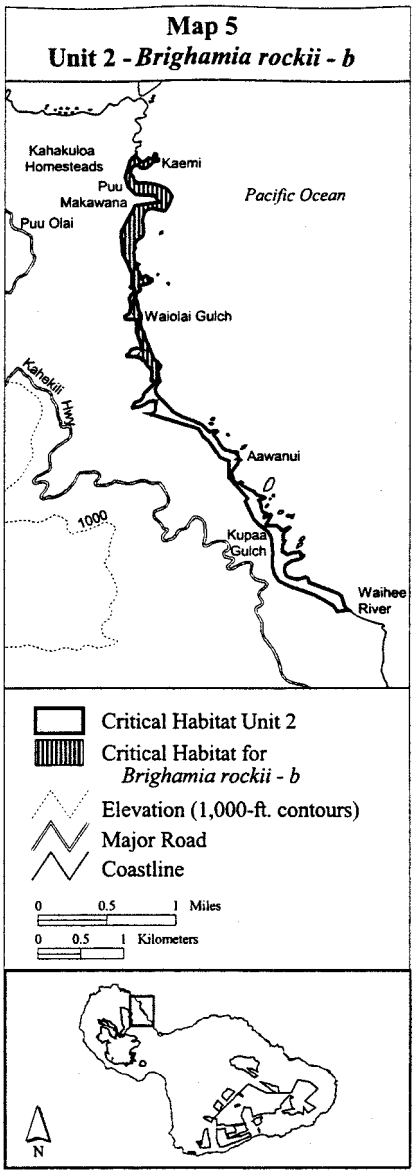



(v) Maui 2—*Brighamia rockii*—b (17 ha; 42 ac).

(A) Unit consists of the following 47 boundary points and the intermediate coastline: Start at 757133, 2322103; 757301, 2320290; 757290, 2320310; 757286, 2320313; 757279, 2320318; 757264, 2320330; 757264, 2320389; 757248, 2320415; 757247, 2320416; 757241, 2320425; 757211, 2320467;

757209, 2320469; 757193, 2320485; 757174, 2320504; 757148, 2320525; 757157, 2320542; 757190, 2320563; 757188, 2320568; 757183, 2320582; 757167, 2320630; 757140, 2320705; 757145, 2320746; 757139, 2320784; 757137, 2320794; 757102, 2320856; 757102, 2320918; 757125, 2321030; 757126, 2321037; 757127, 2321042; 757107, 2321136; 757104, 2321149; 757082, 2321207; 757031, 2321316; 757019, 2321449; 757019, 2321491; 757069, 2321583; 757108, 2321658; 757109, 2321661; 757127, 2321696; 757312, 2321727; 757278, 2321778; 757132, 2321784; 757073, 2321843; 757052, 2321922; 757086, 2322052; 757133, 2322103; 757133, 2322103; return to starting point.

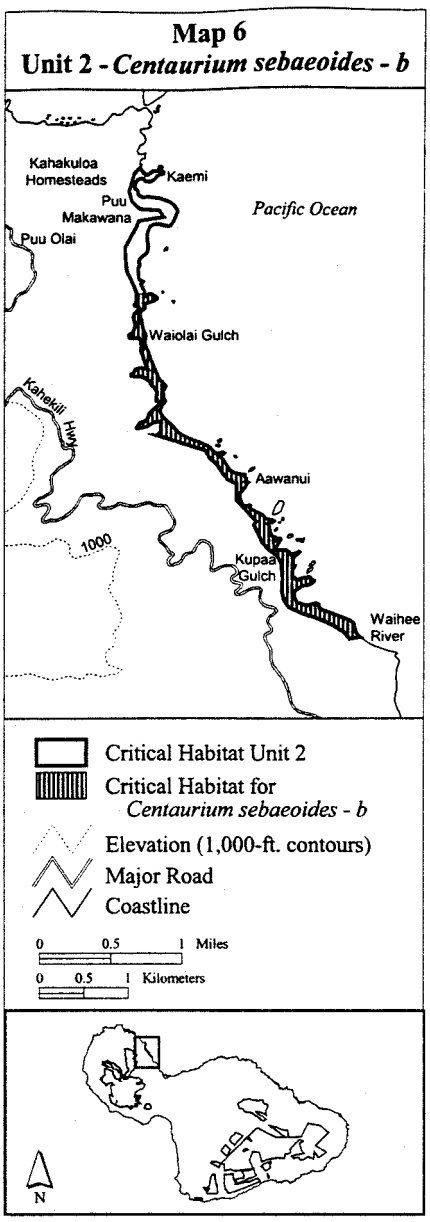
(B) **Note:** Map 5 follows:




(vi) Maui 2—*Centaurium sebaeoides*—b (27 ha; 66 ac).

(A) Unit consists of the following 106 boundary points and the intermediate coastline: Start at 757167, 2321145; 758803, 2318519; 758719, 2318510; 758683, 2318554; 758580, 2318620; 758534, 2318638; 758445, 2318673; 758344, 2318706; 758258, 2318748; 758224, 2318802; 758205, 2318870; 758210, 2318971; 758198, 2319087; 758172, 2319133; 758100, 2319189; 758059, 2319236; 757995, 2319372; 758013, 2319396; 758013, 2319396; 758013, 2319396; 757861, 2319563; 757861, 2319624; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757727, 2319831; 757700, 2319852; 757658, 2319885; 757645, 2319908; 757626, 2319942; 757371, 2320024; 757267, 2320057; 757268, 2320058; 757272, 2320064; 757287, 2320085; 757291, 2320139; 757294, 2320164; 757273, 2320164; 757242, 2320158; 757201, 2320133; 757176, 2320121; 757115, 2320110; 757111, 2320116; 757132, 2320151; 757173, 2320169; 757193, 2320192; 757198, 2320217; 757211, 2320231; 757274, 2320293; 757290, 2320303; 757286, 2320313; 757285, 2320316; 757279, 2320318; 757259, 2320326; 757259, 2320339; 757260, 2320395; 757247, 2320416; 757243, 2320423; 757241, 2320425; 757213, 2320452; 757209, 2320469; 757205, 2320484; 757193, 2320485; 757184, 2320485; 757169, 2320504; 757152, 2320502; 757143, 2320509; 757089, 2320510; 757068, 2320516; 757067, 2320526; 757083, 2320535; 757093, 2320554; 757100, 2320567; 757138, 2320580; 757188, 2320568; 757191, 2320567; 757183, 2320582; 757171, 2320606; 757168, 2320622; 757167, 2320630; 757156, 2320685; 757142, 2320706; 757148, 2320745; 757139, 2320784; 757136, 2320795; 757126, 2320807; 757087, 2320802; 757054, 2320808; 757050, 2320822; 757051, 2320829; 757079, 2320846; 757094, 2320878; 757098, 2320909; 757087, 2320942; 757083, 2320967; 757092, 2320990; 757125, 2321030; 757127, 2321033; 757126, 2321037; 757124, 2321043; 757096, 2321047; 757094, 2321055; 757103, 2321074; 757107, 2321136; 757107, 2321139; 757167, 2321145; return to starting point.

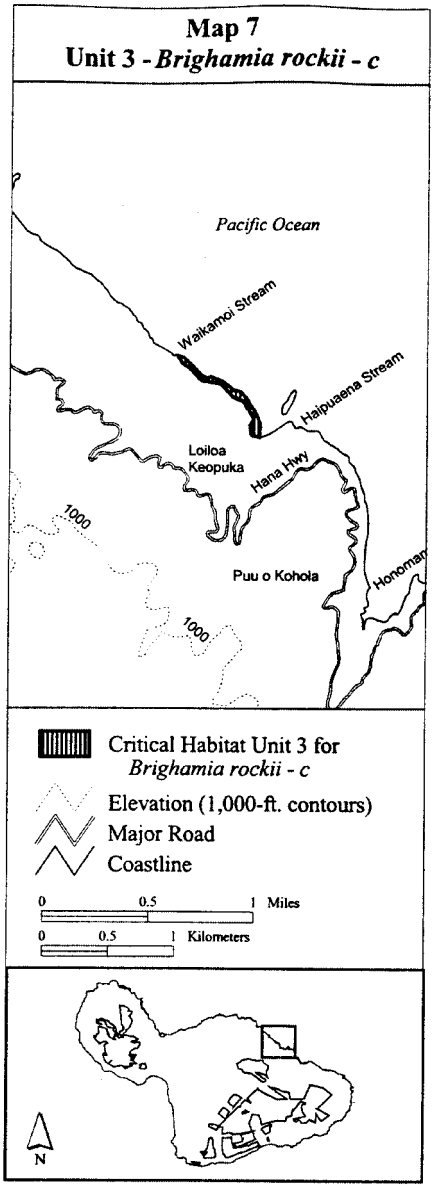
(B) **Note:** Map 6 follows:




(vii) Maui 3—*Brighamia rockii*—c (4 ha; 9 ac).

(A) Unit consists of the following 31 boundary points and the intermediate coastline: Start at 793379, 2311347; 793988, 2310722; 793937, 2310735; 793921, 2310750; 793918, 2310815; 793926, 2310829; 793943, 2310864; 793938, 2310875; 793940, 2310881; 793940, 2310881; 793940, 2310881; 793940, 2310881; 793931, 2310894; 793906, 2310935; 793885, 2310962; 793883, 2310973; 793856, 2311001; 793796, 2311026; 793781, 2311037; 793781, 2311037; 793768, 2311053; 793690, 2311134; 793635, 2311144; 793569, 2311152; 793544, 2311158; 793534, 2311167; 793459, 2311247; 793399, 2311287; 793362, 2311345; 793379, 2311347; return to starting point.

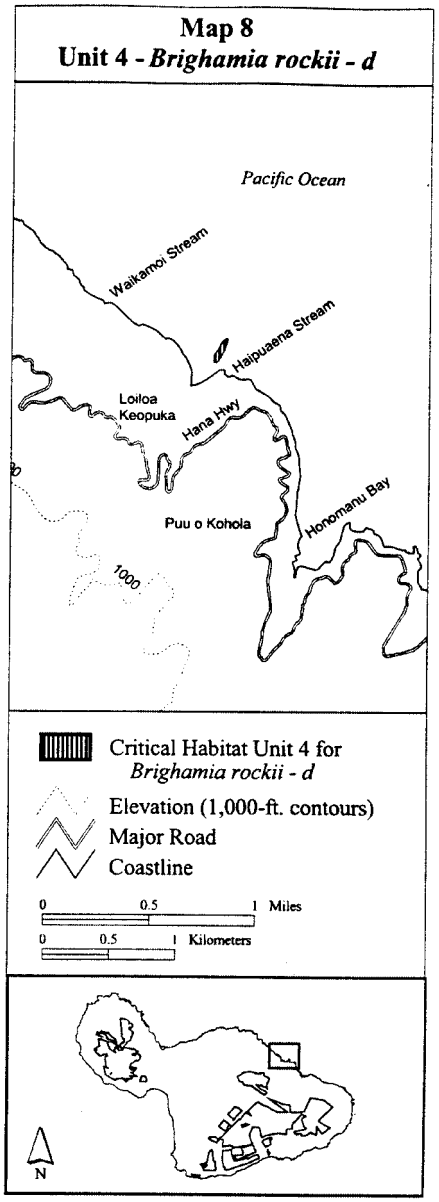
(B) **Note:** Map 7 follows:




(viii) Maui 4—*Brighamia rockii*—d (1 ha; 2 ac).

(A) Unit consists of the entire offshore island located at approximately: 794212, 2310986.

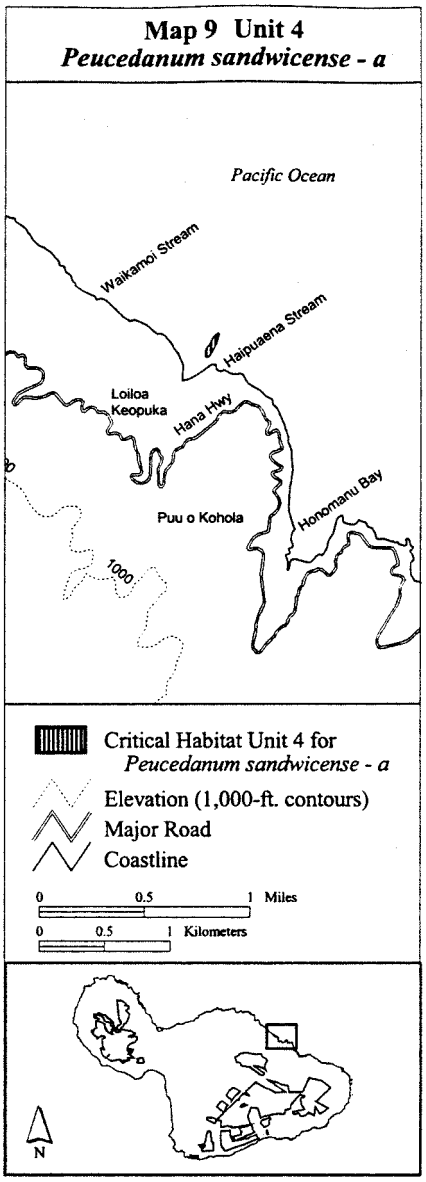
(B) **Note:** Map 8 follows:




(ix) Maui 4—*Peucedanum sandwicense*—a (1 ha; 2 ac).

(A) Unit consists of the entire offshore island located at approximately: 794212, 2310986.

(B) **Note:** Map 9 follows:

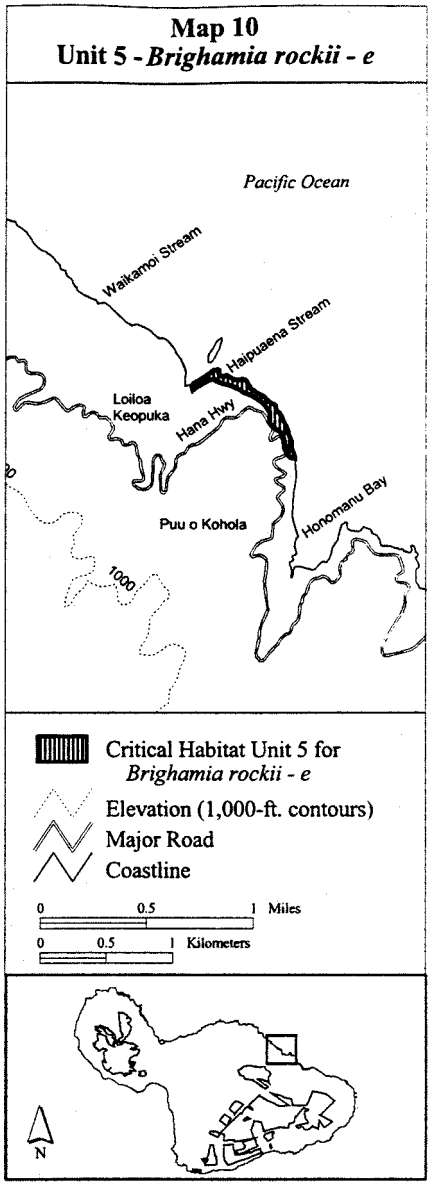



(x) Maui 5—*Brighamia rockii*—e (6 ha; 15 ac).

(A) Unit consists of the following 46 boundary points and the intermediate coastline: Start at 794814, 2310166; 794778, 2310176; 794770, 2310182; 794756, 2310193; 794756, 2310217; 794742, 2310240; 794739, 2310261; 794733, 2310282; 794733, 2310282; 794733, 2310282; 794732, 2310303; 794731, 2310313; 794728, 2310324; 794728, 2310324; 794728, 2310324; 794721, 2310337; 794712, 2310344; 794707, 2310362; 794706, 2310368; 794706, 2310368; 794706, 2310368; 794665, 2310393; 794660, 2310404; 794652, 2310413; 794642, 2310419; 794632, 2310428; 794632, 2310428; 794629, 2310436; 794625, 2310446; 794622, 2310523; 794573, 2310595; 794492, 2310647; 794439, 2310671; 794411, 2310685; 794335, 2310724; 794326, 2310728; 794266, 2310740;

794242, 2310754; 794222, 2310764; 794210, 2310773; 794177, 2310772; 794066, 2310705; 794050, 2310688; 794040, 2310715; 794043, 2310738; 794043, 2310738; return to starting point.

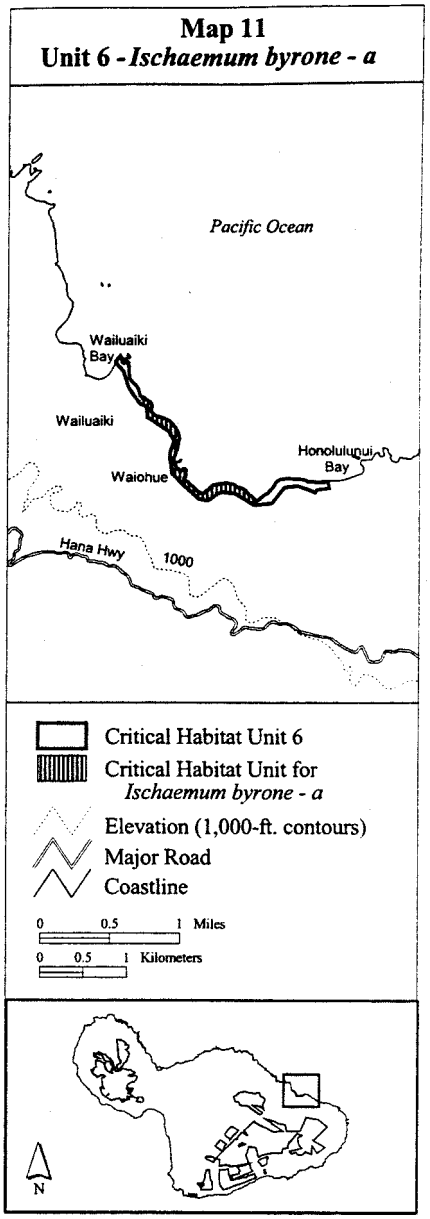
(B) **Note**: Map 10 follows:




(xi) Maui 6—*Ischaemum byrone*—a (17 ha; 43 ac).

(A) Unit consists of the following 34 boundary points and the intermediate coastline: Start at 799822, 2306499; 801132, 2305284; 801131, 2305234; 801117, 2305232; 801048, 2305275; 800891, 2305373; 800731, 2305387; 800581, 2305284; 800517, 2305297; 800481, 2305305; 800472, 2305307; 800472, 2305307; 800265, 2305505; 800166, 2305599; 800166, 2305599; 800166, 2305599; 800159, 2305694; 800147, 2305843; 800147, 2305849; 800147, 2305849; 800190, 2305990; 800138, 2306094; 800138, 2306094; 800060, 2306148; 800001, 2306188; 800001, 2306188; 799917, 2306240; 799879, 2306263; 799874, 2306386; 799796, 2306425; 799795, 2306425; 799795, 2306425; 799795, 2306425; 799822, 2306499; return to starting point.

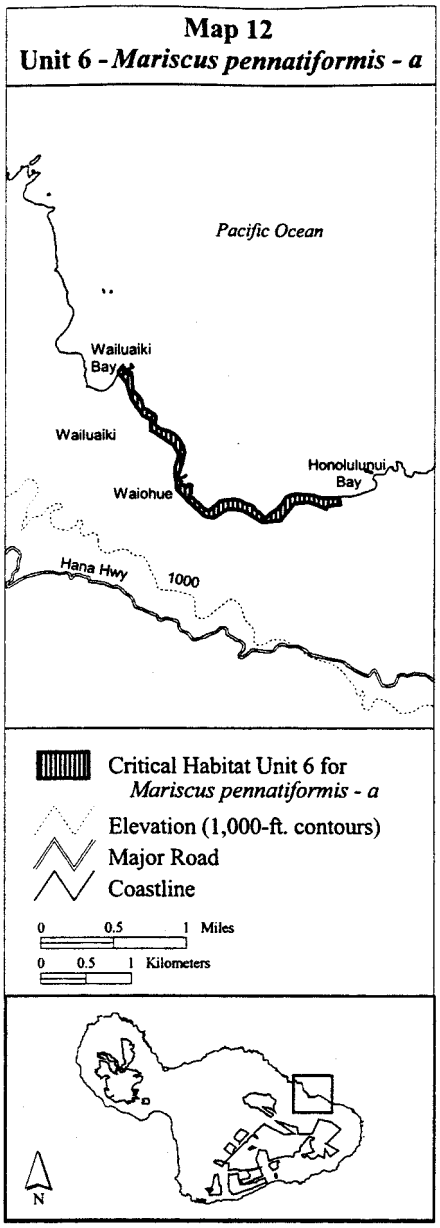
(B) **Note:** Map 11 follows:




(xii) Maui 6—*Mariscus pennatiformis*—a (30 ha; 75 ac).

(A) Unit consists of the following 47 boundary points and the intermediate coastline: Start at 799656, 2306630; 799606, 2306800; 799516, 2306902; 799516, 2306902; 801972, 2305512; 801972, 2305512; 801981, 2305435; 801840, 2305416; 801825, 2305385; 801734, 2305421; 801628, 2305464; 801558, 2305455; 801466, 2305444; 801320, 2305260; 801117, 2305232; 801067, 2305263; 801048, 2305275; 800896, 2305373; 800734, 2305390; 800586, 2305288; 800517, 2305297; 800517, 2305297; 800481, 2305305; 800481, 2305305; 800289, 2305482; 800265, 2305505; 800171, 2305595; 800159, 2305694; 800150, 2305769; 800147, 2305842; 800147, 2305843; 800171, 2305927; 800190, 2305990; 800156, 2306059; 800136, 2306101; 800060, 2306148; 800060, 2306148; 800001, 2306188; 799917, 2306240; 799917, 2306240; 799886, 2306262; 799874, 2306391; 799795, 2306425; 799789, 2306428; 799723, 2306527; 799721, 2306530; 799656, 2306630; return to starting point.

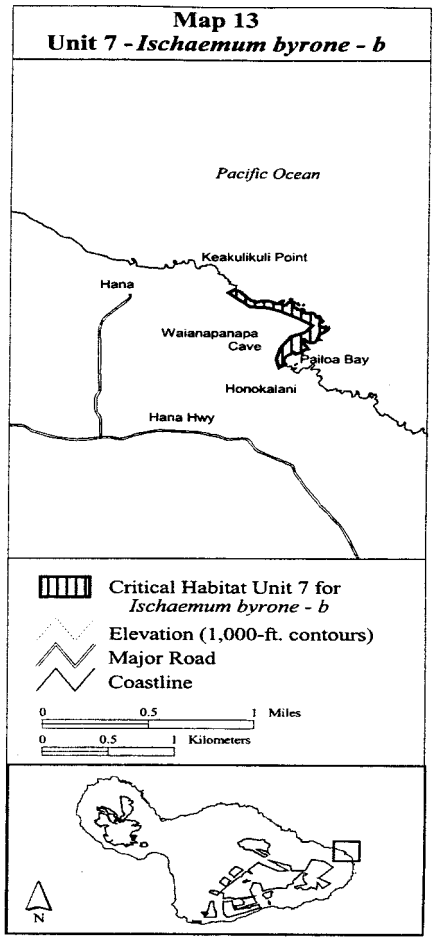
(B) **Note:** Map 12 follows:



(xiii) Maui 7—*Ischaemum byrone*—b (11 ha; 27 ac).

(A) Unit consists of the following 15 boundary points and the intermediate coastline: Start at 811597, 2302341; 811983, 2301617; 811982, 2301617; 811936, 2301585; 811916, 2301671; 811945, 2301774; 812026, 2301885; 812133, 2301927; 812193, 2301995; 812092, 2302061; 811938, 2302135; 811849, 2302164; 811717, 2302172; 811546, 2302307; 811597, 2302341; return to starting point.; return to starting point.

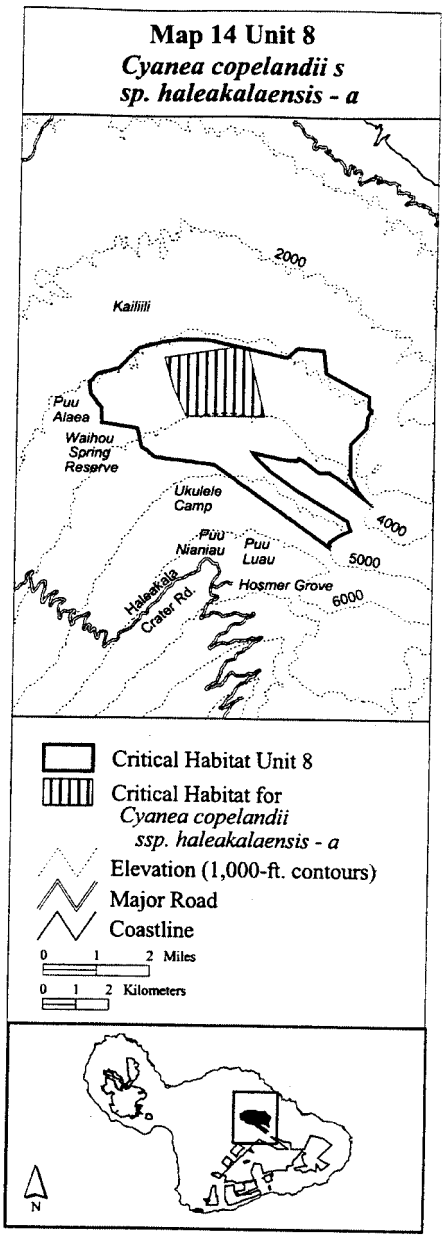
(B) **Note:** Map 13 follows:




(xiv) Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a (501 ha; 1,238 ac).

(A) Unit consists of the following 10 boundary points: Start at 787682, 2306203; 787708, 2306208; 787902, 2306166; 787967, 2306151; 788003, 2306143; 788005, 2306134; 788521, 2304072; 786138, 2304072; 785730, 2304957; 785457, 2305842; return to starting point.

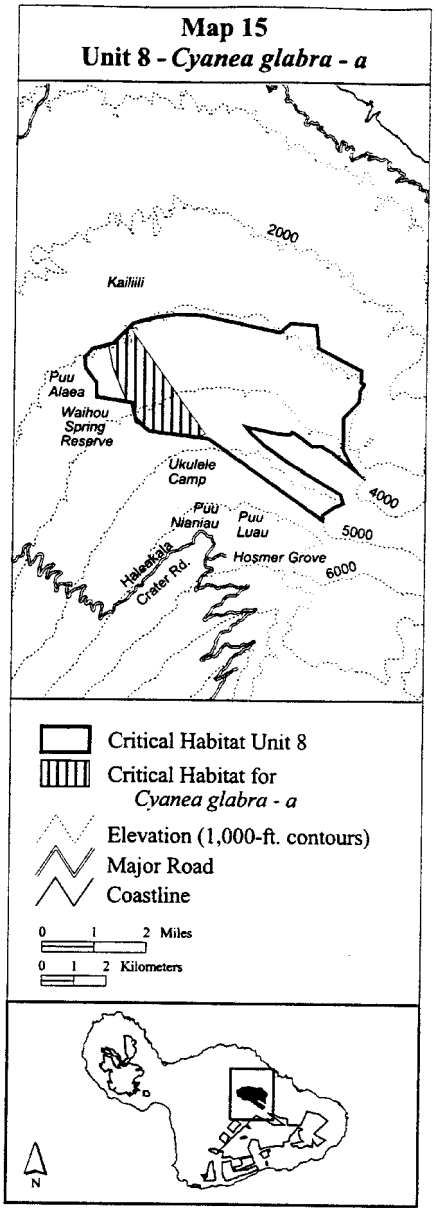
(B) **Note:** Map 14 follows:




(xv) Maui 8—*Cyanea glabra*—a (450 ha; 1,112 ac).

(A) Unit consists of the following 29 boundary points: Start at 783933, 2305472; 783933, 2305473; 783961, 2305480; 784075, 2305511; 784100, 2305536; 784575, 2306024; 784578, 2306020; 786938, 2302713; 786676, 2302611; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785246, 2302785; 785242, 2302786; 785188, 2302835; 784760, 2303276; 784660, 2303678; 784487, 2303704; 784079, 2304760; 784008, 2305132; 783955, 2305292; return to starting point.

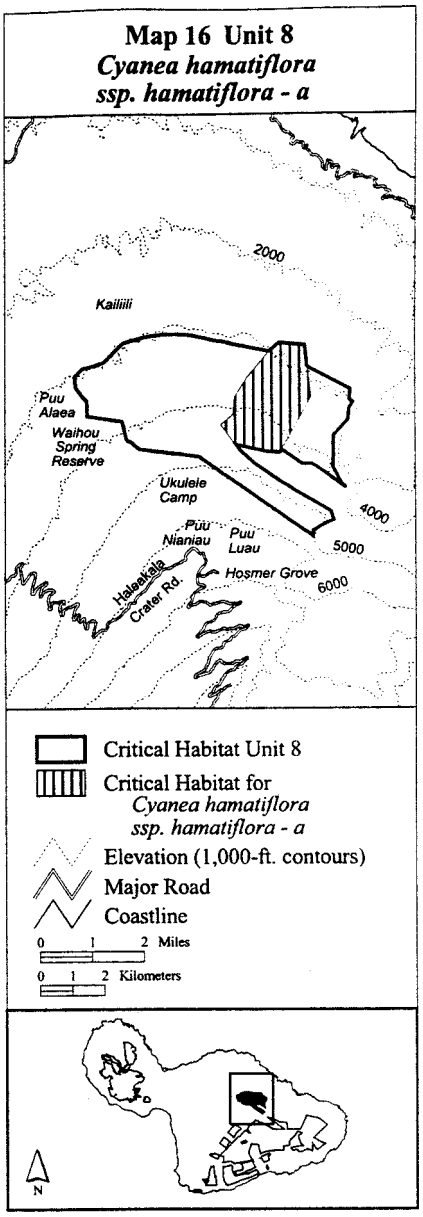
(B) **Note:** Map 15 follows:




(xvi) Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a (611 ha; 1,509 ac).

(A) Unit consists of the following 17 boundary points: Start at 789198, 2305890; 789215, 2305911; 789515, 2306162; 790281, 2306097; 790352, 2305511; 790360, 2305448; 790364, 2305412; 790482, 2304451; 789577, 2302791; 789530, 2302705; 789179, 2302726; 788179, 2302942; 788149, 2302948; 787716, 2303565; 788077, 2303893; 788127, 2304437; 788521, 2305059; return to starting point.

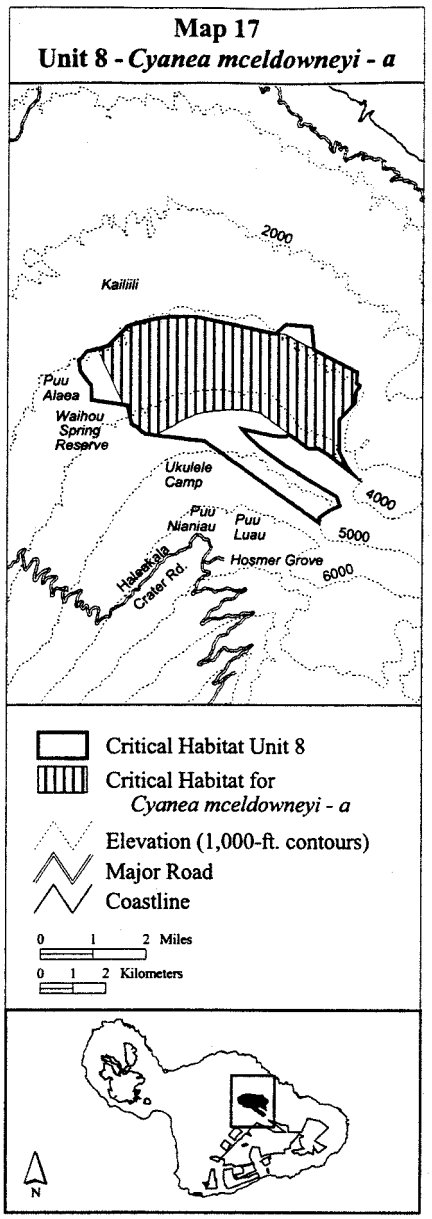
(B) **Note:** Map 16 follows:




(xvii) Maui 8—*Cyanea mceldowneyi*—a (2,127 ha; 5,256 ac).

(A) Unit consists of the following 56 boundary points: Start at 784578, 2306020; 784691, 2306136; 785400, 2306325; 785976, 2306411; 786598, 2306408; 786651, 2306403; 786837, 2306385; 787682, 2306203; 788005, 2306134; 789162, 2305885; 789198, 2305890; 789297, 2305904; 789492, 2305870; 790364, 2305412; 791696, 2304712; 791696, 2304710; 791671, 2304359; 791781, 2304297; 791780, 2304294; 791653, 2304101; 791627, 2303742; 791158, 2303230; 791158, 2302616; 791149, 2302250; 791407, 2301760; 791550, 2301582; 790766, 2302188; 790511, 2302348; 790503, 2302354; 790502, 2302354; 790198, 2302345; 790198, 2302344; 789827, 2302625; 788750, 2303441; 788540, 2303493; 788181, 2303547; 787765, 2303538; 787076, 2303479; 786758, 2303386; 786339, 2303226; 786095, 2303051; 785740, 2302863; 785554, 2302748; 785510, 2302753; 785357, 2302772; 785246, 2302785; 785206, 2302791; 785067, 2302898; 784947, 2303017; 784875, 2303047; 784803, 2303101; 784660, 2303678; 784551, 2303694; 783794, 2305326; 784087, 2305516; 784183, 2305615; return to starting point.

(B) **Note:** Map 17 follows:

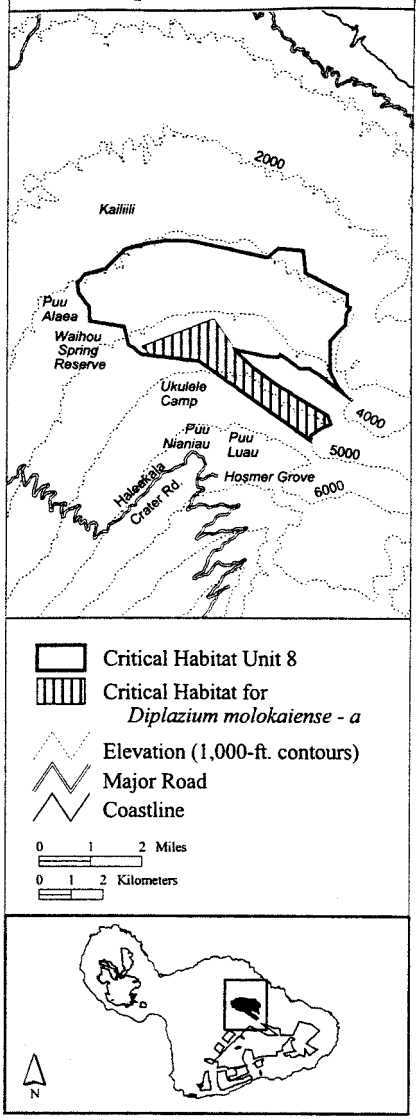



(xviii) Maui 8—*Diplazium molokaiense*—a (574 ha; 1,419 ac).

(A) Unit consists of the following 91 boundary points: Start at 788179, 2302942; 788284, 2302790; 788714, 2302383; 789527, 2301802; 789911, 2301569; 789906, 2301556; 791083, 2300859; 791083, 2300858; 791164, 2300577; 790858, 2300440; 790545, 2300227; 790534, 2300210; 790469, 2300111; 790425, 2300143; 790396, 2300164; 790270, 2300253; 790224, 2300285; 790198, 2300304; 790089, 2300382; 790055, 2300406; 790028, 2300425; 789912, 2300508; 789880, 2300531; 789749, 2300625; 789706, 2300655; 789647, 2300697; 789572, 2300752; 789531, 2300780; 789502, 2300802; 789471, 2300823; 789458, 2300832; 789393, 2300880; 789355, 2300906; 789339, 2300917; 789210, 2301009; 789182, 2301030; 789152, 2301051; 789038, 2301132; 789009, 2301153; 788981, 2301173; 788864, 2301257; 788834, 2301279; 788804, 2301301; 788692, 2301381; 788635, 2301422; 788527, 2301498; 788489, 2301526; 788434, 2301565; 788343, 2301629; 788313, 2301650; 788288, 2301668; 788190, 2301738; 788141, 2301774; 788117, 2301792; 787998, 2301875; 787965, 2301899; 787938, 2301919; 787838, 2301989; 787796, 2302020; 787771, 2302038; 787661, 2302116; 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785504, 2302754; 785239, 2303033; 785221, 2303039; 785230, 2303043; 785221, 2303052; 785248, 2303050; 787496, 2303927; return to starting point.

(B) **Note:** Map 18 follows:

**Map 18**
**Unit 8 - *Diplazium molokaiense - a***

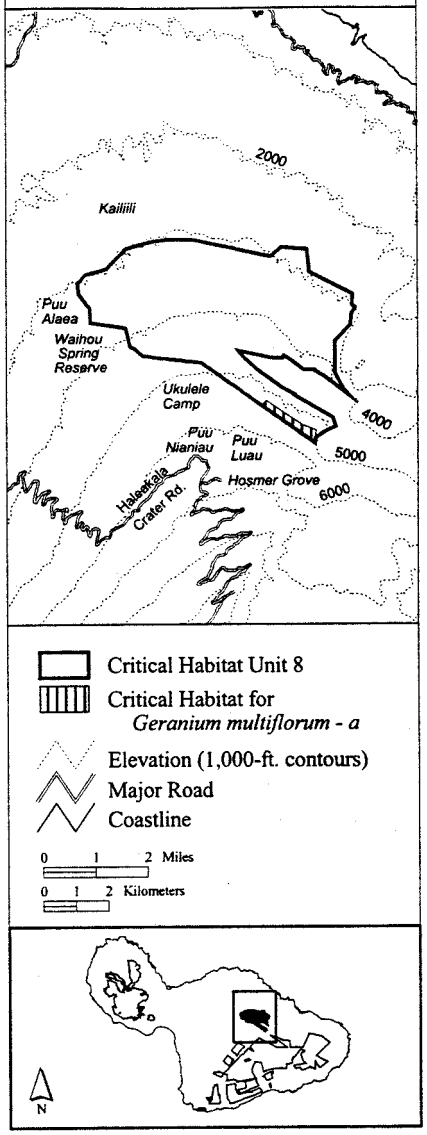



(xix) Maui 8—*Geranium multiflorum*—a (46 ha; 113 ac).

(A) Unit consists of the following 32 boundary points: Start at 790534, 2300210; 790525, 2300071; 790425, 2300143; 790396, 2300164; 790270, 2300253; 790224, 2300285; 790198, 2300304; 790089, 2300382; 790055, 2300406; 790028, 2300425; 789912, 2300508; 789880, 2300531; 789749, 2300625; 789706, 2300655; 789647, 2300697; 789572, 2300752; 789531, 2300780; 789502, 2300802; 789466, 2300826; 789393, 2300880; 789355, 2300906; 789339, 2300917; 789210, 2301009; 789182, 2301030; 789152, 2301051; 789038, 2301132; 789009, 2301153; 788981, 2301173; 788881, 2301245; 789034, 2301393; 790128, 2300638; 790551, 2300470; return to starting point.

(B) **Note:** Map 19 follows:

**Map 19**
**Unit 8 - *Geranium multiflorum - a***

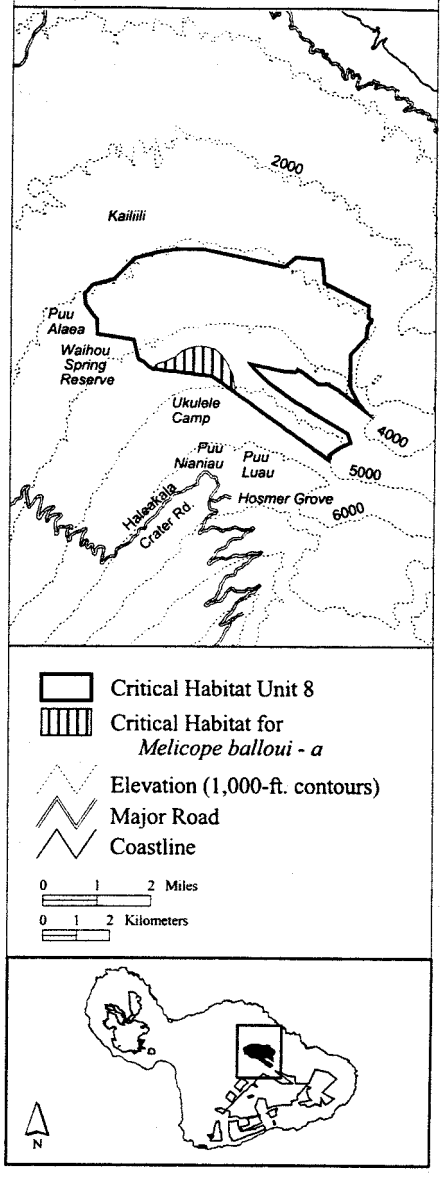



(xx) Maui 8—*Melicope balloui*—a (151 ha; 374 ac).

(A) Unit consists of the following 42 boundary points: Start at 787661, 2302116; 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785248, 2302785; 785306, 2302888; 785406, 2302943; 785630, 2303011; 785923, 2303157; 786143, 2303330; 786357, 2303424; 786541, 2303481; 786781, 2303481; 787100, 2303408; 787288, 2303230; 787513, 2302911; 787513, 2302859; 787634, 2302639; 787702, 2302252; 787717, 2302148; 787677, 2302105; return to starting point.

(B) **Note:** Map 20 follows:

**Map 20**
**Unit 8 - *Melicope balloui - a***

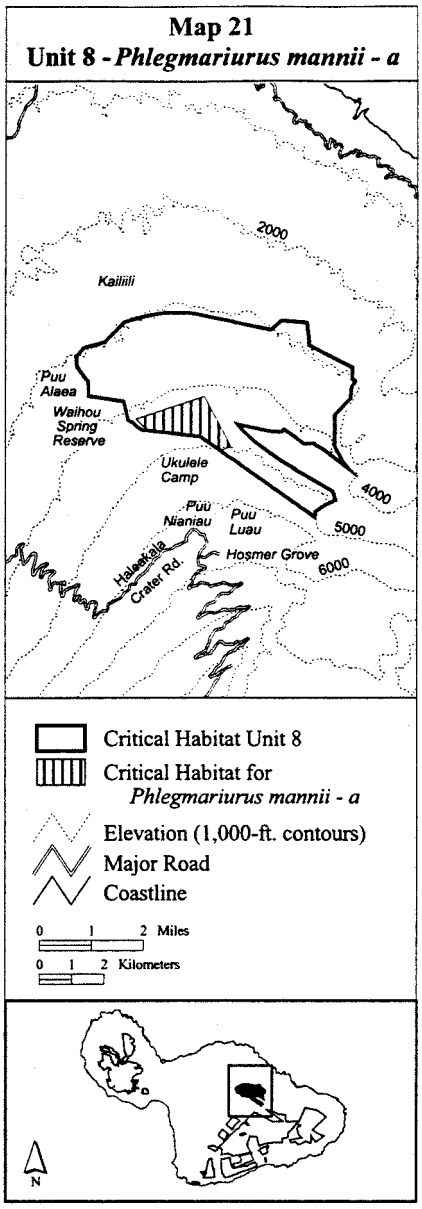



(xxi) Maui 8—*Phlegmariurus mannii*—a (221 ha; 547 ac).

(A) Unit consists of the following 28 boundary points: Start at 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796,

2302718; 785680, 2302732; 785510, 2302753; 785414, 2302765; 785047, 2303112; 787157, 2303805; 787966, 2302253; 787643, 2302129; return to starting point.

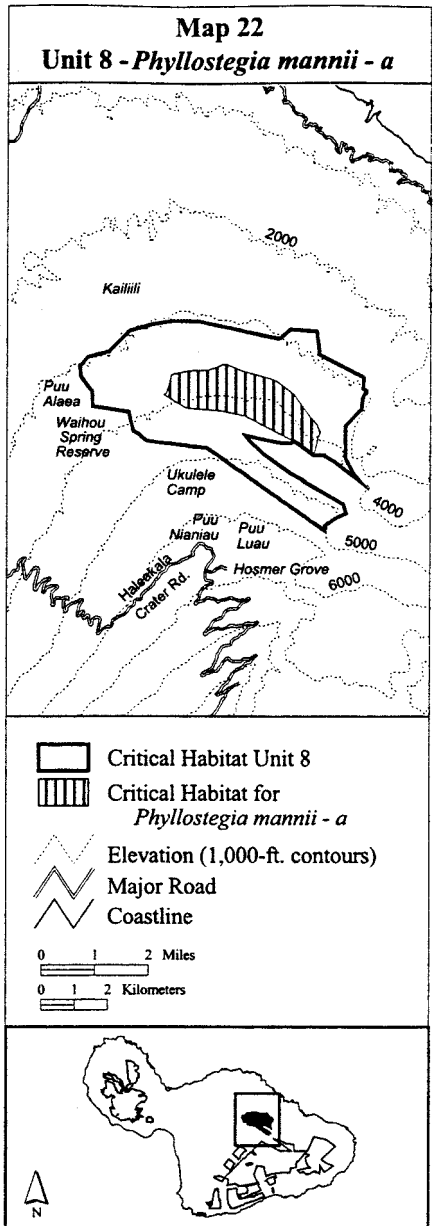
(B) **Note:** Map 21 follows:




(xxii) Maui 8—*Phyllostegia mannii*—a (570 ha; 1,407 ac).

(A) Unit consists of the following 26 boundary points: Start at 789827, 2302625; 789610, 2302774; 789577, 2302791; 788148, 2303539; 787484, 2303692; 786396, 2303777; 785739, 2304188; 785794, 2304239; 785860, 2304480; 785944, 2304792; 786485, 2304912; 787026, 2304936; 787302, 2305014; 787488, 2305093; 787615, 2305093; 788065, 2304906; 788906, 2304672; 789100, 2304588; 789615, 2304203; 789825, 2303873; 790084, 2303525; 790288, 2303290; 790396, 2303032; 790324, 2302870; 790294, 2302671; 790206, 2302365; return to starting point.

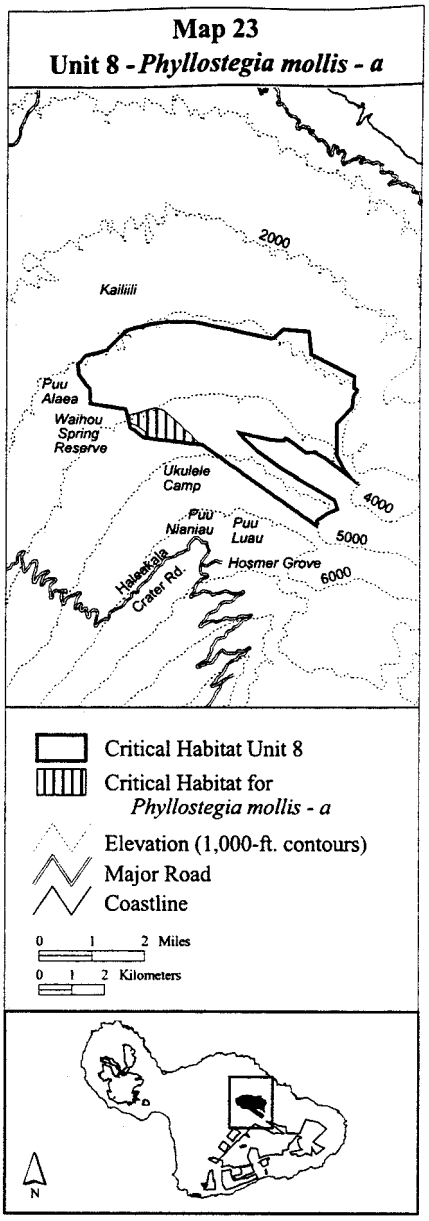
(B) **Note:** Map 22 follows:




(xxiii) Maui 8—*Phyllostegia mollis*—a (128 ha; 316 ac).

(A) Unit consists of the following 20 boundary points: Start at 785938, 2302701; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785247, 2302785; 785274, 2302870; 785281, 2302986; 784974, 2303191; 784840, 2303242; 784725, 2303477; 785401, 2303682; 785589, 2303726; 785845, 2303639; 786322, 2303224; 786467, 2303065; 786660, 2302911; 786775, 2302757; 786962, 2302596; return to starting point.

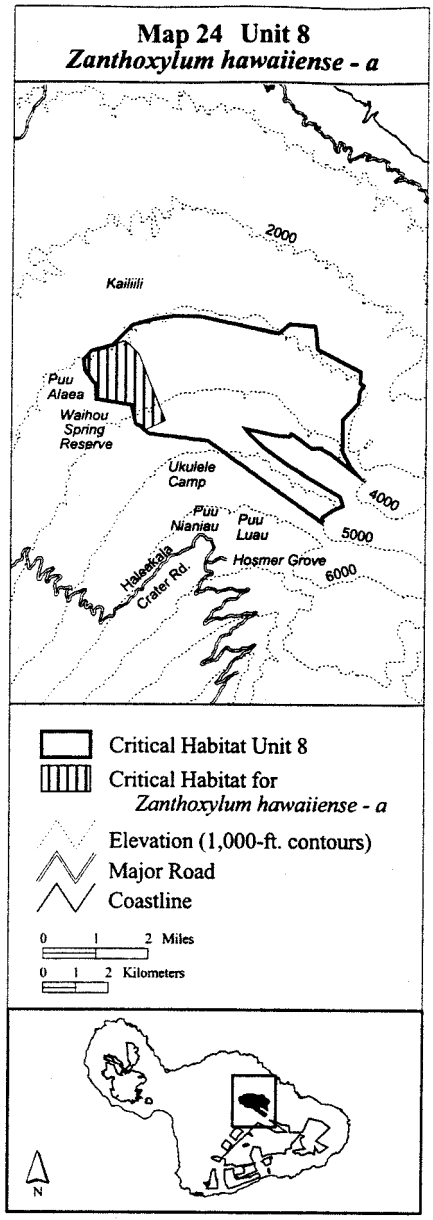
(B) **Note:** Map 23 follows:




(xxiv) Maui 8—*Zanthoxylum hawaiiense*—a (362 ha; 895 ac)

(A) Unit consists of the following 24 boundary points: Start at 783221, 2305104; 783425, 2305329; 783765, 2305418; 783933, 2305472; 783961, 2305480; 783967, 2305482; 784075, 2305511; 784083, 2305519; 784480, 2305646; 784882, 2305244; 785713, 2303193; 785079, 2302889; 785056, 2302911; 784947, 2303017; 784803, 2303101; 784660, 2303678; 783584, 2303838; 783583, 2303838; 783559, 2304310; 783487, 2304405; 783488, 2304406; 783486, 2304406; 783228, 2304747; 783196, 2305076; return to starting point.

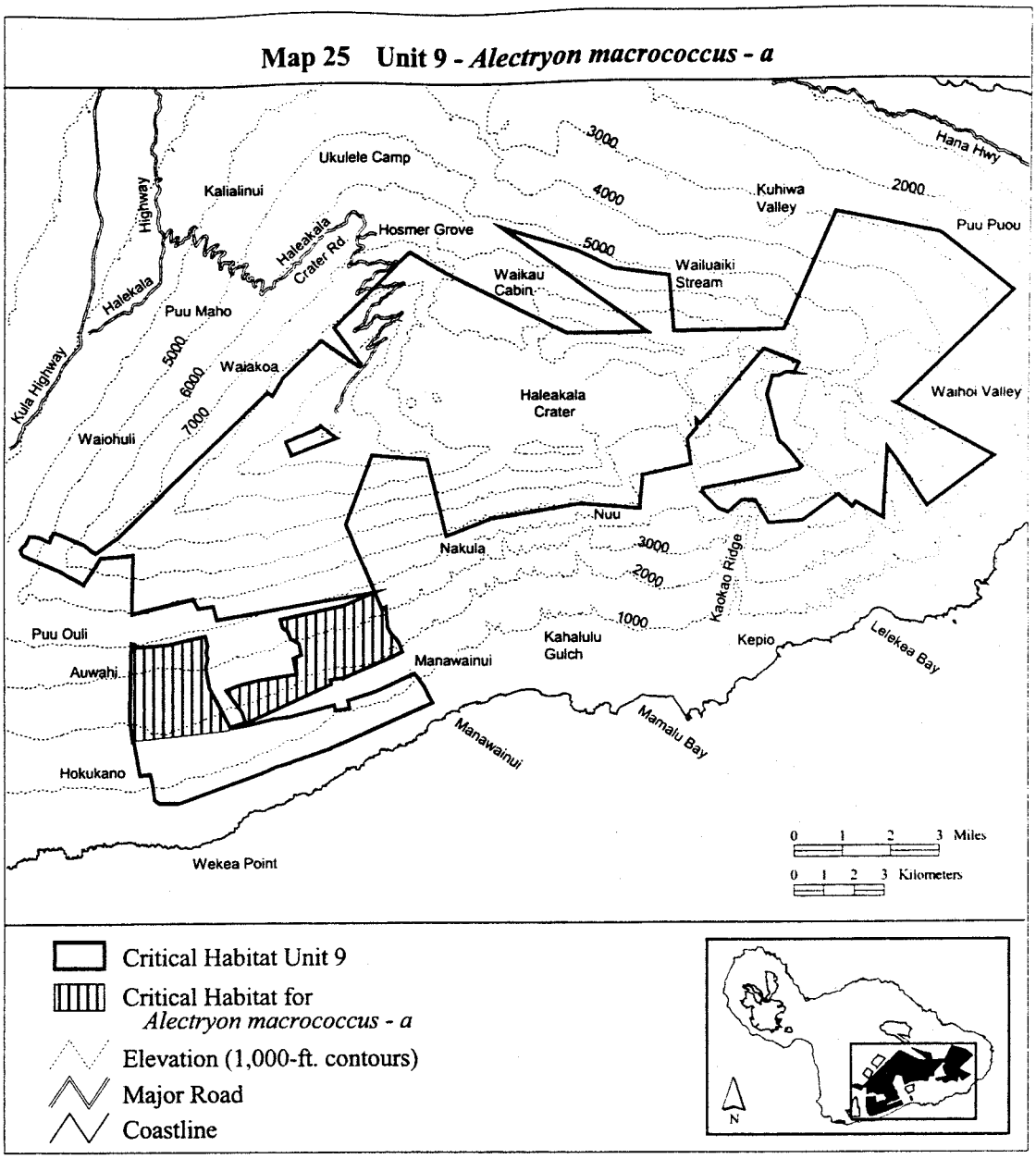
(B) **Note:** Map 24 follows:




(xxv) Maui 9—*Alectryon macrococcus*—a (1,893 ha; 4,678 ac).

(A) Unit consists of the following 87 boundary points: Start at 787503, 2286804; 787552, 2286825; 787793, 2286254; 787882, 2286300; 787924, 2286322; 787969, 2285836; 787982, 2285645; 788112, 2285409; 788112, 2285408; 788269, 2285261; 788387, 2285086; 788485, 2284821; 788486, 2284815; 788116, 2284626; 788115, 2284625; 786708, 2284032; 786514, 2283946; 786511, 2283963; 786509, 2283964; 786072, 2283891; 786071, 2283889; 786091, 2283757; 785721, 2283591; 782955, 2282353; 782675, 2282228; 779507, 2281898; 779470, 2281894; 779468, 2281911; 779453, 2282018; 779433, 2282157; 779422, 2282233; 779414, 2282298; 779404, 2282370; 779384, 2282500; 779372, 2282586; 779369, 2282603; 779370, 2282710; 779372, 2282813; 779377, 2282926; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779413, 2284560; 779419, 2284768; 779424, 2284997; 779552, 2285008; 780605, 2285094; 781897, 2285373; 781955, 2285060; 781922, 2284849; 781966, 2284605; 781901, 2284319; 782031, 2283673; 782383, 2282985; 782730, 2282341; 782731, 2282340; 783230, 2282513; 783231, 2282514; 783231, 2282515; 783112, 2282851; 782588, 2283565; 782997, 2283742; 783717, 2283910; 784941, 2284105; 784942, 2284105; 784943, 2284107; 784824, 2284610; 785088, 2284723; 785089, 2284725; 785013, 2285109; 785013, 2285110; 784720, 2285273; 784639, 2285527; 784482, 2285614; 784385, 2285911; 786496, 2286367; return to starting point.

(B) **Note:** Map 25 follows:




(xxvi) Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a (9,041 ha; 22,340 ac).

(A) Unit consists of the following 159 boundary points: Start at 778986, 2288684; 778989, 2288687; 779048, 2288746; 779070, 2288768; 780400, 2290082; 780392, 2290088; 780380, 2290097; 781358, 2291060; 781772, 2291467; 783957, 2293620; 784132, 2293514; 784471, 2294125; 785753, 2295387; 785766, 2295377; 785773, 2295373; 785784, 2295366; 785798, 2295356; 785812, 2295346; 785831, 2295333; 785843, 2295325; 785871, 2295305; 785887, 2295294; 785904, 2295283; 785906, 2295281; 785922, 2295270; 785931, 2295264; 785949, 2295252; 785962, 2295242; 785975, 2295233; 785995, 2295220; 786007, 2295211; 786012, 2295208; 786032, 2295194; 786034, 2295193; 786047, 2295183; 786054, 2295179; 786071, 2295167; 786099, 2295147; 786102, 2295145; 786104, 2295144; 786108, 2295141; 786113, 2295137; 786127, 2295127; 786136, 2295121; 786146, 2295115; 786153, 2295110; 786155, 2295108; 786173, 2295096; 786193, 2295082; 786225, 2295060; 786238, 2295051; 786290, 2295015; 786293, 2295013; 786317, 2294997; 786332, 2294986; 786344, 2294978; 786351, 2294973; 786354, 2294971; 786363, 2294965; 786368, 2294961; 786378, 2294954; 786390, 2294945; 786395, 2294943; 786413, 2294930; 786415, 2294929; 786420, 2294926; 786424, 2294923; 786464, 2294895; 786474, 2294887; 786483, 2294882; 786493, 2294875; 786507, 2294865; 786518, 2294857; 786525, 2294853; 786537, 2294844; 786558, 2294830; 786582, 2294813; 786597, 2294803; 786600, 2294801; 786616, 2294789; 786634, 2294777; 786668, 2294753; 786701, 2294730; 786716, 2294721; 786759, 2294691; 786775, 2294680; 786777, 2294679; 786791, 2294668; 786810, 2294655; 786824, 2294646; 786843, 2294633; 786895, 2294597; 786905, 2294591; 786915, 2294583; 786917, 2294582; 786938, 2294566; 786957, 2294554; 786990, 2294532; 787001, 2294523; 787015, 2294513; 787022, 2294508; 787024, 2294508; 787025, 2294508; 787038, 2294530; 787082,

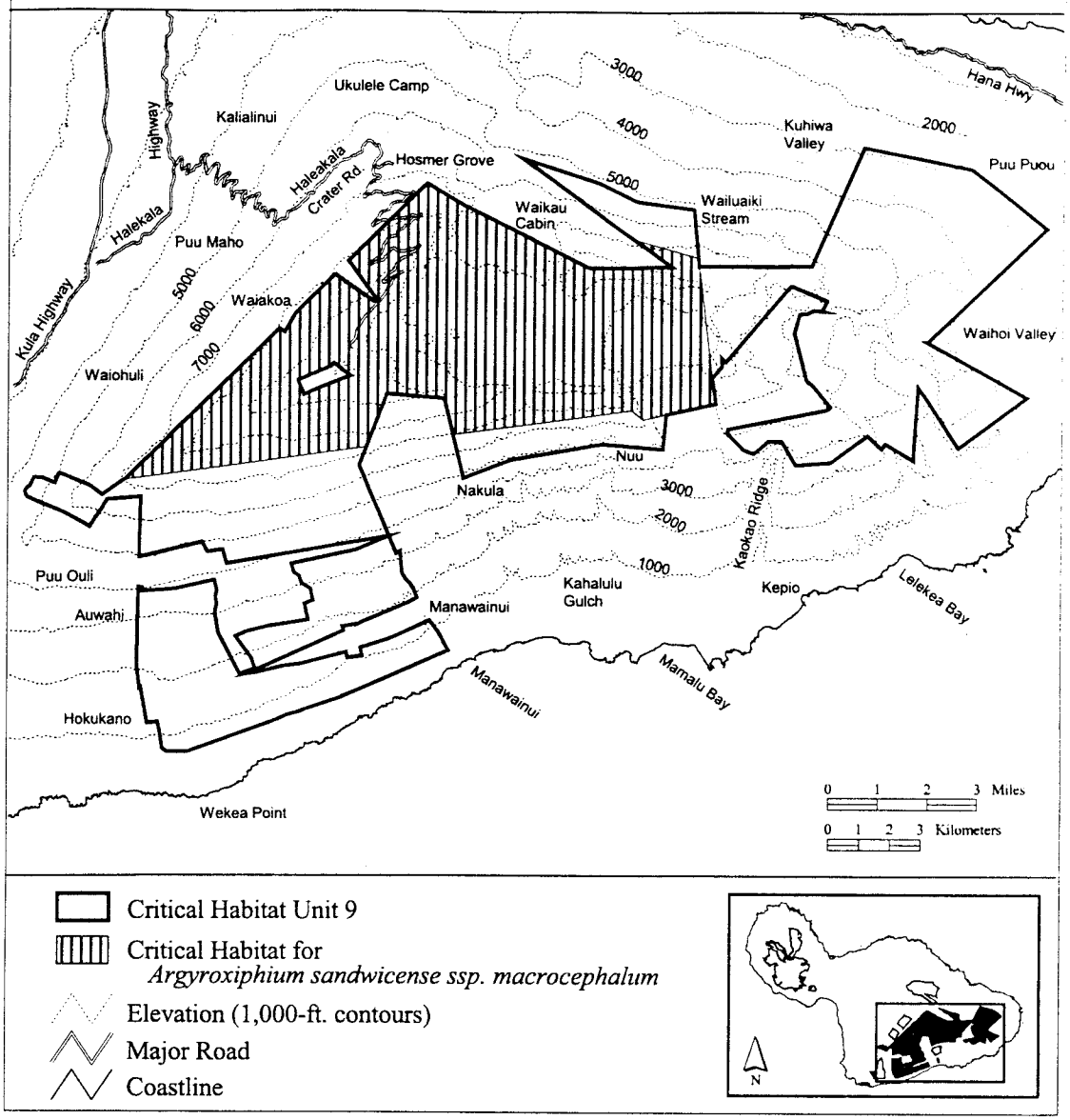
2294593; 786188, 2295812; 788190, 2297786; 788404, 2297994; 788742, 2298301; 788752, 2298310; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788940, 2298201; 788942, 2298200; 788965, 2298185; 789012, 2298158; 789034, 2298146; 789372, 2297947; 789683, 2297771; 789712, 2297753; 789756, 2297728; 789999, 2297585; 790577, 2297304; 790826, 2297180; 791591, 2296795; 794000, 2295593; 795810, 2295621; 795945, 2295623; 796322, 2295627; 796366, 2295628; 796367, 2295628; 796710, 2295632; 796712, 2295633; 796712, 2295635; 796322, 2295917; 796064, 2296102; 795805, 2296286; 795433, 2296550; 797565, 2295906; 797569, 2295864; 797581, 2295638; 797634, 2295413; 798056, 2292032; 798056, 2292031; 798107, 2291624; 798165, 2291162; 796929, 2290891; 796545, 2290807; 795794, 2290643; 795424, 2290939; 795382, 2290933; 789630, 2290134; 789516, 2290615; 789343, 2291348; 787469, 2291492; 786812, 2289742; 778932, 2288646; return to starting point.

(B) Excluding the area bounded by the following 42 boundary points (76ha; 189ac):

Start at 784680, 2291987; 784747, 2292015; 784786, 2292031; 784910, 2292083; 784946, 2292099; 784984, 2292116; 785051, 2292143; 785110, 2292167; 785146, 2292182; 785204, 2292207; 785308, 2292250; 785341, 2292265; 785383, 2292282; 785501, 2292330; 785537, 2292346; 785576, 2292362; 785614, 2292410; 785643, 2292390; 785674, 2292428; 785689, 2292448; 785732, 2292503; 785780, 2292466; 785847, 2292414; 785871, 2292394; 785930, 2292350; 785942, 2292341; 785983, 2292310; 785993, 2292302; 786016, 2292284; 786041, 2292263; 786107, 2292213; 786138, 2292189; 786181, 2292155; 786209, 2292133; 786238, 2292111; 786263, 2292091; 785264, 2291677; 784769, 2291468; 784742, 2291524; 784703, 2291618; 784568, 2291939; 784568, 2291941; return to starting point.

(C) **Note:** Map 26 follows:

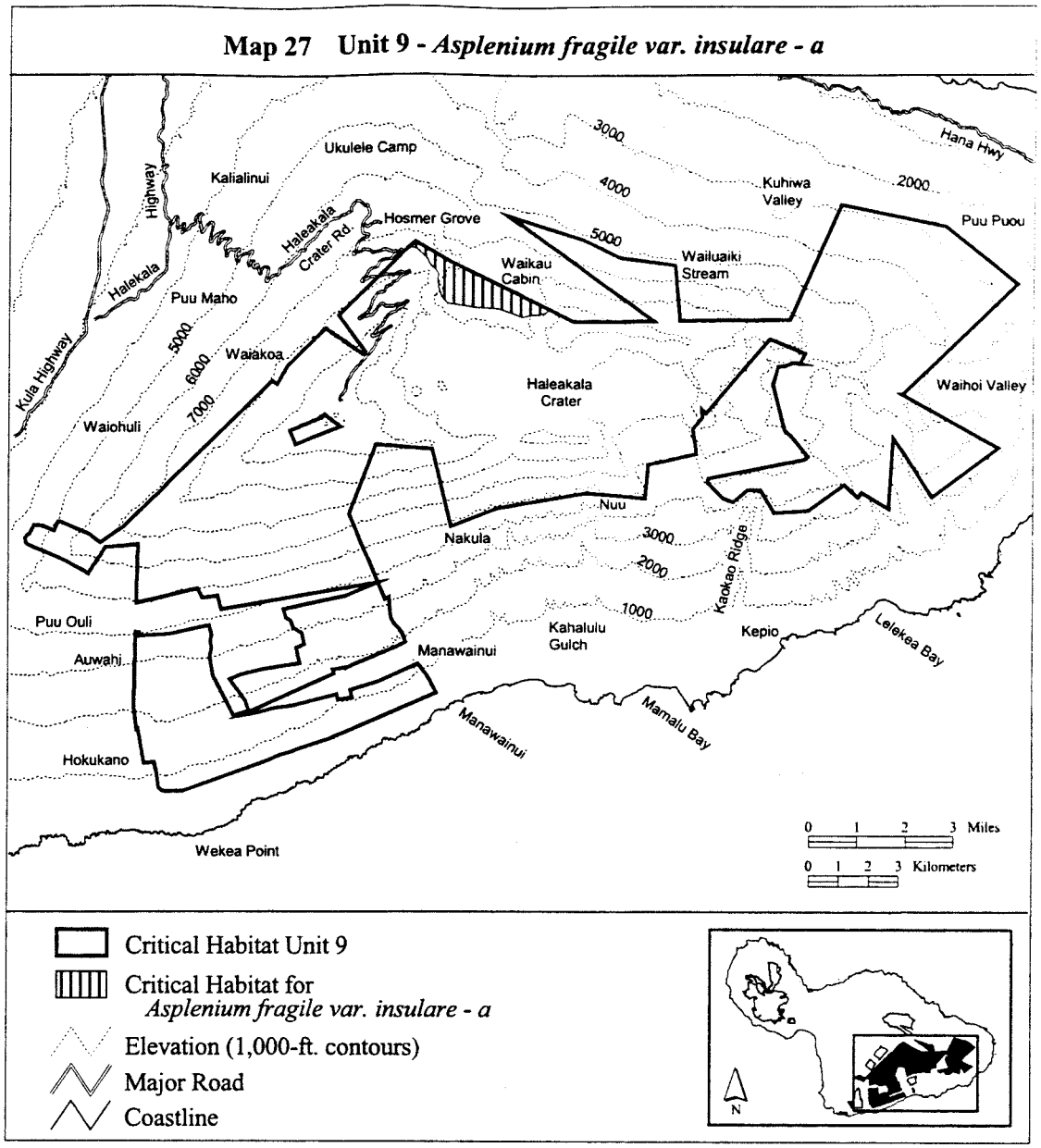
**Map 26 Unit 9 - *Argyroxiphium sandwicense ssp. macrocephalum***



(xxvii) Maui 9—*Asplenium fragile* var. *insulare*—a (362 ha; 894 ac).

(A) Unit consists of the following 74 boundary points: Start at 788543, 2298123; 788563, 2298140; 788600, 2298173; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788942, 2298200; 788965, 2298185; 789012, 2298158; 789097, 2298111; 789125, 2298094; 789154, 2298077; 789279, 2298004; 789310, 2297986; 789342, 2297969; 789450, 2297905; 789495, 2297879; 789521, 2297863; 789656, 2297787; 789683, 2297771; 789712, 2297753; 789841, 2297681; 789867, 2297664; 789901, 2297645; 789955, 2297614; 790033, 2297574; 790061, 2297560; 790093, 2297545; 790216, 2297485; 790249, 2297467; 790279, 2297452; 790304, 2297441; 790412, 2297387; 790443, 2297372; 790472, 2297357; 790581, 2297304; 790638, 2297276; 790666, 2297261; 790719, 2297235; 790800, 2297196; 790831, 2297181; 790865, 2297163; 790992, 2297102; 791409, 2296895; 791824, 2296689; 792240, 2296482; 792444, 2296380; 792449, 2296378; 792655, 2296275; 793070, 2296068; 793155, 2296026; 793157, 2295951; 793118, 2295890; 792901, 2295834; 792611, 2295823; 792304, 2295750; 791909, 2295901; 791480, 2296046; 791067, 2296068; 790755, 2296079; 790543, 2296118; 789819, 2296246; 789629, 2296452; 789535, 2296731; 789485, 2296976; 789512, 2297221; 789514, 2297223; 789451, 2297316; 789306, 2297478; 789212, 2297600; 789145, 2297717; 788799, 2298069; 788554, 2298124; return to starting point.

(B) **Note:** Map 27 follows:

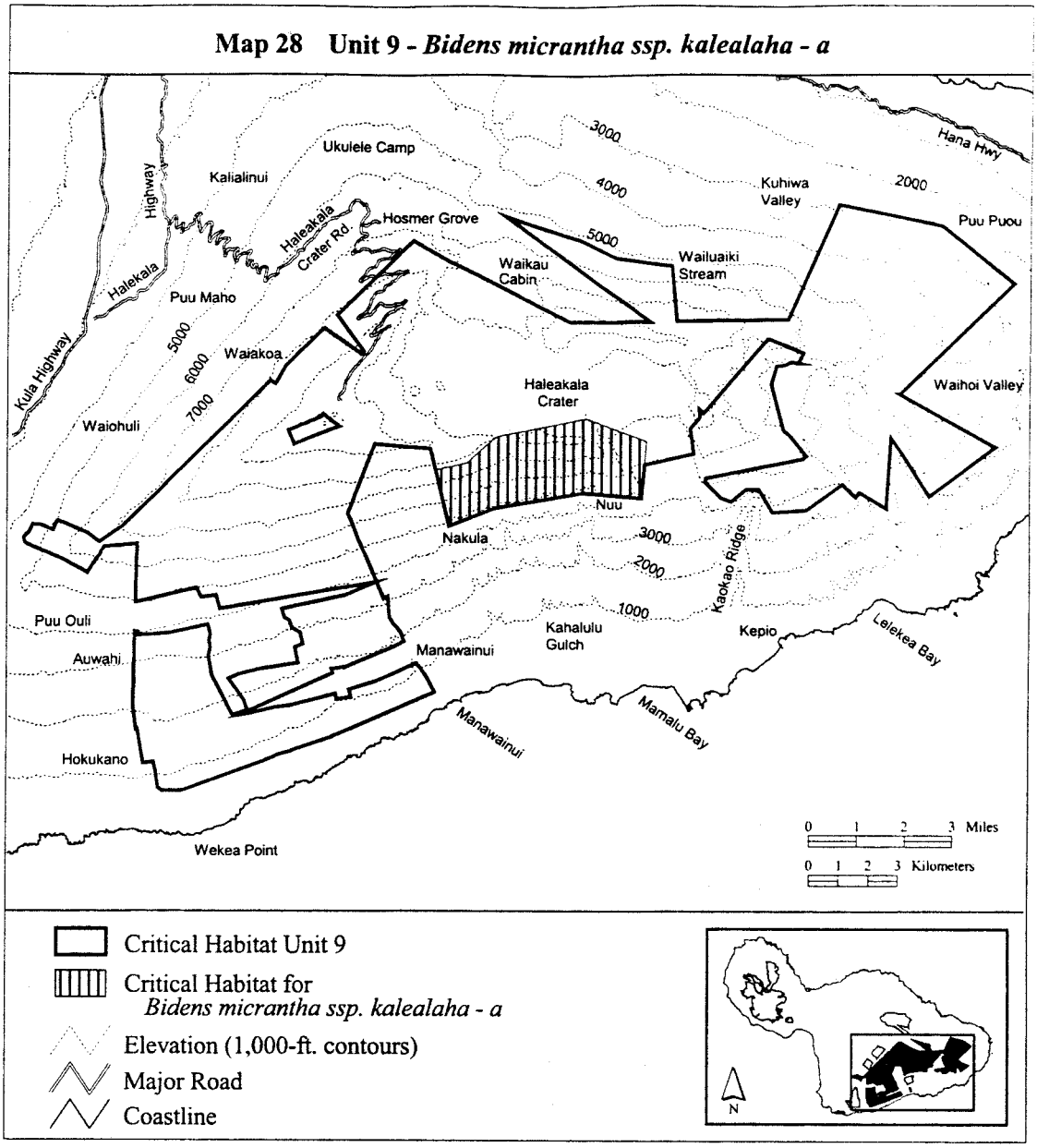



(xxviii) Maui 9—*Bidens micrantha* ssp. *kalealaha*—a (1,563 ha; 3,861 ac).

(A) Unit consists of the following 16 boundary points: Start at 796545, 2290807; 796545, 2290801; 796458, 2289725; 796454, 2289679; 796453,

2289665; 794502, 2289839; 794488, 2289840; 794474, 2289837; 791519, 2289316; 789966, 2288718; 789516, 2290615; 790559, 2290844; 791422, 2291618; 791566, 2291747; 794576, 2292372; 796609, 2291606; return to starting point.

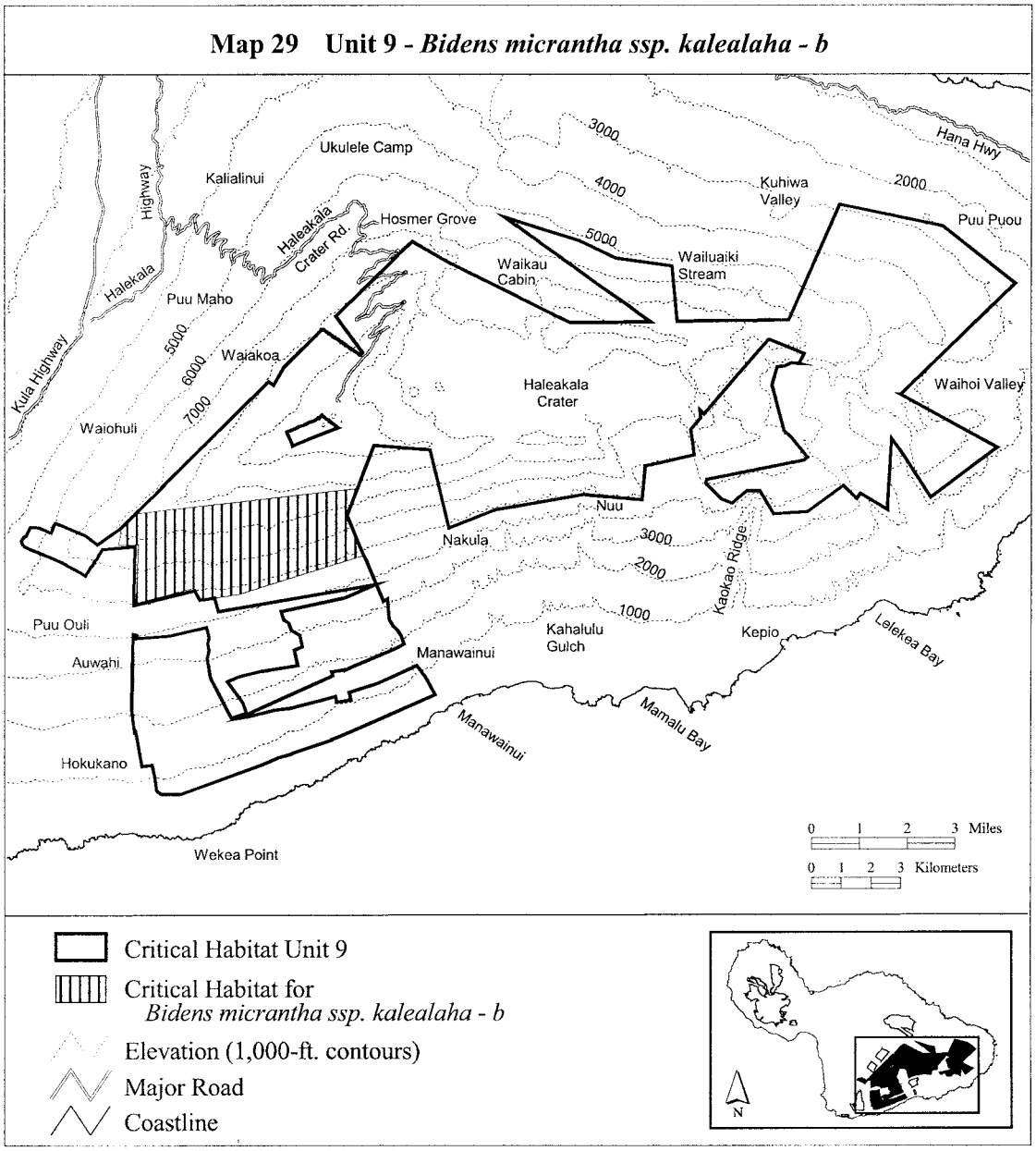
(B) **Note:** Map 28 follows:




(xxix) Maui 9—*Bidens micrantha* ssp. *kalealaha*—b (2,116 ha; 5,229 ac).

(A) Unit consists of the following 18 boundary points: Start at 779048, 2288746; 779070, 2288768; 779512, 2289205; 780627, 2289332; 782572, 2289555; 786928, 2290052; 786812, 2289742; 786580, 2289125; 786747, 2288730; 787145, 2287787; 782967, 2286486; 782162, 2286366; 781652, 2286290; 781485, 2286623; 781454, 2286686; 779524, 2286194; 779600, 2288162; 778935, 2288132; return to starting point.

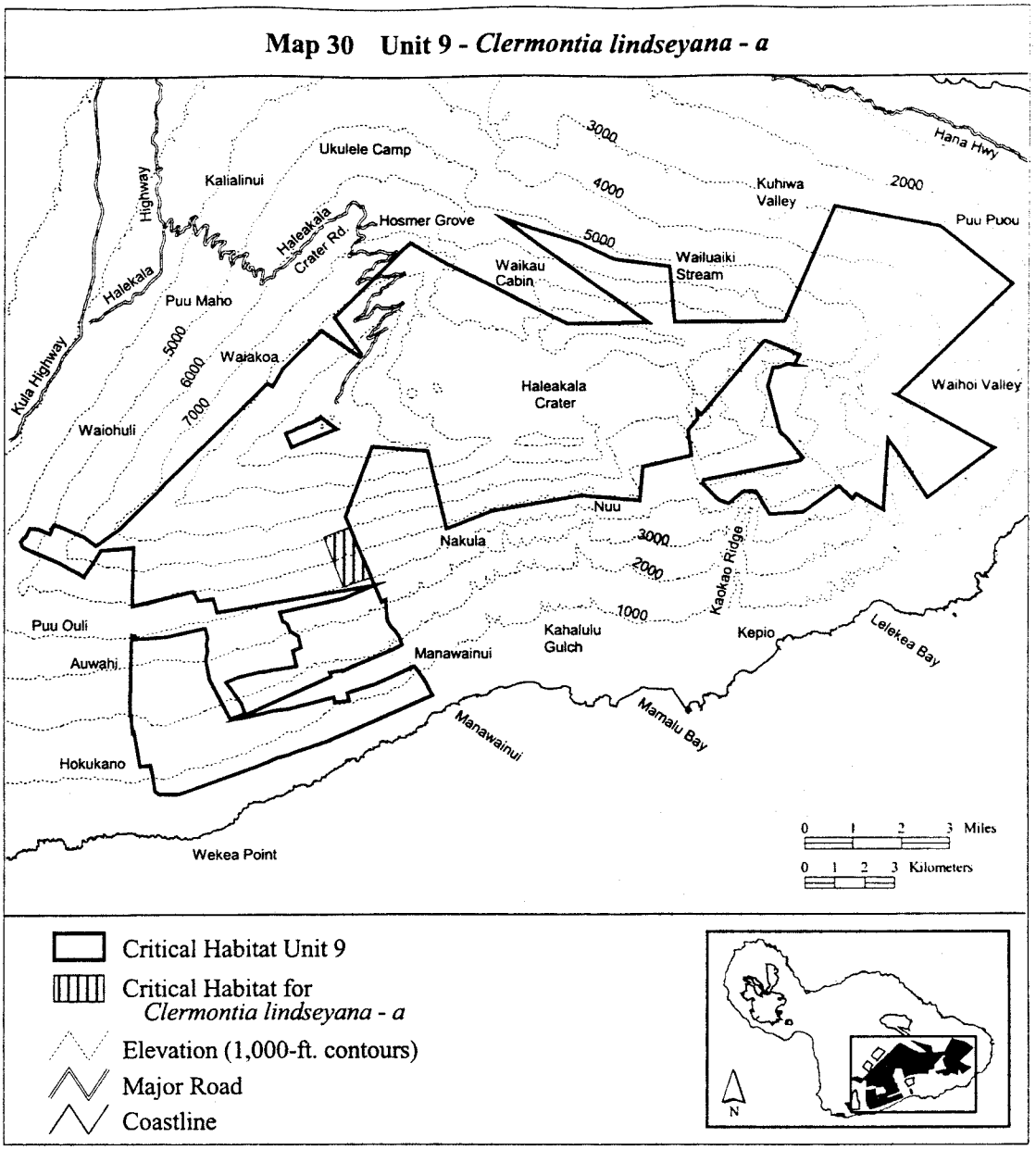
(B) **Note:** Map 29 follows:




(xxx) Maui 9—*Clermontia lindseyana*—a (177 ha; 438 ac).

(A) Unit consists of the following 5 boundary points: Start at 787444, 2287080; 787071, 2286938; 786501, 2286762; 785851, 2288424; 786721, 2288791; return to starting point.

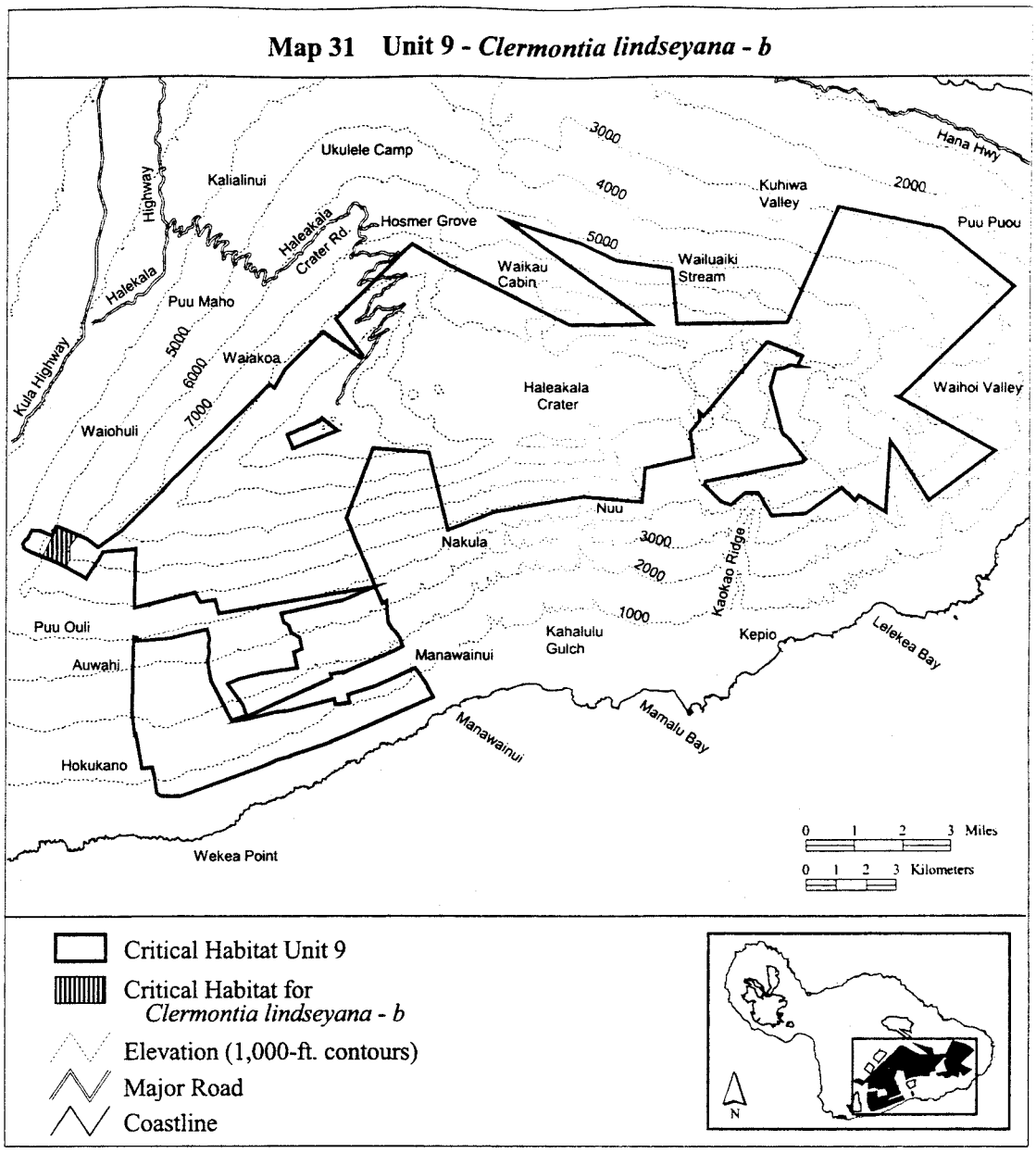
(B) **Note:** Map 30 follows:




(xxxi) Maui 9—*Clermontia lindseyana*—b (60 ha; 148 ac).

(A) Unit consists of the following 25 boundary points: Start at 776854, 2288875; 776854, 2288876; 776882, 2288864; 776920, 2288848; 776994, 2288817; 777561, 2288580; 777275, 2288186; 777275, 2287757; 777159, 2287487; 776983, 2287585; 776726, 2287694; 776756, 2287770; 776817, 2287928; 776860, 2288037; 776871, 2288068; 776895, 2288122; 776938, 2288237; 776979, 2288341; 777002, 2288401; 777006, 2288411; 777006, 2288412; 777006, 2288413; 777005, 2288413; 777005, 2288414; 776698, 2288553; return to starting point.

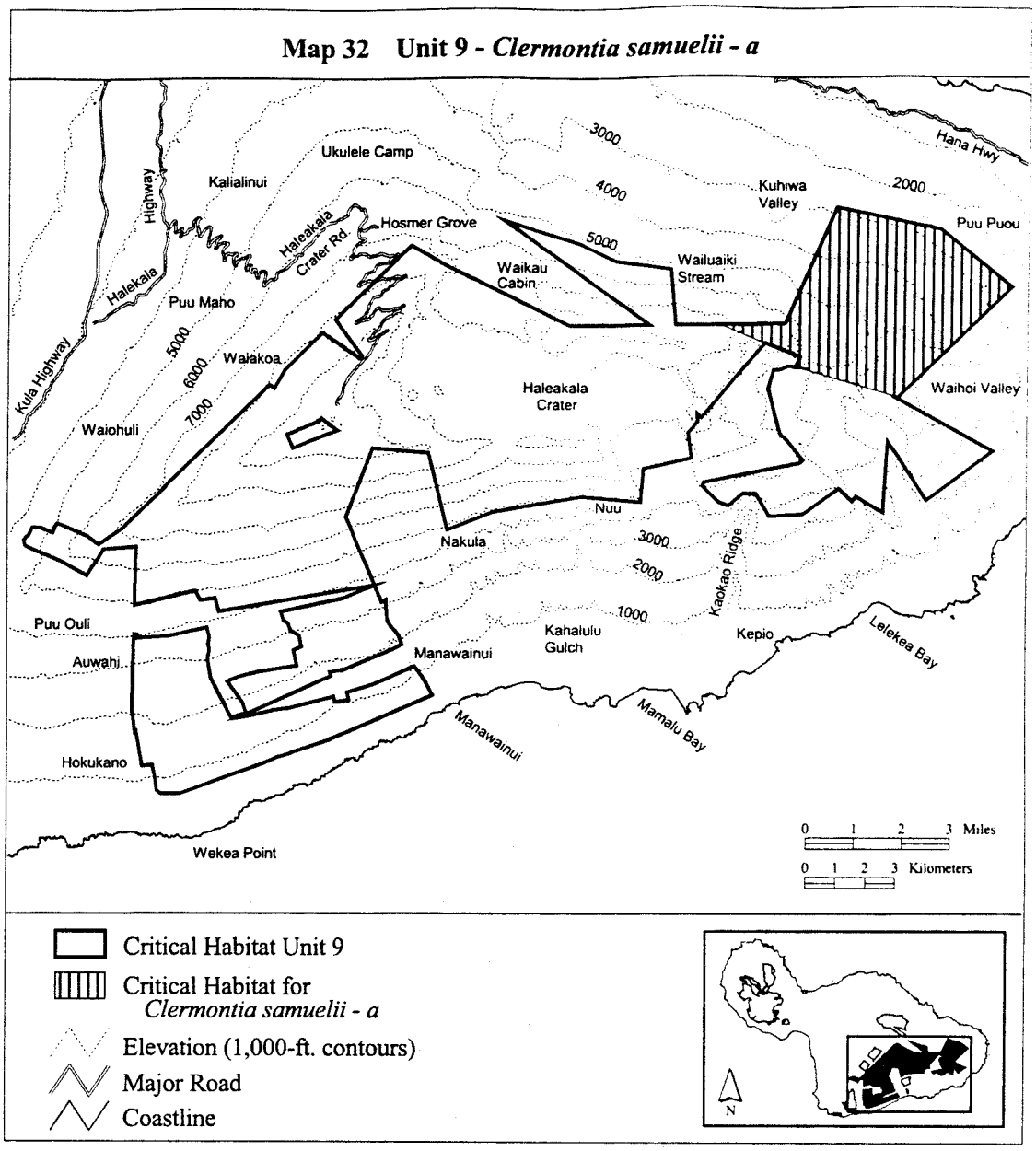
(B) **Note:** Map 31 follows:




(xxxii) Maui 9—*Clermontia samuelii*—a (3,130 ha; 7,734 ac).

(A) Unit consists of the following 27 boundary points: Start at 799099, 2295658; 799092, 2295661; 799244, 2295662; 799663, 2295668; 800082, 2295673; 800414, 2295677; 800379, 2295672; 800982, 2295684; 801296, 2295688; 801297, 2295688; 801369, 2295851; 802993, 2299556; 806459, 2298838; 807604, 2297939; 808913, 2296912; 805091, 2293218; 805090, 2293218; 801679, 2294214; 801640, 2294225; 801796, 2294569; 801346, 2294743; 801340, 2294745; 800636, 2295040; 800633, 2295036; 800632, 2295034; 800624, 2295037; 800620, 2295038; return to starting point.

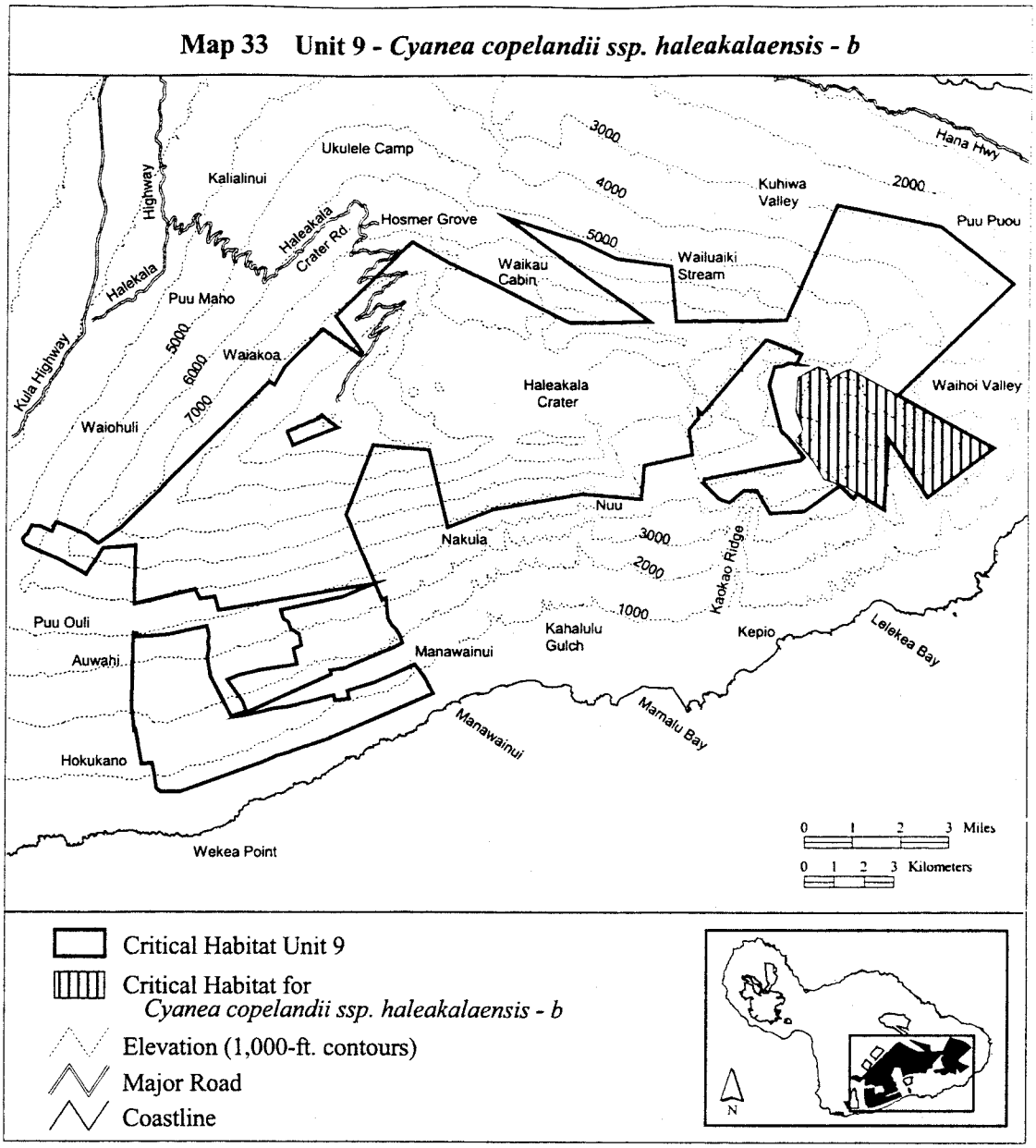
(B) **Note:** Map 32 follows:




(xiii) Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b (1,709 ha; 4,224 ac).

(A) Unit consists of the following 21 boundary points: Start at 805053, 2293180; 806644, 2292314; 808301, 2291412; 806062, 2289747; 805115, 2291183; 804741, 2291728; 804610, 2289526; 804598, 2289317; 803684, 2289877; 803296, 2290115; 802589, 2290350; 802215, 2290953; 801641, 2291671; 801871, 2292015; 801641, 2292647; 801699, 2293766; 802359, 2294139; 802646, 2294024; 802761, 2293680; 802962, 2293852; 803432, 2294063; return to starting point.

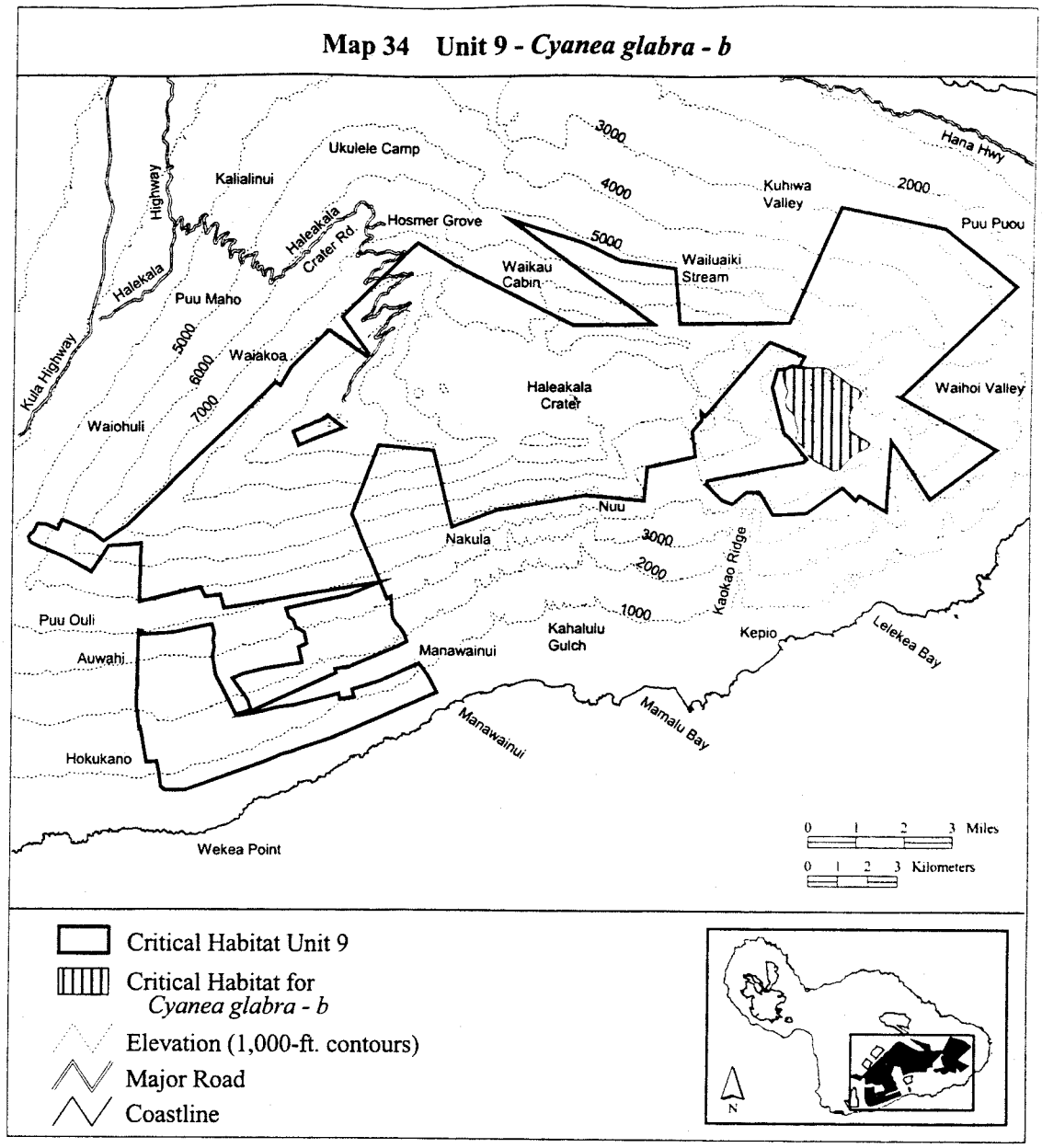
(B) **Note:** Map 33 follows:




(xxxiv) Maui 9—*Cyanea glabra*—b (650 ha; 1,605 ac).

(A) Unit consists of the following 50 boundary points: Start at 801146, 2294134; 801147, 2294134; 801185, 2294156; 801306, 2294225; 801376, 2294265; 801594, 2294228; 801679, 2294214; 801771, 2294198; 802073, 2294198; 802434, 2294198; 802655, 2294131; 802883, 2293924; 803365, 2293596; 803600, 2293468; 803707, 2293361; 803713, 2293247; 803425, 2292852; 803318, 2292564; 803312, 2292196; 803372, 2292055; 803713, 2291855; 803988, 2291687; 804008, 2291560; 803894, 2291480; 803680, 2291366; 803486, 2291265; 803305, 2291078; 803044, 2290763; 802850, 2290709; 802722, 2290743; 802542, 2290884; 802227, 2291017; 801979, 2291212; 801832, 2291439; 801745, 2291560; 801637, 2291660; 801550, 2291788; 801544, 2291848; 801604, 2291955; 801611, 2292069; 801517, 2292370; 801497, 2292538; 801443, 2292638; 801330, 2292757; 801229, 2292846; 801175, 2293006; 801182, 2293134; 801242, 2293401; 801142, 2293689; 801062, 2294018; return to starting point.

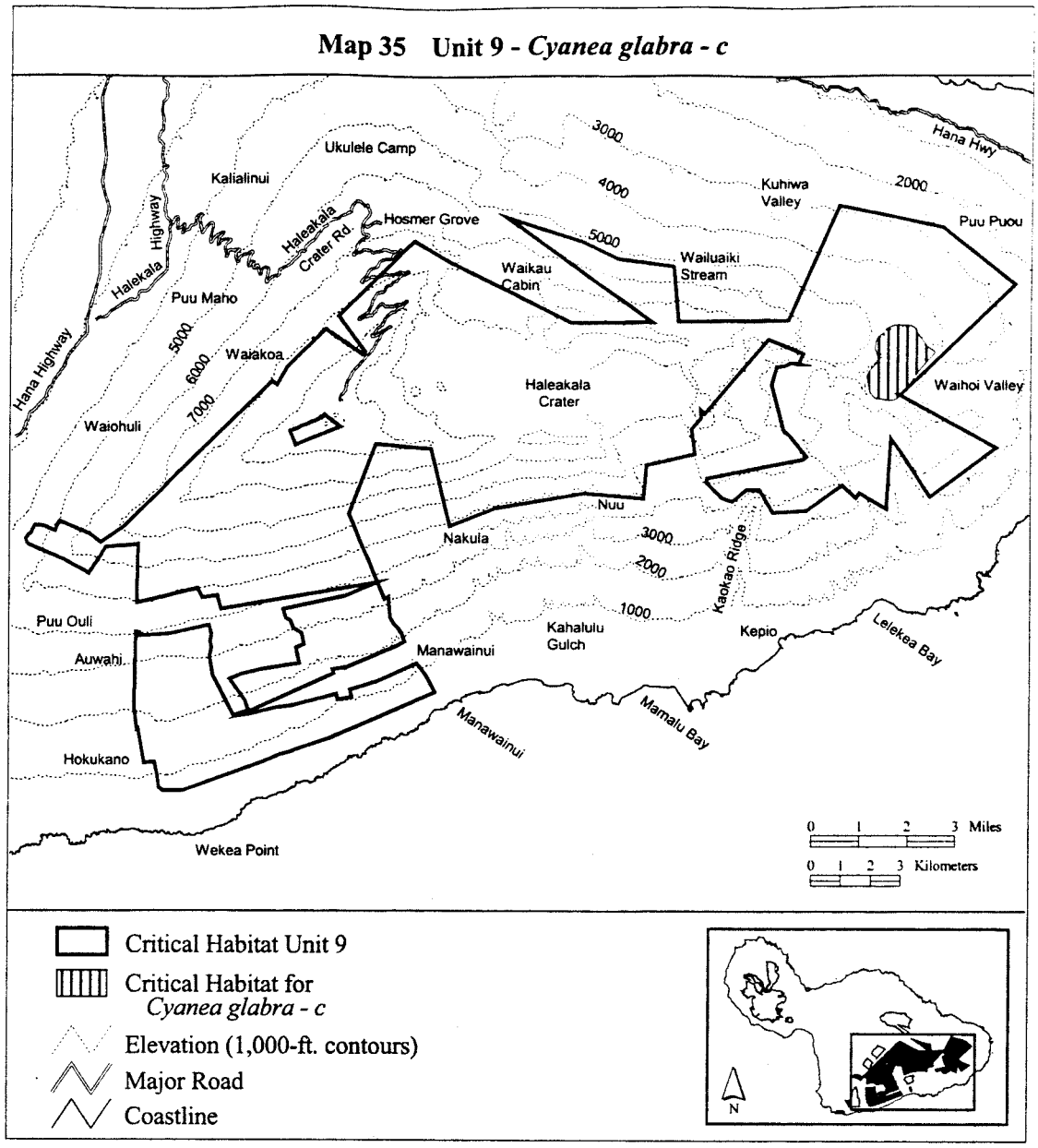
(B) **Note:** Map 34 follows:




(xxxv) Maui 9—*Cyanea glabra*—c (363 ha; 898 ac).

(A) Unit consists of the following 38 boundary points: Start at 805090, 2293218; 805068, 2293196; 805053, 2293181; 805053, 2293180; 804943, 2293067; 804871, 2293032; 804680, 2293002; 804400, 2293049; 804298, 2293049; 804161, 2293121; 804036, 2293276; 804024, 2293342; 803964, 2293634; 803917, 2293843; 803988, 2293950; 804084, 2294076; 804245, 2294261; 804298, 2294398; 804245, 2294571; 804191, 2294750; 804215, 2295007; 804304, 2295144; 804489, 2295275; 804573, 2295394; 804650, 2295454; 804895, 2295550; 805367, 2295538; 805534, 2295460; 805587, 2295365; 805695, 2295150; 805933, 2294828; 806166, 2294684; 806184, 2294631; 806178, 2294595; 805981, 2294362; 805677, 2294016; 805480, 2293718; 805188, 2293318; return to starting point.

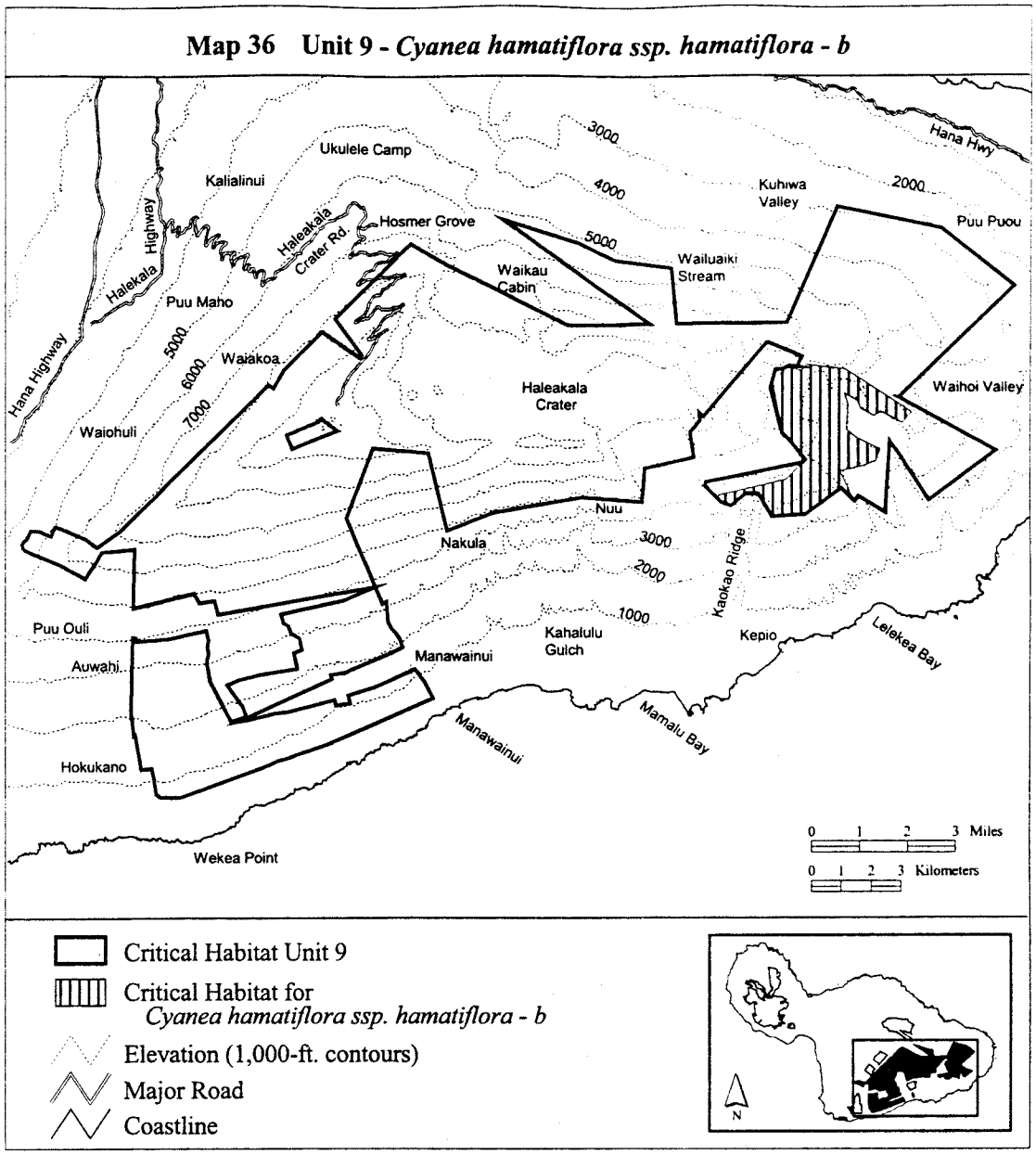
(B) **Note:** Map 35 follows:




(xxxvi) Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b (1,309 ha; 3,235 ac).

(A) Unit consists of the following 34 boundary points: Start at 801996, 2294274; 803261, 2294116; 805475, 2292702; 805159, 2292328; 804474, 2292692; 804184, 2292587; 803762, 2292824; 803635, 2293097; 803235, 2293299; 803340, 2292930; 803288, 2292113; 803657, 2291823; 804421, 2291454; 804289, 2291058; 803920, 2290900; 803077, 2290716; 803548, 2289729; 803114, 2290141; 801935, 2289265; 800788, 2289185; 800516, 2289662; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799034, 2289728; 799006, 2289910; 801285, 2290452; 801917, 2291085; 801678, 2291389; 801153, 2292060; 800860, 2293524; 801185, 2294156; 801306, 2294225; 801759, 2294089; return to starting point.

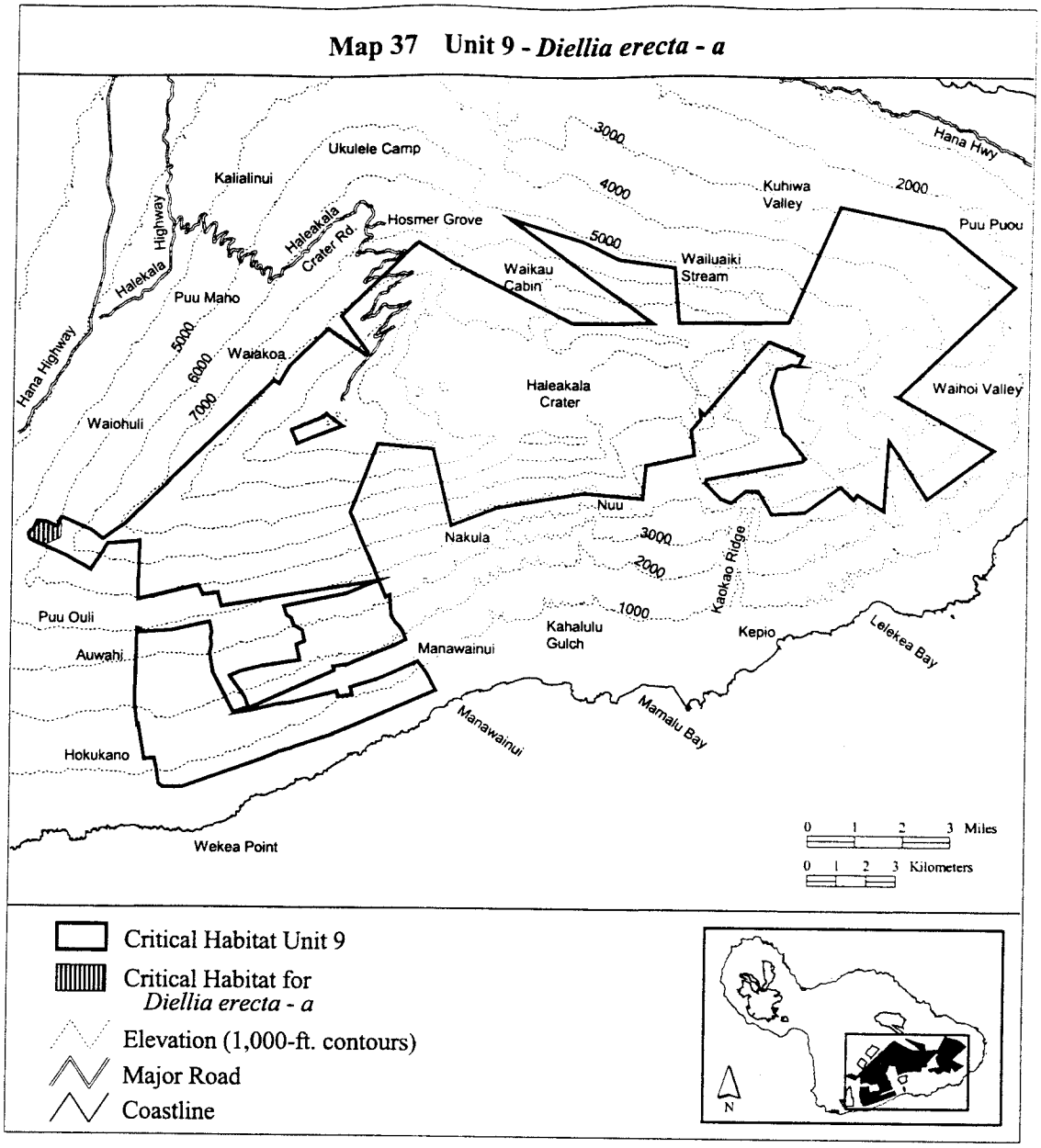
(B) **Note:** Map 36 follows:




(xxxvii) Maui 9—*Diellia erecta*—a (2 ha; 5 ac).

(A) Unit consists of the following 9 boundary points: Start at 776678, 2288562; 776714, 2288648; 776729, 2288680; 776747, 2288719; 776756, 2288719; 776808, 2288717; 776832, 2288598; 776823, 2288519; 776820, 2288498; return to starting point.

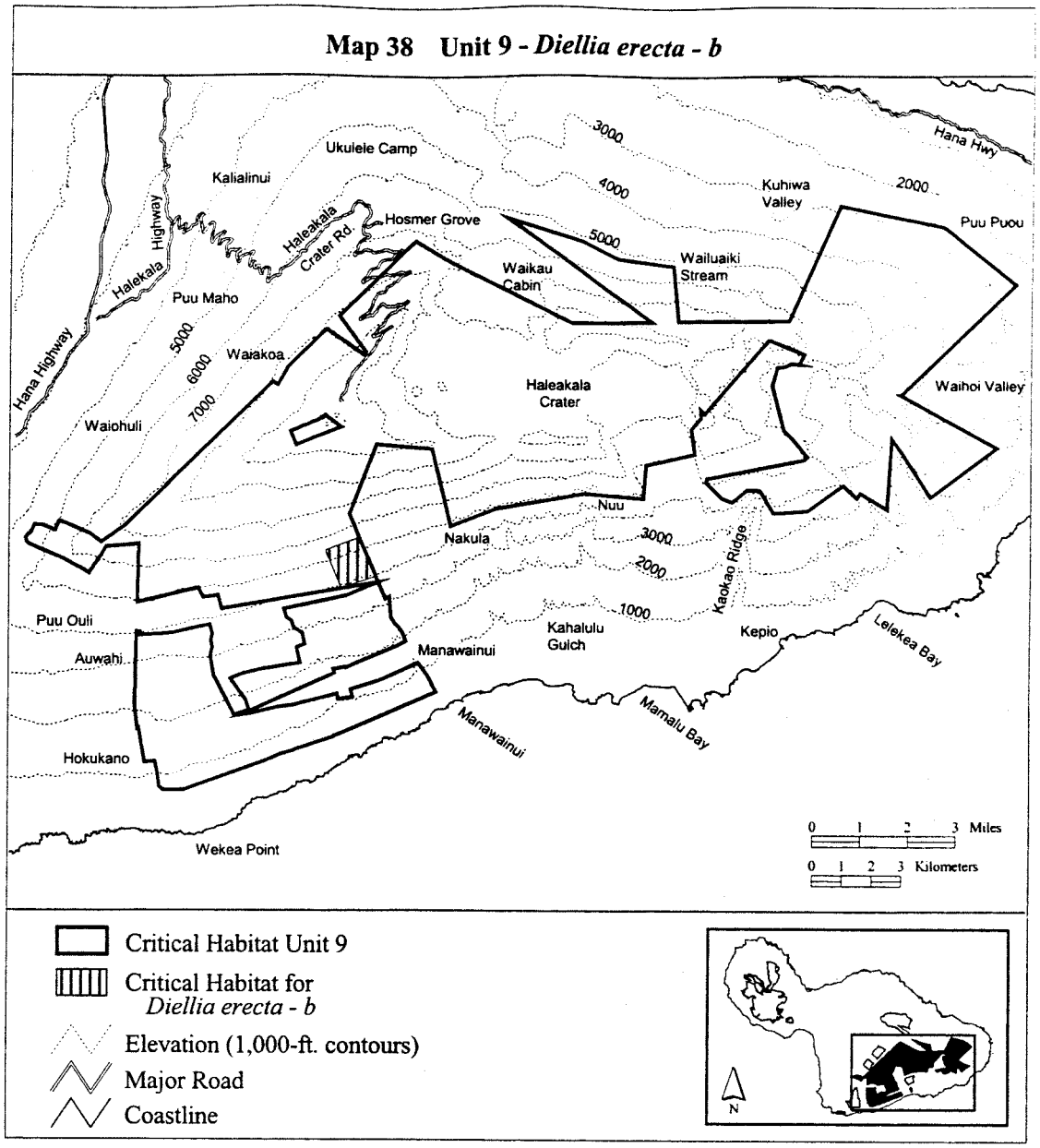
(B) **Note:** Map 37 follows:




(xxxviii) Maui 9—*Diellia erecta*—b (175 ha; 431 ac).

(A) Unit consists of the following 9 boundary points: Start at 787240, 2287564; 787475, 2287007; 786302, 2286613; 785862, 2287663; 785861, 2287662; 785789, 2287851; 785769, 2287902; 785806, 2287916; 786914, 2288334; return to starting point.

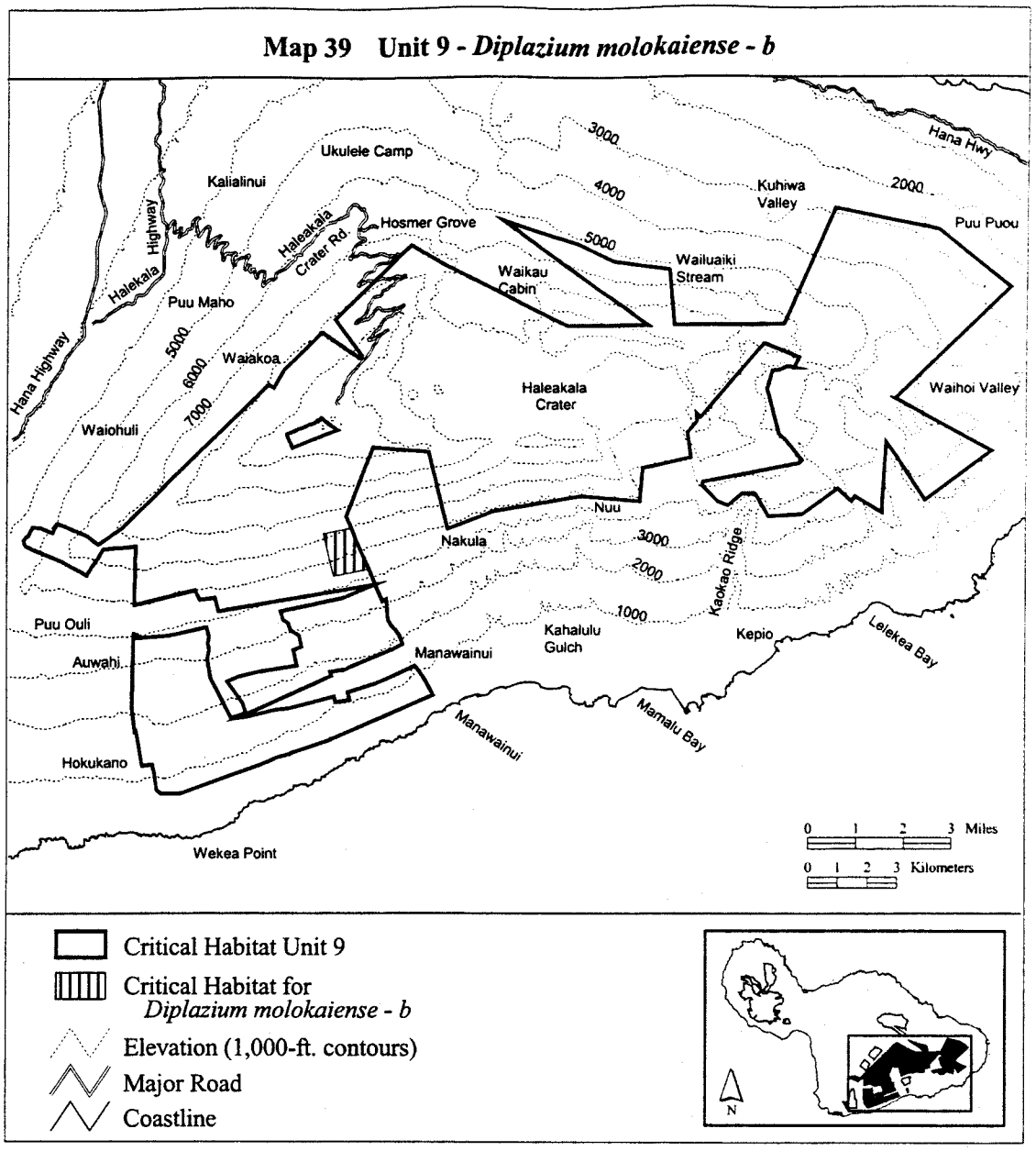
(B) **Note:** Map 38 follows:




(xxxix) Maui 9—*Diplazium molokaiense*—b (162 ha; 401 ac).

(A) Unit consists of the following 4 boundary points: Start at 786149, 2287088; 785806, 2288547; 786747, 2288730; 787339, 2287329; return to starting point.

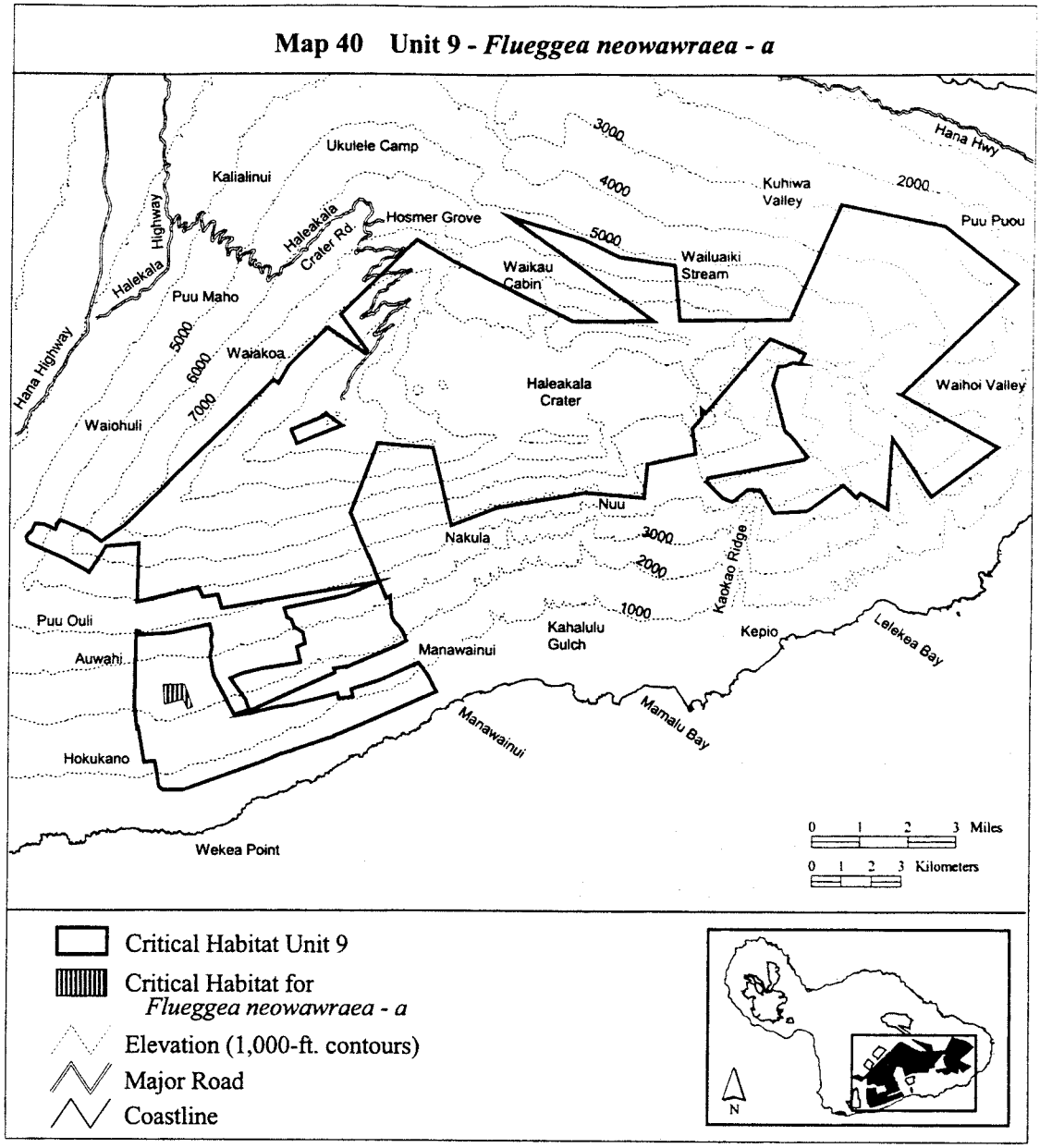
(B) **Note:** Map 39 follows:




(xl) Maui 9—*Flueggea neowawraea*—a (52 ha; 128 ac).

(A) Unit consists of the following 6 boundary points: Start at 780345, 2283357; 781056, 2283374; 781342, 2282594; 781160, 2282542; 781012, 2282863; 780388, 2282689; return to starting point.

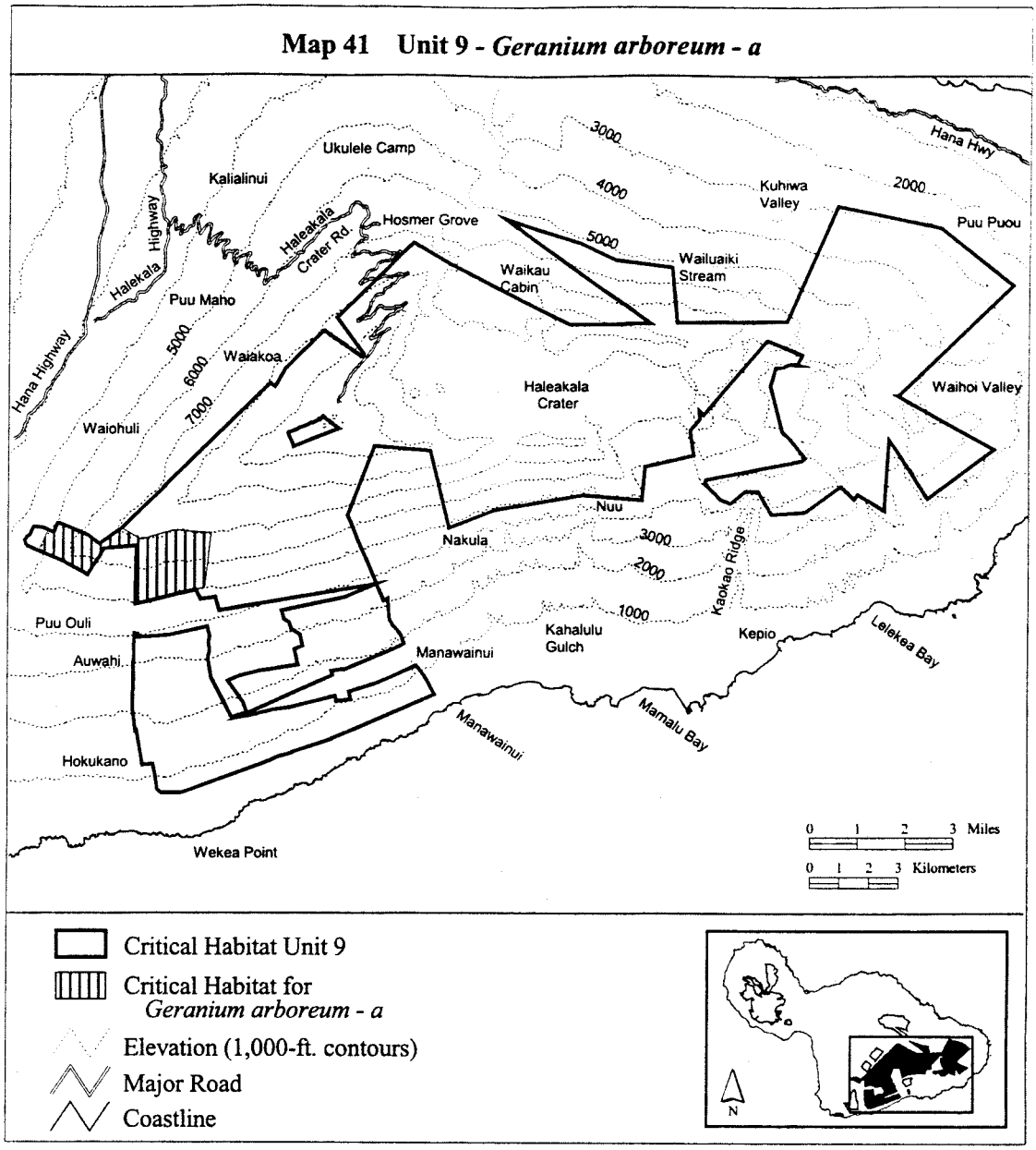
(B) **Note:** Map 40 follows:




(xli) Maui 9—*Geranium arboreum*—a (731 ha; 1,805 ac).

(A) Unit consists of the following 78 boundary points: Start at 776678, 2288562; 776714, 2288648; 776729, 2288680; 776769, 2288768; 776801, 2288841; 776816, 2288873; 776823, 2288888; 776854, 2288875; 776994, 2288817; 777437, 2288634; 777736, 2288504; 777822, 2288467; 778221, 2288151; 778821, 2288569; 778986, 2288684; 779630, 2288318; 780757, 2288633; 782012, 2288542; 781788, 2286699; 781485, 2286623; 779450, 2286115; 779447, 2286116; 779447, 2286118; 779447, 2286148; 779449, 2286273; 779451, 2286428; 779453, 2286528; 779457, 2286767; 779463, 2287069; 779466, 2287187; 779469, 2287405; 779474, 2287664; 779478, 2287896; 779480, 2288005; 779481, 2288094; 779481, 2288097; 779480, 2288099; 779379, 2288090; 779098, 2288064; 778964, 2288051; 778864, 2288041; 778675, 2288023; 778485, 2288006; 778407, 2287998; 778397, 2287997; 778396, 2287997; 778295, 2287839; 778290, 2287830; 778201, 2287689; 778141, 2287597; 778127, 2287576; 778122, 2287567; 778097, 2287528; 778072, 2287490; 778051, 2287458; 778008, 2287395; 777941, 2287295; 777929, 2287273; 777926, 2287268; 777872, 2287190; 777820, 2287111; 777670, 2287202; 777221, 2287452; 776983, 2287585; 776726, 2287694; 776756, 2287770; 776817, 2287928; 776860, 2288037; 776871, 2288068; 776895, 2288122; 776938, 2288237; 776979, 2288341; 777002, 2288401; 777006, 2288411; 777006, 2288412; 777006, 2288413; 777005, 2288413; 777005, 2288414; return to starting point.

(B) **Note:** Map 41 follows:

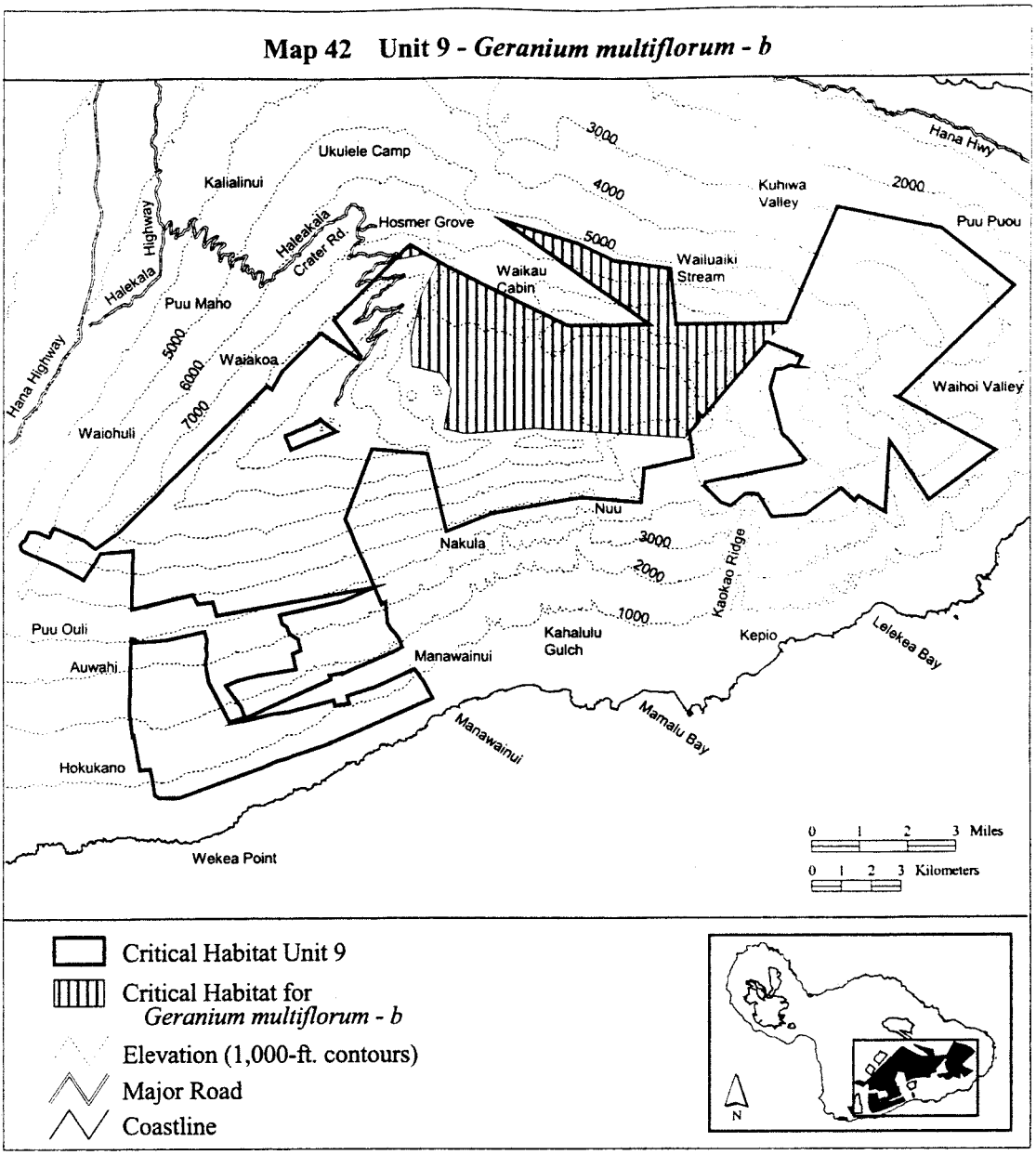



(xlii) Maui 9—*Geranium multiflorum*—b (4,817 ha; 11,903 ac).

(A) Unit consists of the following 155 boundary points: Start at 788163, 2297782; 788209, 2297823; 788474, 2298061; 788549, 2298128; 788563, 2298140; 788752, 2298310; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788940, 2298201; 788945, 2298198; 788965, 2298185; 789012, 2298158; 789097, 2298111; 789125, 2298094; 789154, 2298077; 789279, 2298004; 789310, 2297986; 789342, 2297969; 789450, 2297905; 789495, 2297879; 789521, 2297863; 789656, 2297787; 789683, 2297771; 789712, 2297753; 789841, 2297681; 789867, 2297664; 789901, 2297645; 789955, 2297614; 790033, 2297574; 790061, 2297560; 790093, 2297545; 790216, 2297485; 790249, 2297467; 790279, 2297452; 790304, 2297441; 790412, 2297387; 790443, 2297372; 790472, 2297357; 790581, 2297304; 790633, 2297278; 790637, 2297277; 790638, 2297276; 790666, 2297261; 790712, 2297238; 790778, 2297205; 790851, 2297171; 790865, 2297163; 790992, 2297102; 791049, 2297073; 791253, 2296971; 791748, 2296726; 792093, 2296555; 792239, 2296482; 792302, 2296451; 792444, 2296380; 792449, 2296378; 792490, 2296357; 792655, 2296275; 793070, 2296068; 793303, 2295953; 793307, 2295951; 793422, 2295894; 793425, 2295892; 793482, 2295864; 793485, 2295863; 793542, 2295834; 793701, 2295755; 794013, 2295601; 794376, 2295605; 794739, 2295608; 795102, 2295612; 795523, 2295618; 795945, 2295623; 796322, 2295627; 796366, 2295628; 796367, 2295628; 796710, 2295632; 796712, 2295633; 796712, 2295635; 796322, 2295917; 796064, 2296102; 795805, 2296286; 795412, 2296565; 794929, 2296911; 794586, 2297162; 794089, 2297517; 793843, 2297693; 793840, 2297695; 793717, 2297782; 793715, 2297784; 793592, 2297871; 793096, 2298227; 792850, 2298402; 792846, 2298405; 792724, 2298492; 792721, 2298494; 792661, 2298537; 792659, 2298539; 792630, 2298559; 792627, 2298561; 792614, 2298570; 792612, 2298572; 792606, 2298576; 792604, 2298578; 792602,

2298579; 792600, 2298581; 792599, 2298581; 792395, 2298727; 792392, 2298730; 792290, 2298802; 792288, 2298804; 792238, 2298839; 792236, 2298841; 792212, 2298858; 792210, 2298860; 792199, 2298867; 792197, 2298869; 792193, 2298872; 792190, 2298874; 792187, 2298876; 791820, 2299139; 792911, 2298800; 794323, 2298361; 795561, 2297771; 797414, 2297495; 797590, 2295645; 797591, 2295643; 797602, 2295643; 797615, 2295643; 797793, 2295645; 798243, 2295649; 800429, 2295671; 801112, 2295683; 801148, 2295656; 800620, 2295038; 800619, 2295037; 799580, 2293819; 798494, 2292544; 798490, 2292539; 798357, 2292680; 798374, 2292403; 798056, 2292031; 797894, 2291841; 792958, 2292187; 790618, 2291998; 789902, 2292186; 790128, 2293507; 789788, 2294035; 788807, 2294262; 788770, 2295129; 789109, 2296601; 789675, 2297733; 789185, 2297997; return to starting point.

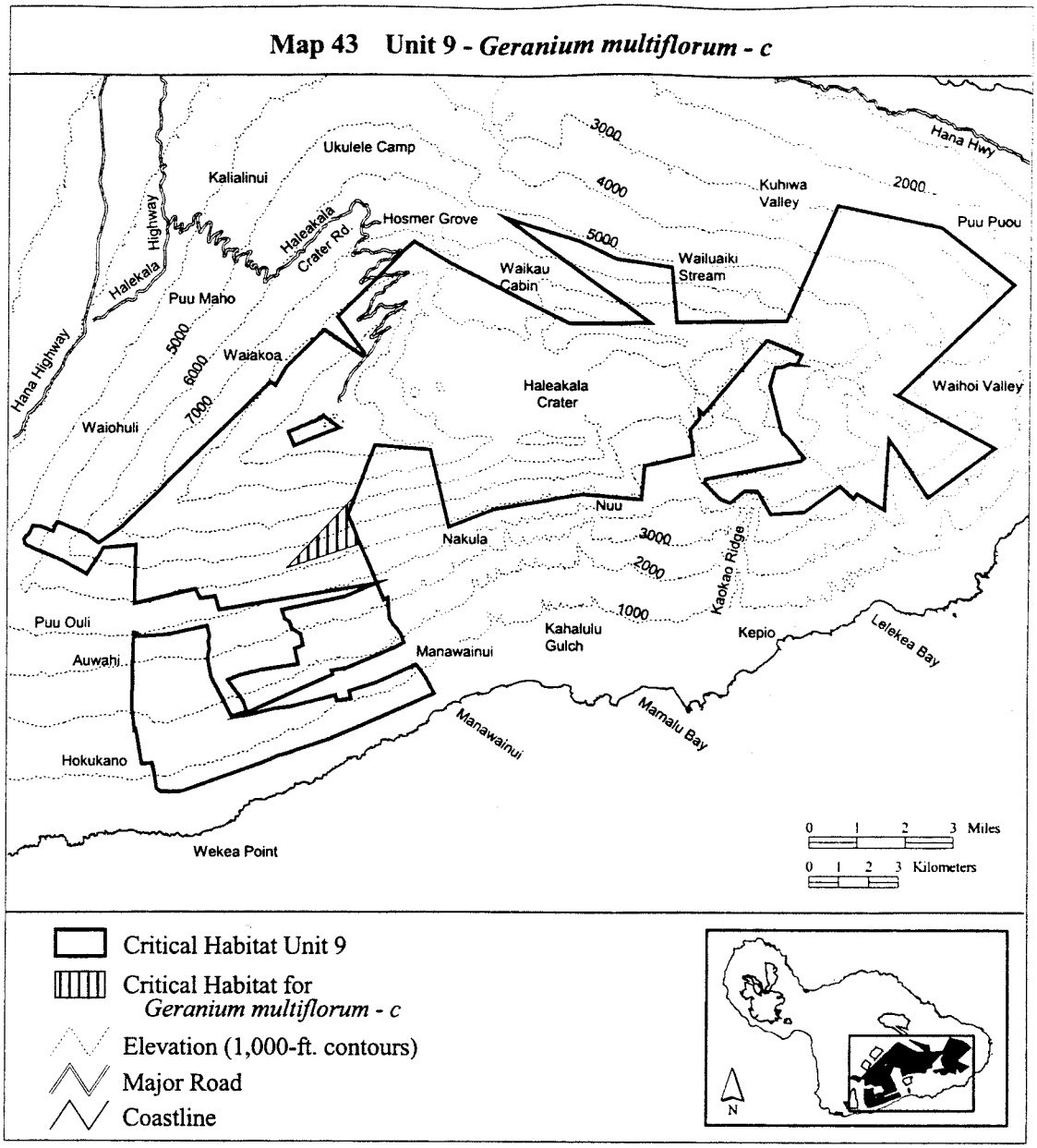
(B) **Note:** Map 42 follows:




(xliii) Maui 9—*Geranium multiflorum*—c (182 ha; 451 ac).

(A) Unit consists of the following 4 boundary points: Start at 786997, 2288137; 784544, 2287319; 786824, 2289775; 786580, 2289125; return to starting point.

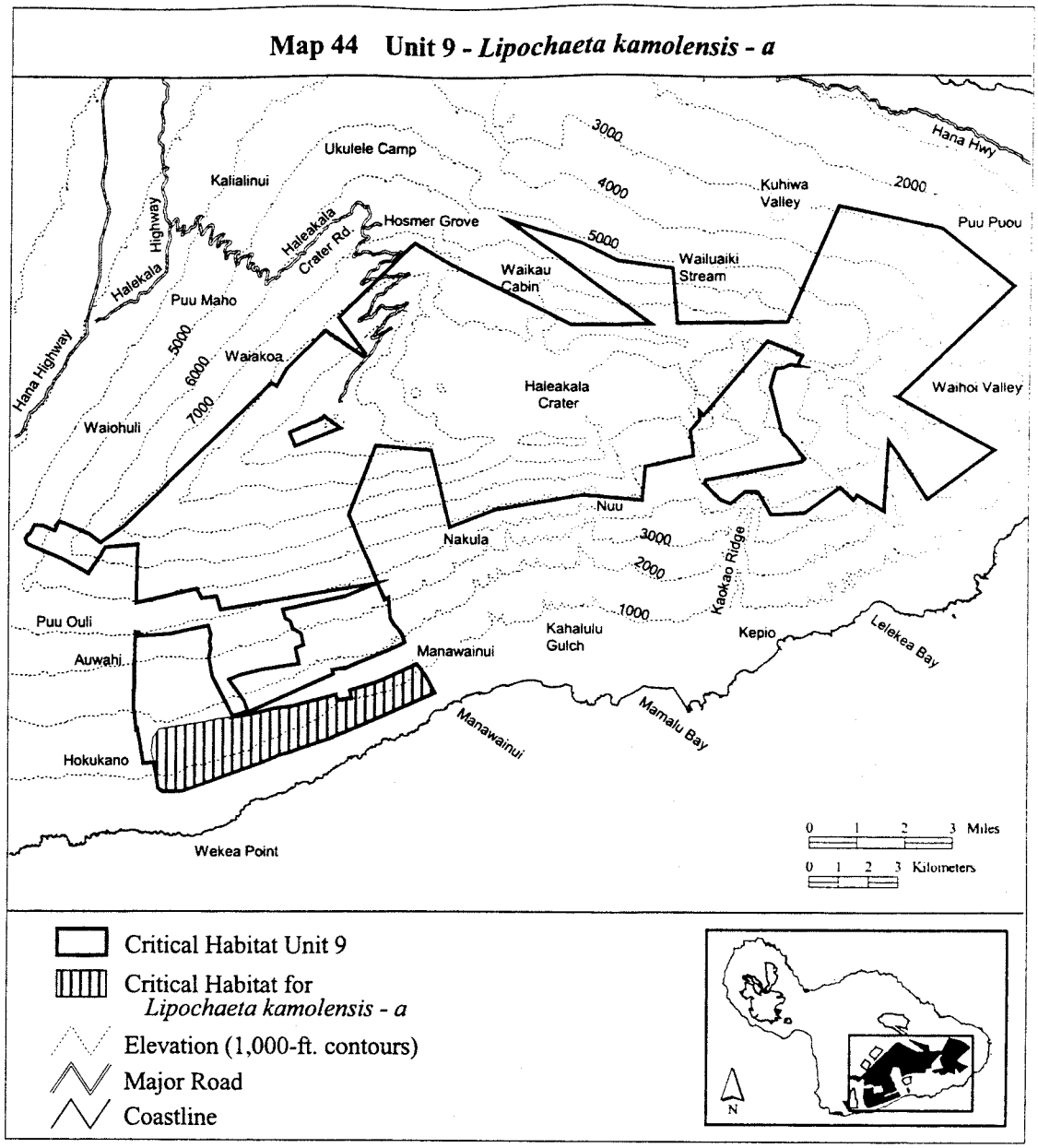
(B) **Note:** Map 43 follows:




(xliv) Maui 9—*Lipochaeta kamolensis*—a (1,475 ha; 3,644 ac).

(A) Unit consists of the following 42 boundary points: Start at 782955, 2282353; 783327, 2282400; 784164, 2282607; 784741, 2282683; 785726, 2282934; 786198, 2283073; 786228, 2282888; 786228, 2282887; 786230, 2282886; 786701, 2282954; 786702, 2282955; 786702, 2282956; 786655, 2283208; 787384, 2283423; 787548, 2283495; 787945, 2283669; 788905, 2284089; 788984, 2283995; 789152, 2283770; 789288, 2283565; 789391, 2283327; 789514, 2283129; 787773, 2282368; 786596, 2281853; 786087, 2281631; 786085, 2281630; 784789, 2281189; 784708, 2281139; 784251, 2281019; 784001, 2280899; 783805, 2280811; 781021, 2279811; 780368, 2279811; 780216, 2279920; 780139, 2280453; 780063, 2280787; 780052, 2280834; 779976, 2281160; 780031, 2281595; 780248, 2281900; 781662, 2282128; 782206, 2282259; return to starting point.

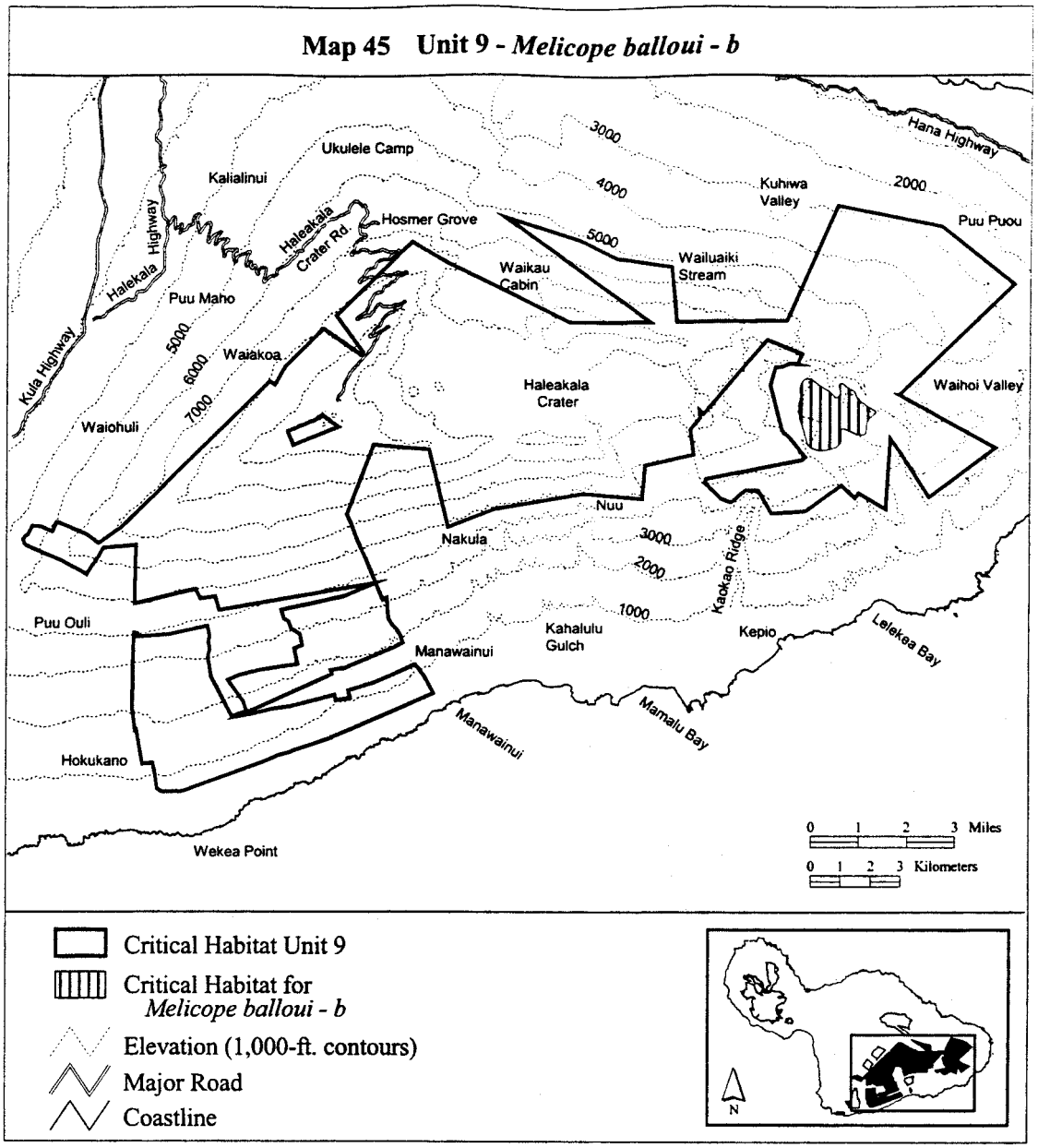
(B) **Note:** Map 44 follows:




(xlv) Maui 9—*Melicope balloui*—b (394 ha; 973 ac).

(A) Unit consists of the following 45 boundary points: Start at 801687, 2292860; 801740, 2293120; 801749, 2293217; 801736, 2293388; 801740, 2293476; 801793, 2293617; 801894, 2293723; 802092, 2293736; 802374, 2293512; 802708, 2293331; 802840, 2293212; 802889, 2293116; 802955, 2293094; 803069, 2293173; 803087, 2293287; 803047, 2293446; 803047, 2293538; 803140, 2293582; 803316, 2293437; 803545, 2293314; 803619, 2293116; 803769, 2292957; 804016, 2292781; 804266, 2292645; 804249, 2292561; 804051, 2292403; 803963, 2292244; 803945, 2292099; 803945, 2291945; 803928, 2291870; 803804, 2291844; 803681, 2291848; 803413, 2291949; 803272, 2292020; 803153, 2292051; 803109, 2292020; 803118, 2291804; 803091, 2291562; 802964, 2291430; 802770, 2291368; 802422, 2291298; 802088, 2291417; 802000, 2291518; 801758, 2292262; 801714, 2292447; return to starting point.

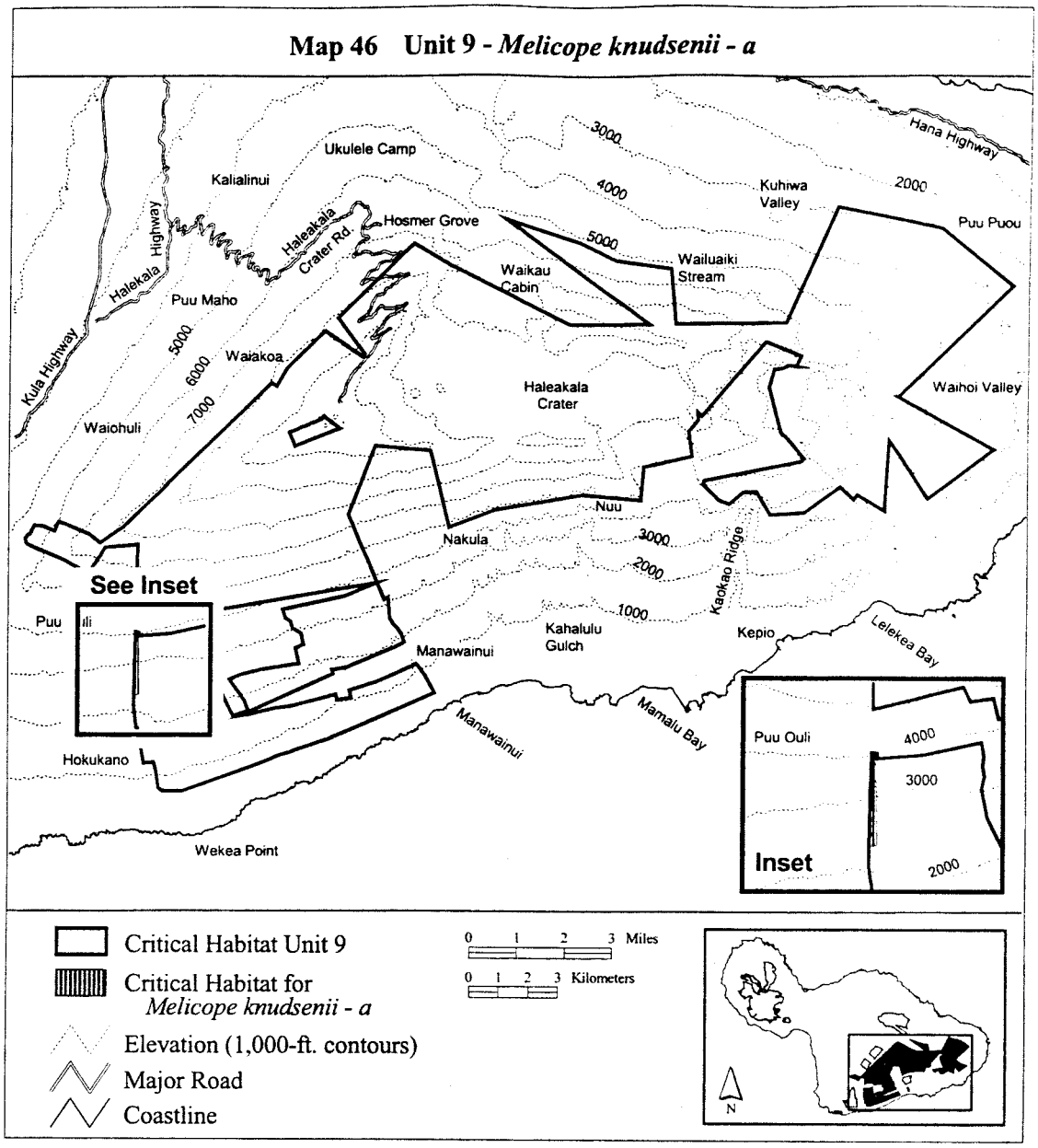
(B) **Note:** Map 45 follows:




(xlvi) Maui 9—Melicope knudsenii—a (28 ha; 69 ac).

(A) Unit consists of the following 26 boundary points: Start at 779378, 2283038; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283858; 779397, 2283869; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779408, 2284377; 779408, 2284385; 779408, 2284390; 779413, 2284560; 779419, 2284768; 779424, 2285004; 779427, 2285134; 779523, 2285126; 779547, 2283051; return to starting point.

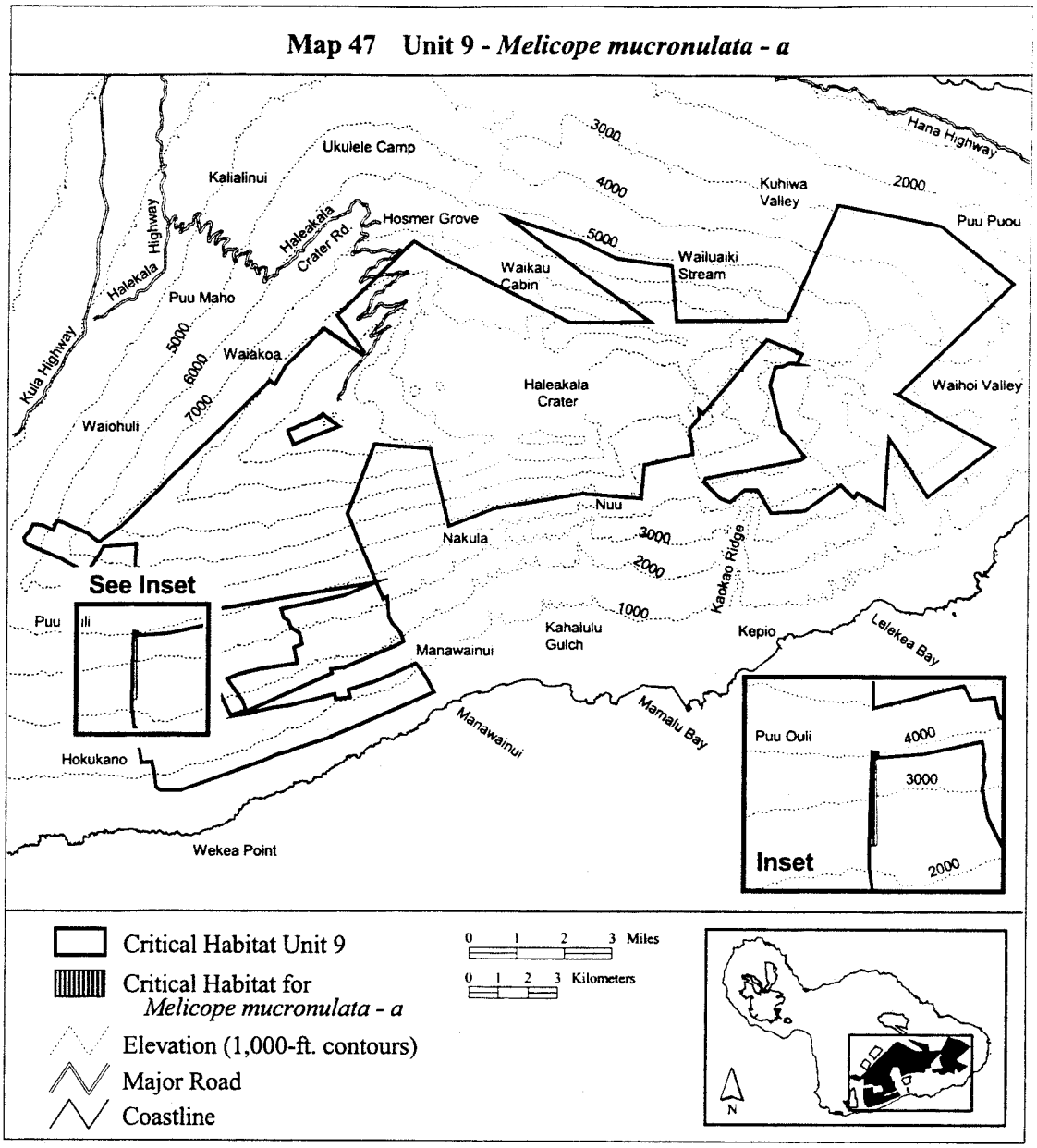
(B) **Note:** Map 46 follows:




(xlvii) Maui 9—*Melicope mucronulata*—a (34 ha; 83 ac).

(A) Unit consists of the following 23 boundary points: Start at 779374, 2282861; 779377, 2282926; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779413, 2284560; 779419, 2284768; 779424, 2285004; 779427, 2285144; 779552, 2285134; 779552, 2285008; 779544, 2282873; return to starting point.

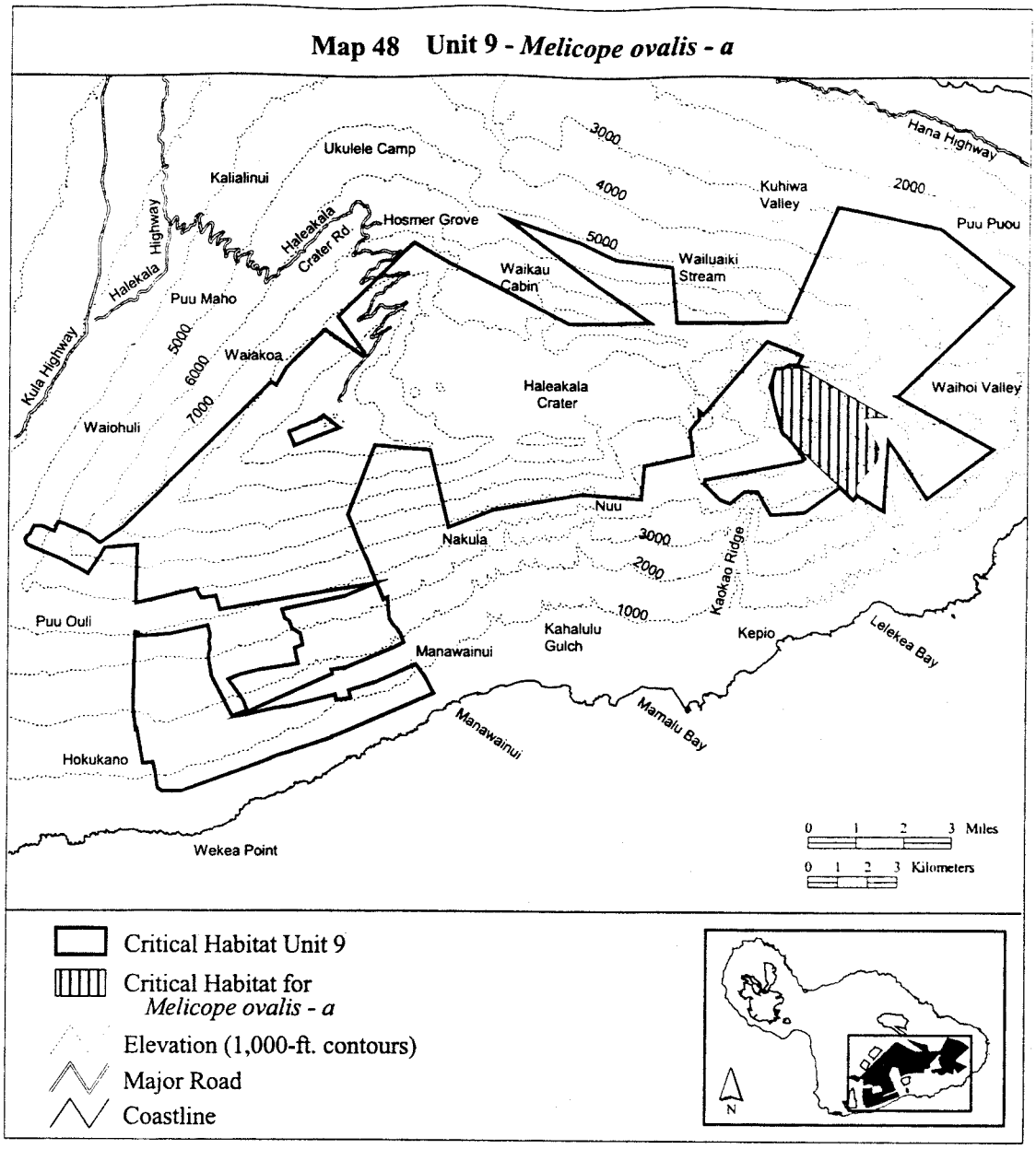
(B) **Note:** Map 47 follows:




(xlviii) Maui 9—*Melicope ovalis*—a (933 ha; 2,306 ac).

(A) Unit consists of the following 18 boundary points: Start at 803684, 2289877; 803574, 2289704; 803114, 2290141; 803112, 2290139; 801383, 2291766; 801145, 2291990; 800743, 2293514; 800900, 2294126; 801146, 2294134; 801147, 2294134; 801148, 2294134; 801758, 2294144; 804700, 2292498; 804245, 2292498; 803895, 2292463; 804438, 2291482; 804352, 2291008; 803667, 2290169; return to starting point.

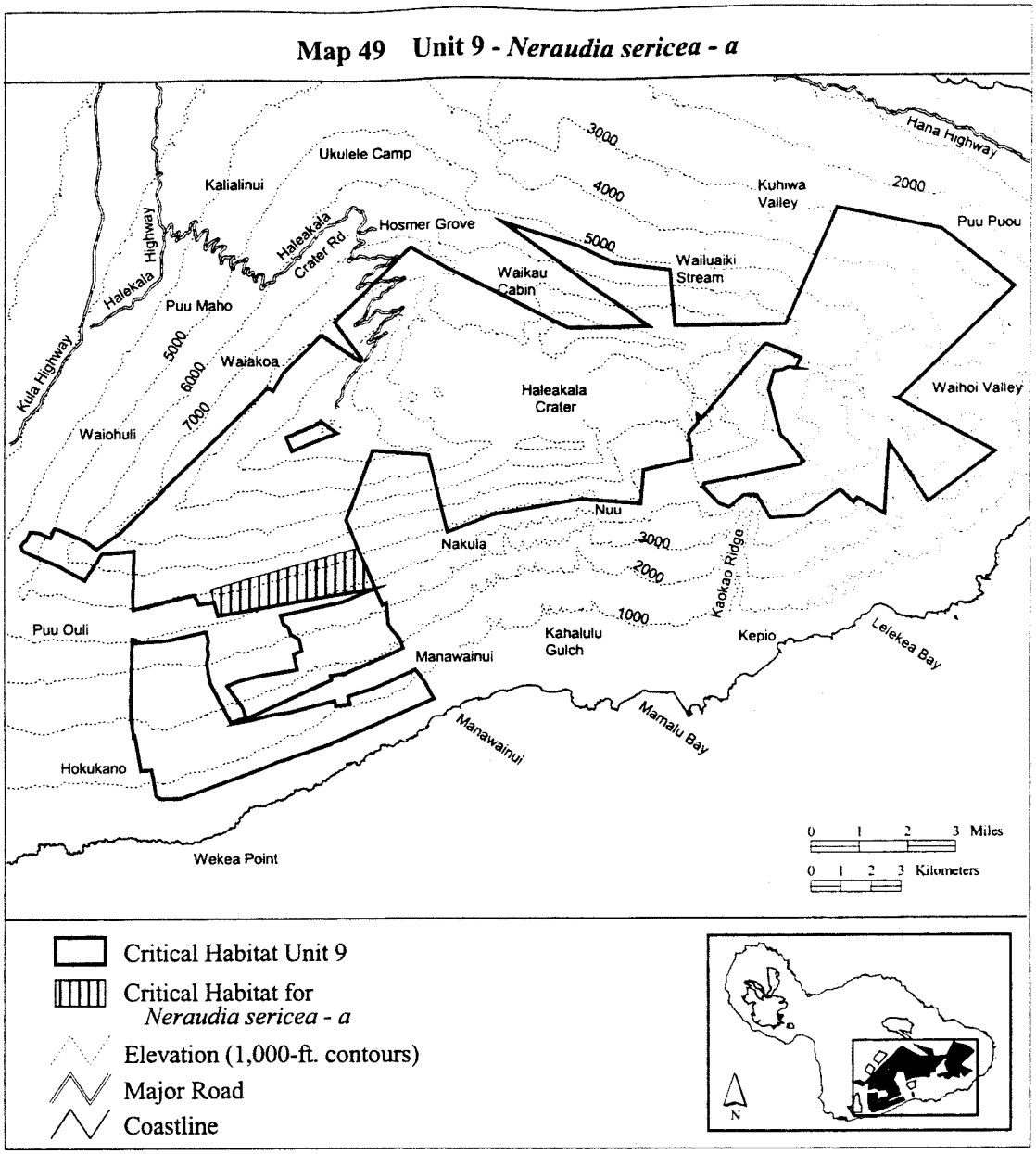
(B) **Note:** Map 48 follows:




(xlix) Maui 9—*Neraudia sericea*—a (623 ha; 1,540 ac).

(A) Unit consists of the following 7 boundary points: Start at 787503, 2286804; 782284, 2285907; 782162, 2286366; 782046, 2286802; 786980, 2288178; 787198, 2287662; 787557, 2286813; return to starting point.

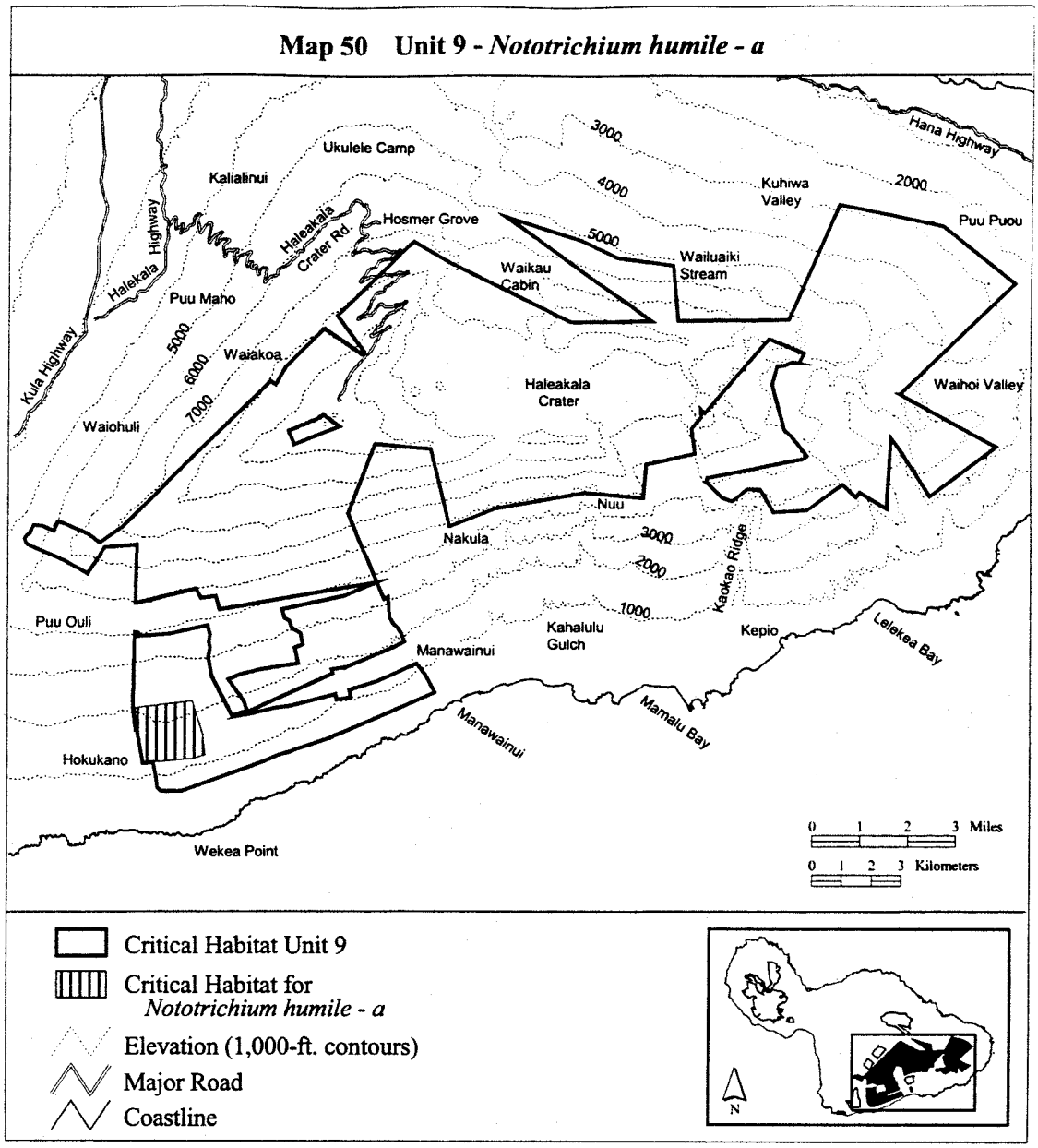
(B) **Note:** Map 49 follows:




(l) Maui 9—*Nototrichium humile*—a (398 ha; 982 ac).

(A) Unit consists of the following 9 boundary points: Start at 780063, 2280787; 779707, 2280753; 779507, 2281898; 779466, 2282131; 779455, 2282613; 781370, 2282843; 781731, 2281716; 781818, 2281027; 781425, 2280917; return to starting point.

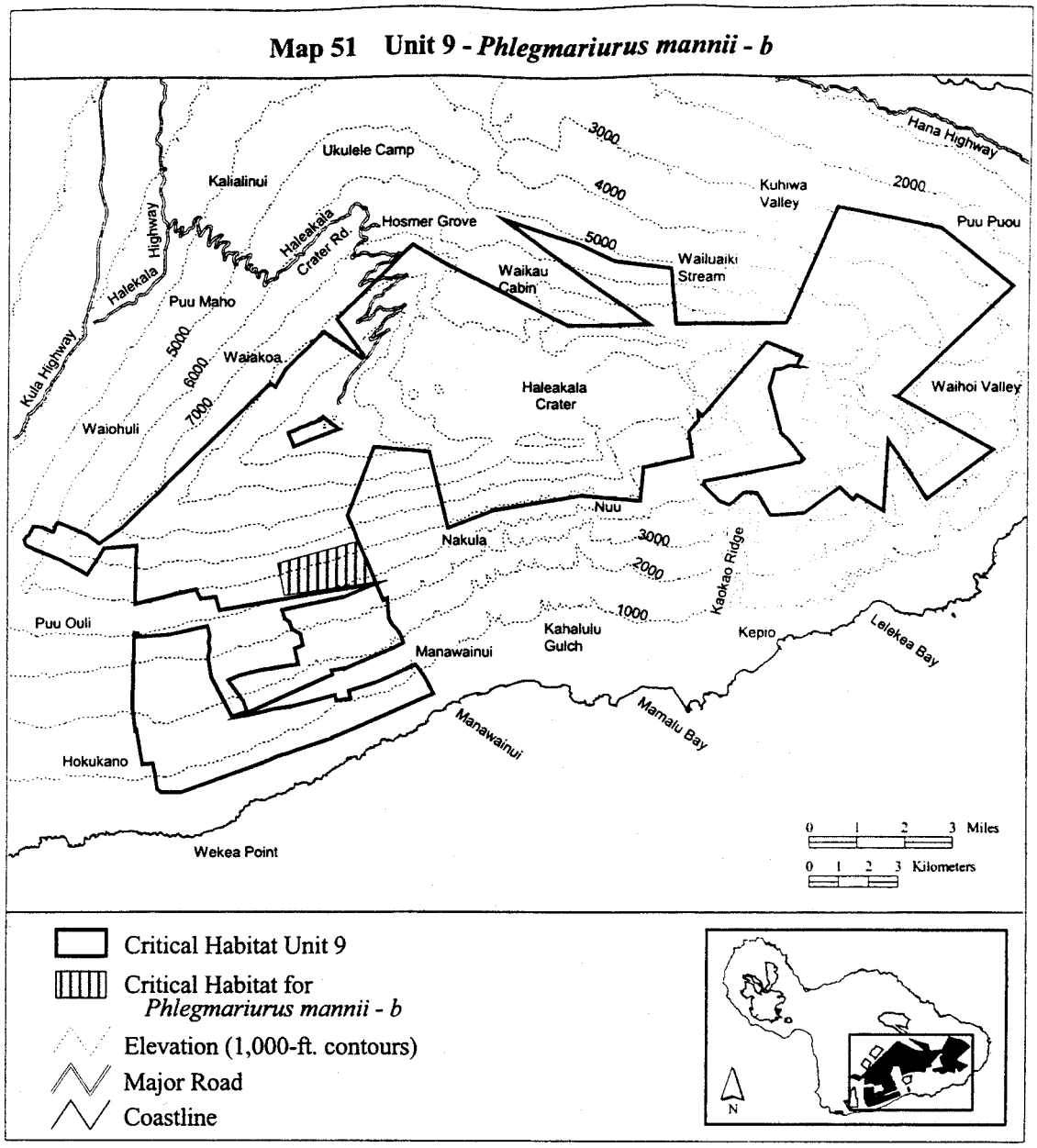
(B)**Note:** Map 50 follows:




(li) Maui 9—*Phlegmariurus mannii*—b (383 ha; 947 ac).

(A) Unit consists of the following 4 boundary points: Start at 787536, 2286861; 784465, 2286413; 784226, 2287486; 786946, 2288260; return to starting point.

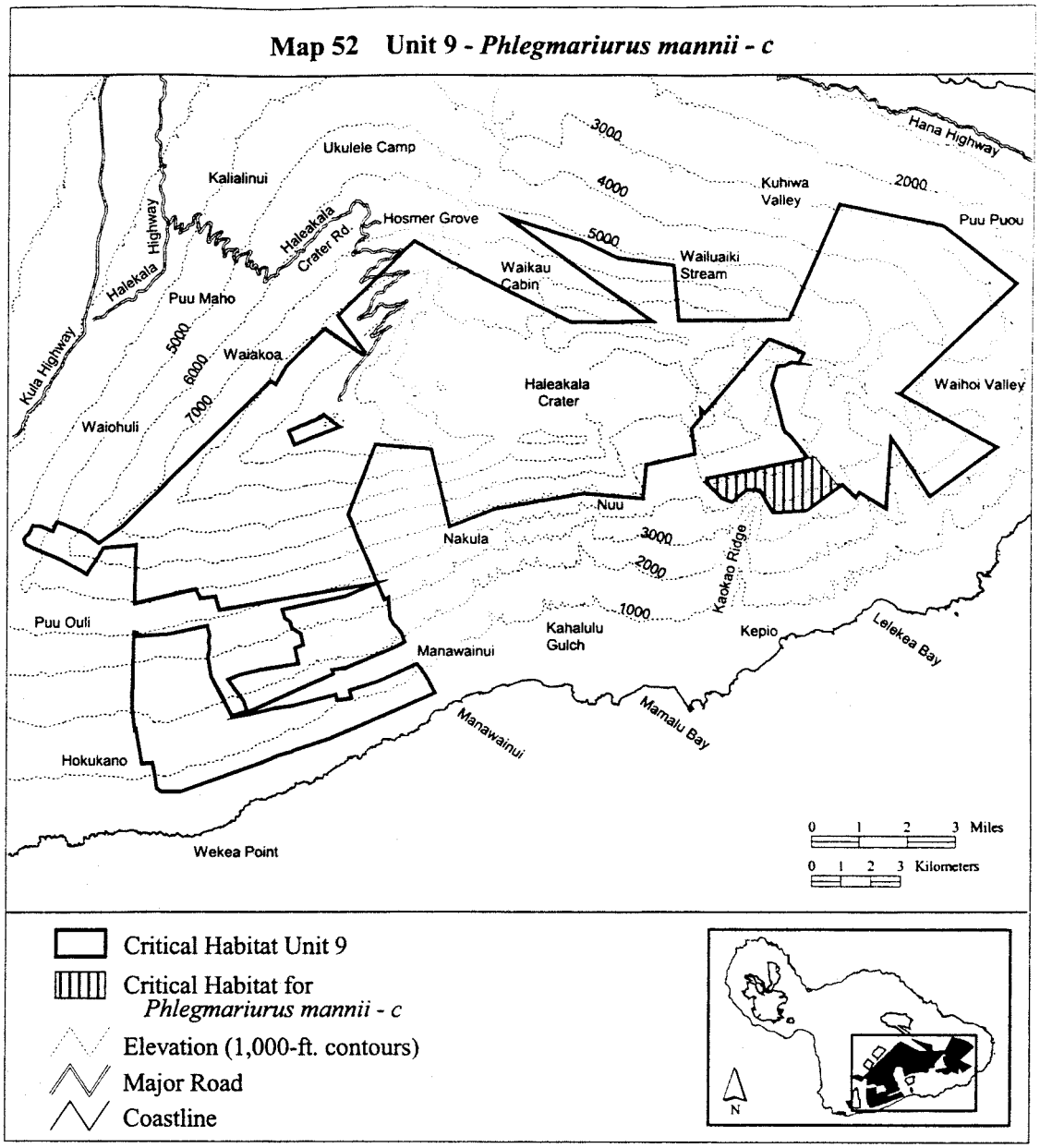
(B) **Note:** Map 51 follows:




(lii) Maui 9—*Phlegmariurus mannii*—c (476 ha; 1,176 ac).

(A) Unit consists of the following 12 boundary points: Start at 801935, 2289265; 800788, 2289185; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799083, 2289679; 799034, 2289728; 798541, 2290221; 798585, 2290346; 801831, 2290999; 802185, 2291070; 803010, 2290064; return to starting point.

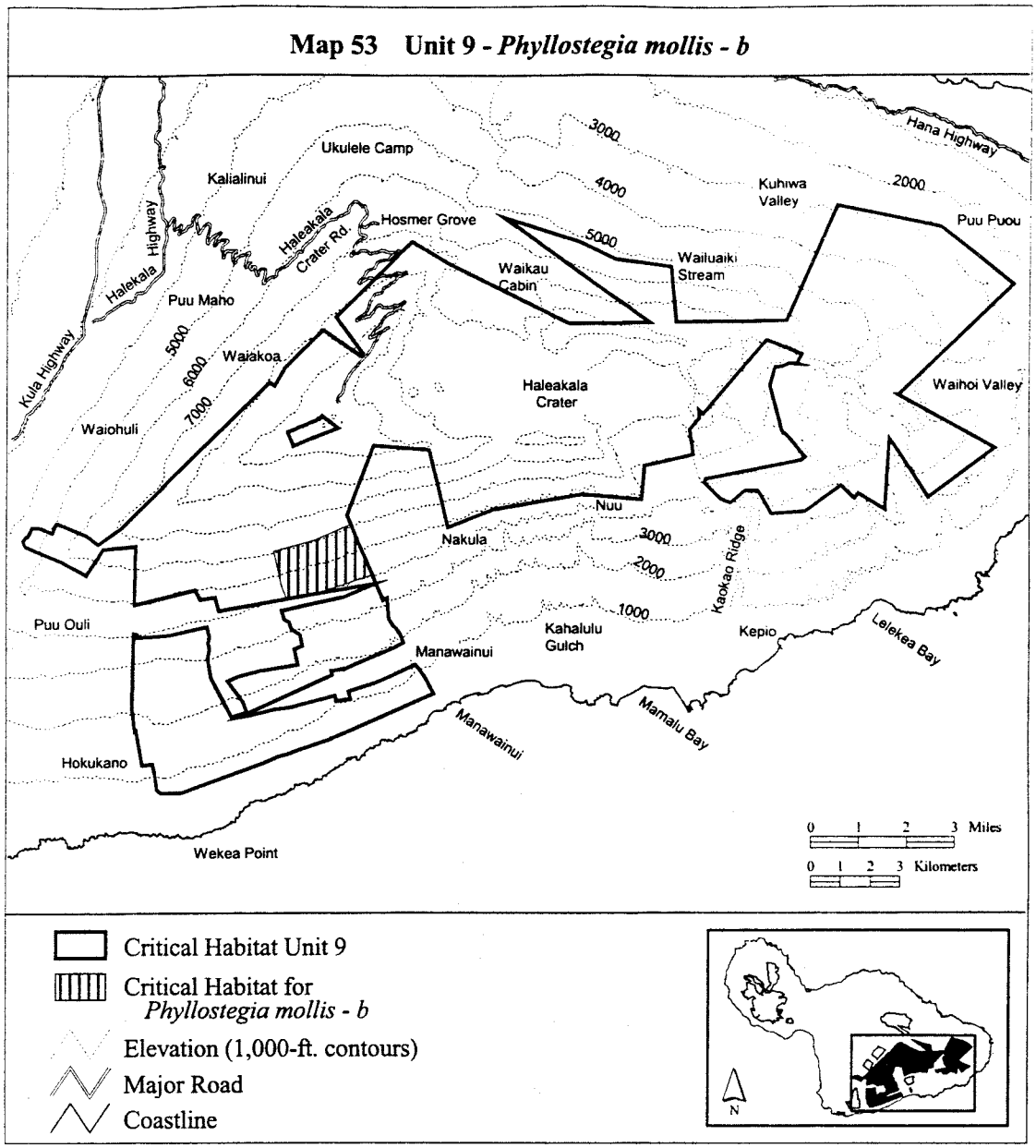
(B) **Note:** Map 52 follows:




(liii) Maui 9—*Phyllostegia mollis*—b (508 ha; 1,256 ac)

(A) Unit consists of the following 9 boundary points: Start at 787430, 2287113; 786267, 2286707; 785468, 2286458; 784537, 2286331; 784388, 2286734; 784109, 2287909; 785061, 2288163; 785507, 2288294; 786709, 2288819; return to starting point.

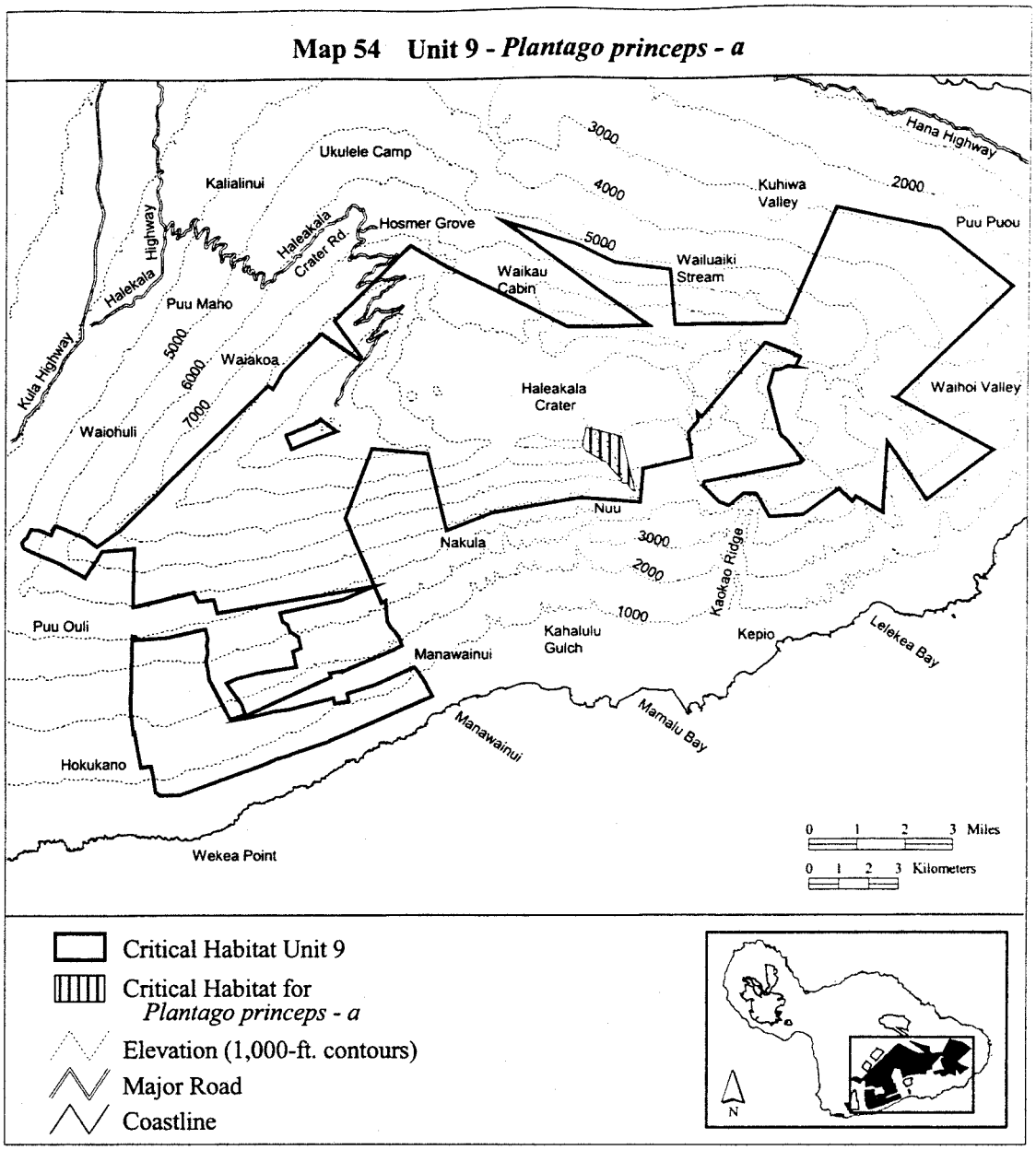
(B) **Note:** Map 53 follows:




(liv) Maui 9—*Plantago princeps*—a (164 ha; 406 ac).

(A) Unit consists of the following 13 boundary points: Start at 794508, 2291589; 794636, 2292209; 795824, 2291911; 796274, 2290033; 796133, 2290112; 796008, 2290304; 795864, 2290318; 795807, 2290385; 795821, 2290462; 795400, 2290907; 795299, 2291051; 795213, 2291075; 794614, 2291434; return to starting point.

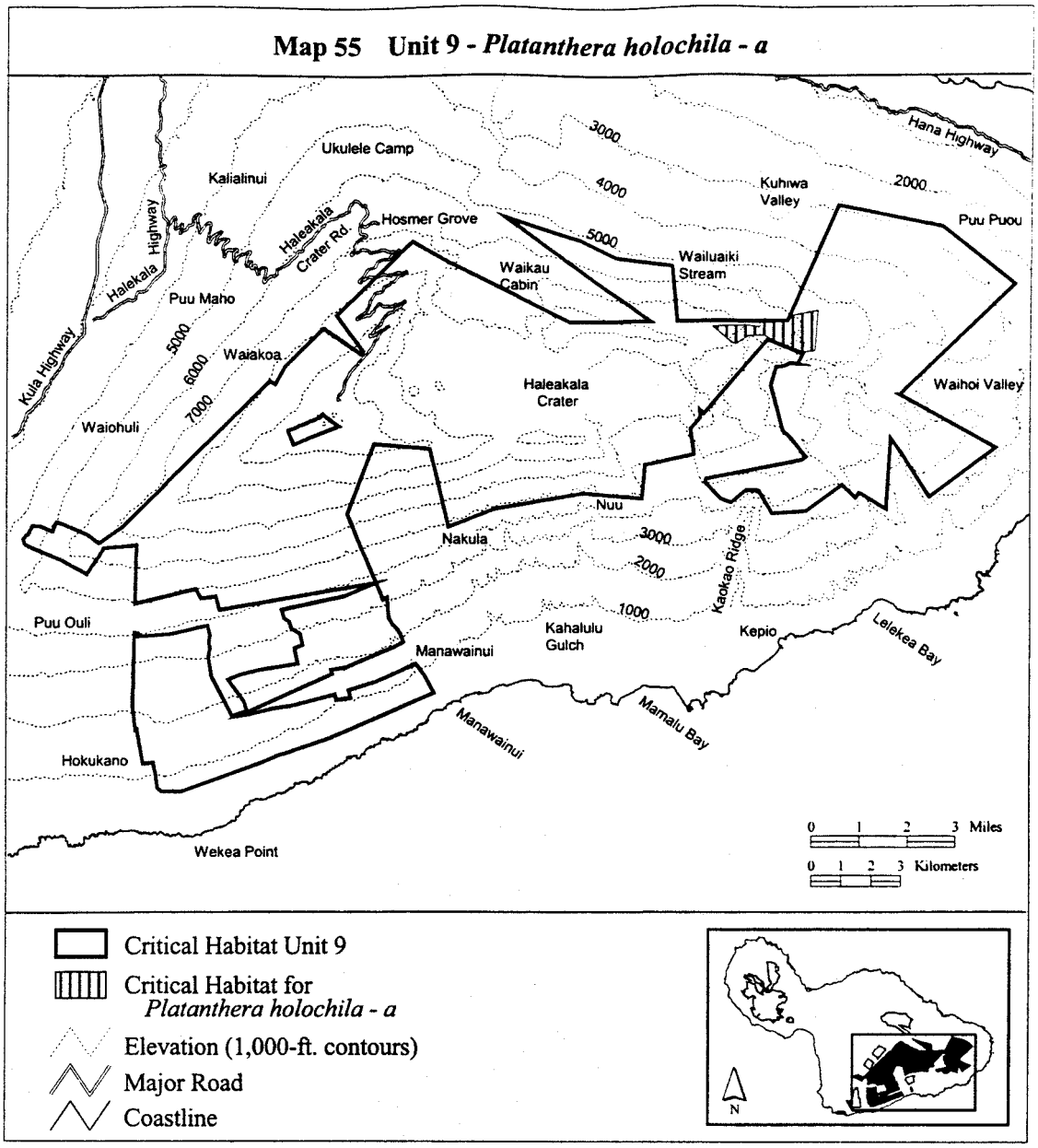
(B) **Note:** Map 54 follows:




(lv) Maui 9—*Platanthera holochila*—a (241 ha; 596 ac).

(A) Unit consists of the following 18 boundary points: Start at 800379, 2295672; 800982, 2295684; 801296, 2295688; 801297, 2295688; 801367, 2295845; 802309, 2296025; 802197, 2294658; 801820, 2294614; 801346, 2294743; 801343, 2294744; 800511, 2295191; 800001, 2295168; 799735, 2294991; 799557, 2294880; 799402, 2294969; 798778, 2295470; 799935, 2295528; 800349, 2295462; return to starting point.

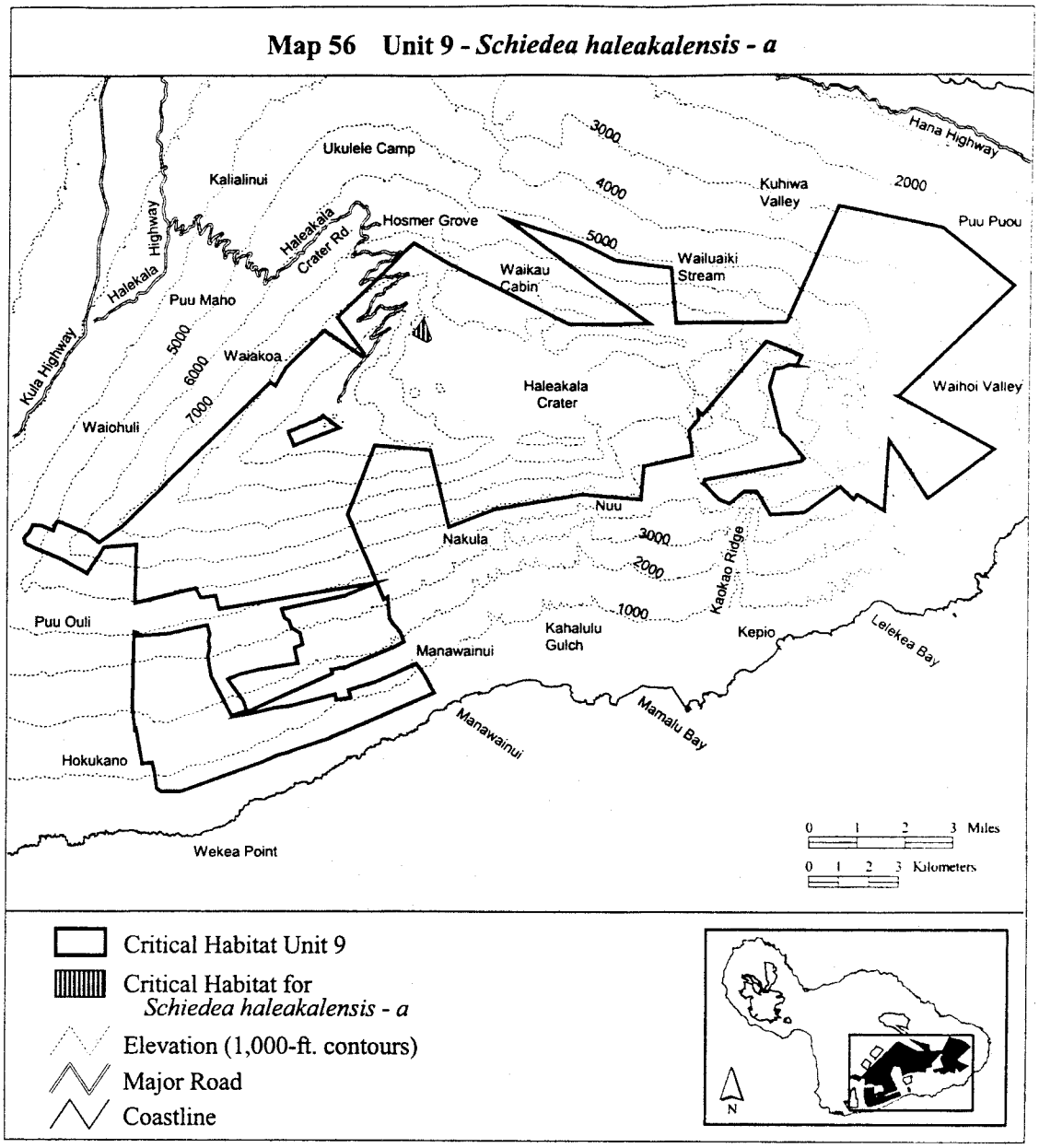
(B) **Note:** Map 55 follows:




(lvi) Maui 9—*Schiedea haleakalensis*—a (26 ha; 64 ac).

(A) Unit consists of the following 4 boundary points: Start at 789350, 2295087; 789223, 2294975; 788711, 2295251; 789089, 2295825; return to starting point.

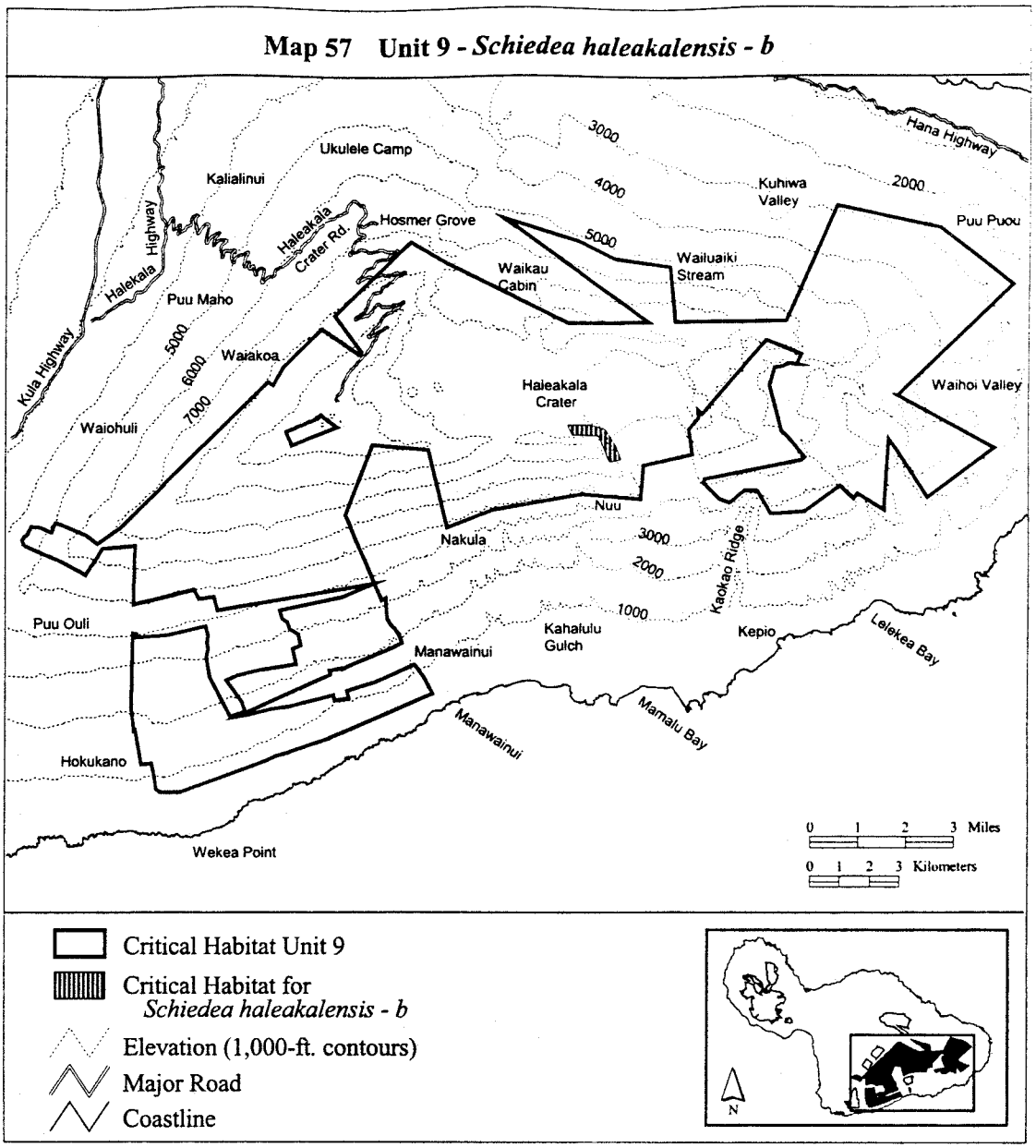
(B) **Note:** Map 56 follows:




(lvii) Maui 9—*Schiedea haleakalensis*—b (77 ha; 189 ac).

(A) Unit consists of the following 8 boundary points: Start at 794791, 2292187; 795274, 2292032; 795602, 2291475; 795788, 2291001; 795397, 2290929; 795031, 2291796; 794146, 2291863; 793984, 2292184; return to starting point.

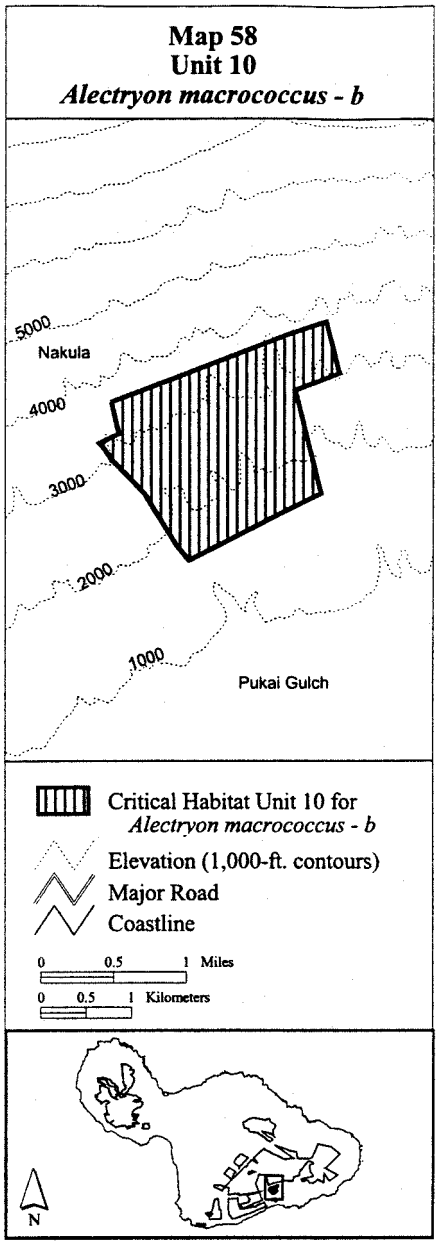
(B) **Note:** Map 57 follows:


Map 57 Unit 9 - *Schiedea haleakalensis - b*
Ukulele Camp
Kalialinui
Hosmer Grove
Haleakala Crater Rd.
Halekala Highway
Kula Highway
Puu Maho
Waiakoa
Waiohuli
Waikau Cabin
Kuhiwa Valley
Wailuaiki Stream
Hana Highway
Puu Puou
Waihoi Valley
Haleakala Crater
Nuu
Nakula
Kaokao Ridge
Puu Ouli
Kahalulu Gulch
Kepio
Lelekea Bay
Manawainui
Mamalu Bay
Hokukano
Wekea Point
3000
4000
5000
6000
7000
2000
1000
0 1 2 3 Miles
0 1 2 3 Kilometers
Critical Habitat Unit 9
Critical Habitat for *Schiedea haleakalensis - b*
Elevation (1,000-ft. contours)
Major Road
Coastline
N

(lviii) Maui 10—*Alectryon macrococcus*—b (402 ha; 992 ac).

(A) Unit consists of the following 25 boundary points: Start at 790161, 2287892; 790167, 2287894; 792132, 2288649; 792550, 2288788; 792695, 2288207; 792207, 2288023; 792491, 2286865; 792021, 2286624; 791018, 2286111; 790896, 2286265; 790745, 2286503; 790526, 2286863; 790525, 2286864; 790342, 2287060; 790170, 2287235; 790166, 2287238; 790160, 2287244; 790149, 2287257; 790135, 2287278; 790113, 2287317; 790099, 2287341; 790085, 2287359; 790061, 2287386; 790031, 2287426; 790244, 2287538; return to starting point.

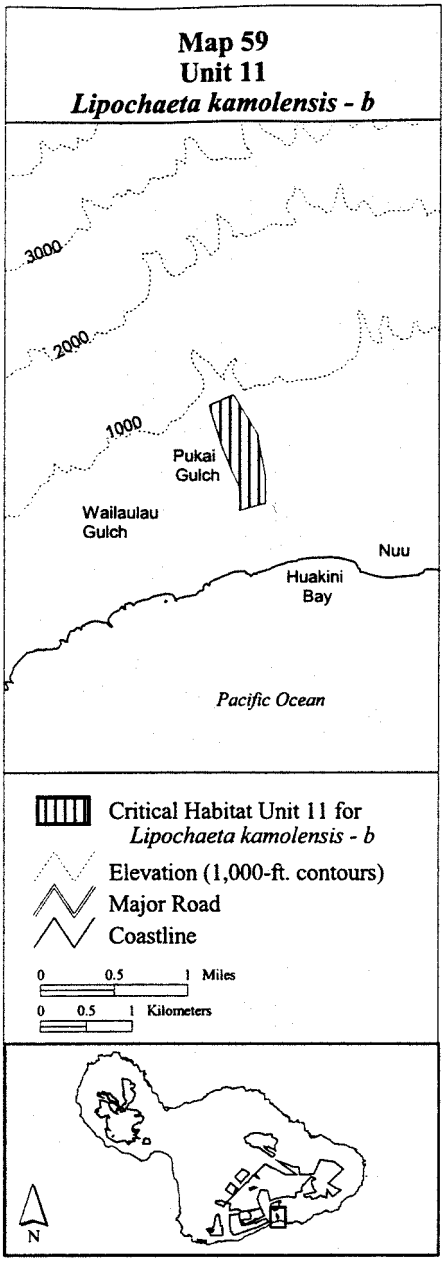
(B) **Note:** Map 58 follows:




(lix) Maui 11—*Lipochaeta kamolensis*—b (42 ha; 105 ac).

(A) Unit consists of the following 16 boundary points: Start at 791492, 2285251; 791757, 2285370; 791758, 2285368; 792019, 2284935; 792107, 2284459; 792107, 2284447; 792107, 2284163; 792103, 2284162; 791825, 2284087; 791831, 2284136; 791831, 2284137; 791825, 2284347; 791825, 2284348; 791736, 2284527; 791629, 2284802; 791506, 2285203; return to starting point.

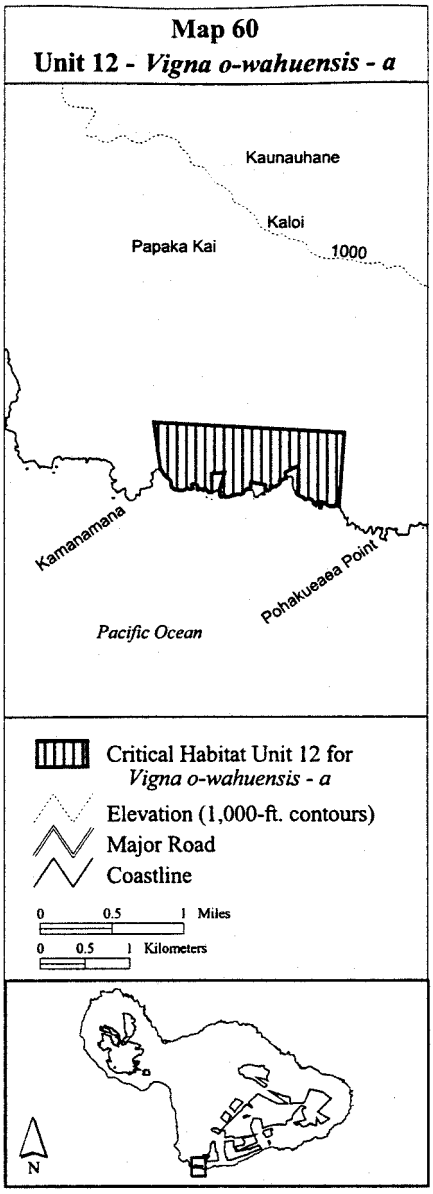
(B) **Note:** Map 59 follows:




(lx) Maui 12—*Vigna o-wahuensis*—a (144 ha; 357 ac).

(A) Unit consists of the following 27 boundary points and the intermediate coastline: Start at Start at 771207, 2278581; 771207, 2278581; 772344, 2278517; 773349, 2278461; 773349, 2278461; 773349, 2278461; 773296, 2277638; 773294, 2277610; 772830, 2277758; 772830, 2277758; 772839, 2278087; 772691, 2278009; 772697, 2277944; 772464, 2277817; 772464, 2277818; 772464, 2277873; 772302, 2277904; 772291, 2277823; 772291, 2277823; 771941, 2277804; 772001, 2278009; 771861, 2277996; 771858, 2277785; 771283, 2278049; 771283, 2278049; 771283, 2278049; 771207, 2278581; return to starting point.; return to starting point.

(B) **Note:** Map 60 follows:

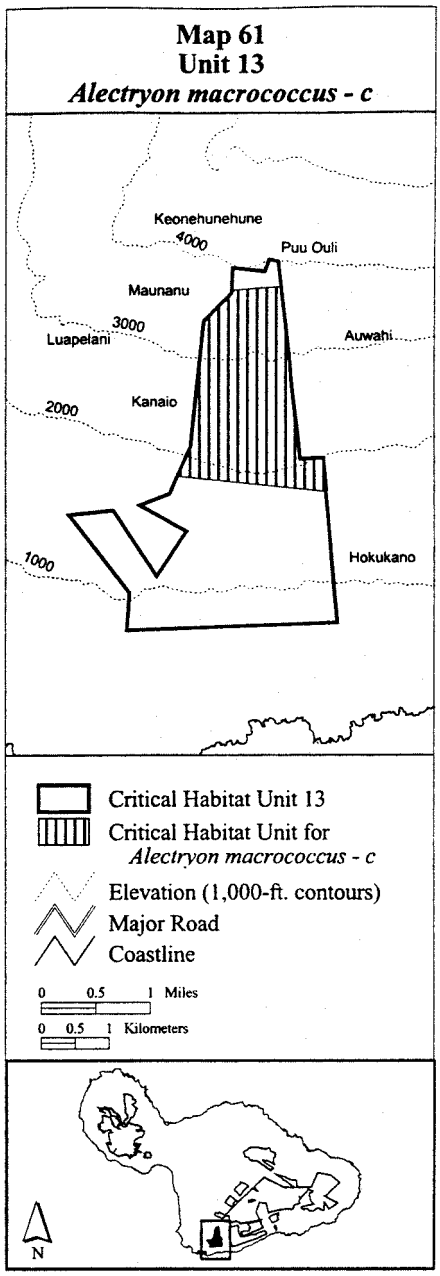



(lxi) Maui 13—*Alectryon macrococcus*—c (418 ha; 1,034 ac).

(A) Unit consists of the following 20 boundary points: Start at 777409, 2281715; 777399, 2281716; 775210, 2281944; 775397, 2282390; 775399, 2282405; 775595, 2284266; 776003, 2284682; 776042, 2284722; 776732,

2284778; 776737, 2284731; 776802, 2284151; 776861, 2283642; 776886, 2283406; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777365, 2282220; 777408, 2281728; return to starting point.

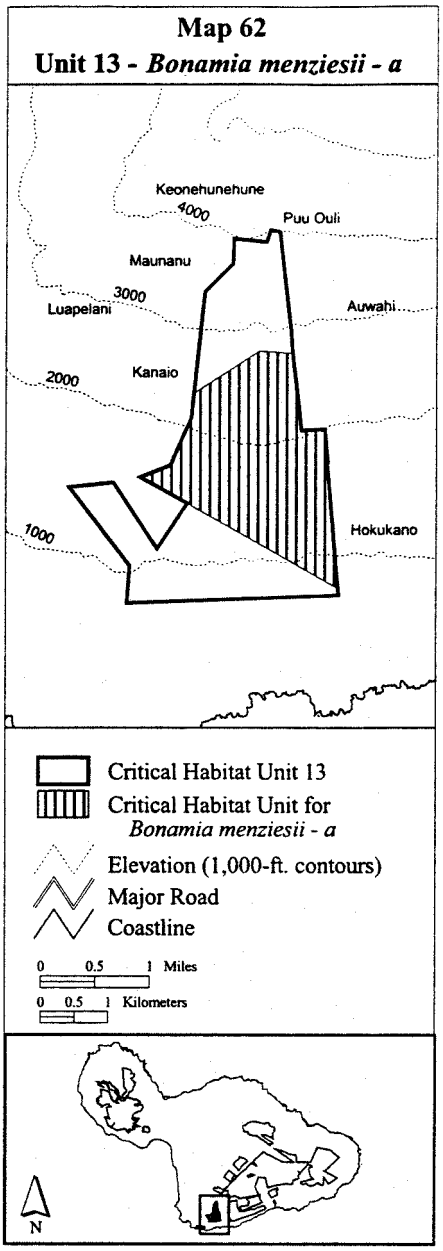
(B) **Note:** Map 61 follows:




(lxii) Maui 13—*Bonamia menziesii*—a (536 ha; 1,325 ac).

(A) Unit consists of the following 18 boundary points: Start at 777534, 2280121; 777558, 2279855; 777557, 2279856; 775339, 2281114; 774656, 2281501; 775099, 2281680; 775397, 2282390; 775399, 2282405; 775433, 2282731; 775436, 2282755; 776398, 2283391; 776891, 2283357; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777348, 2282219; return to starting point.

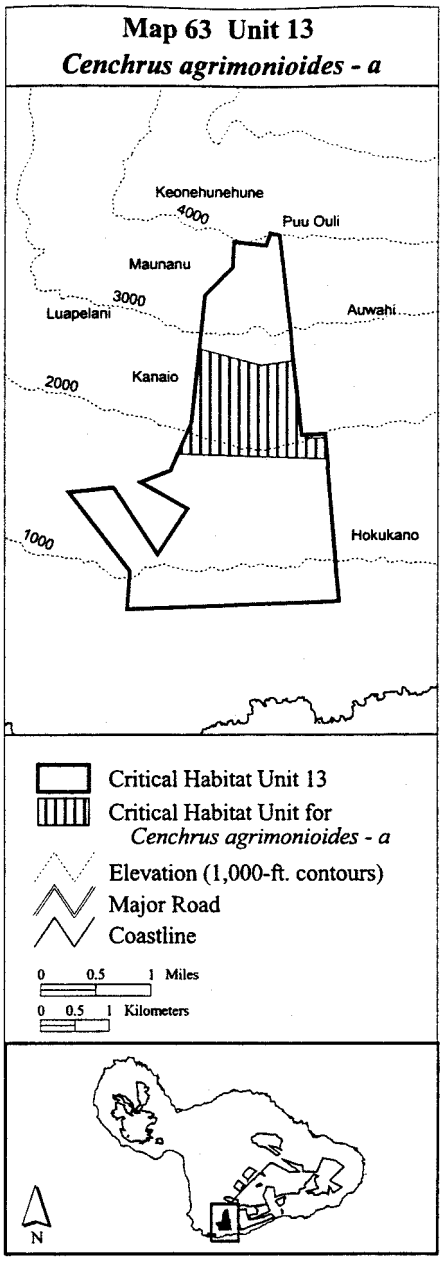
(B) **Note:** Map 62 follows:




(lxiii) Maui 13—*Cenchrus agrimonioides*—a (237 ha; 586 ac).

(A) Unit consists of the following 15 boundary points: Start at 775397, 2282390; 775399, 2282405; 775513, 2283488; 776422, 2283239; 776896, 2283308; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777071, 2282206; 777077, 2282162; 777341, 2282162; 777390, 2281851; 775204, 2281929; return to starting point.

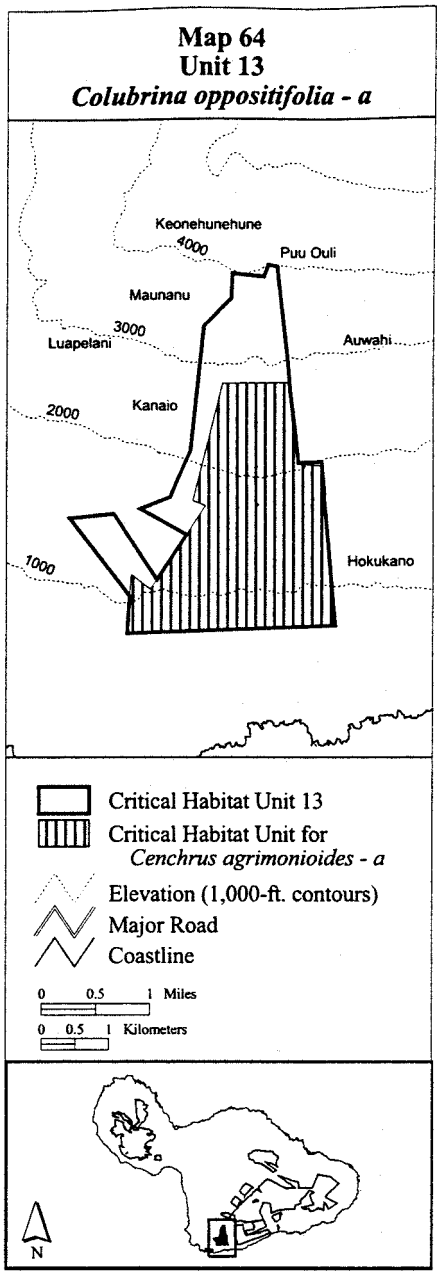
(B) **Note:** Map 63 follows:




(lxiv) Maui 13—*Colubrina oppositifolia*—a (739 ha; 1,827 ac).

(A) Unit consists of the following 20 boundary points: Start at 777399, 2281716; 777534, 2280121; 777557, 2279856; 777566, 2279748; 774460, 2279633; 774498, 2280191; 774520, 2280511; 774805, 2280290; 774901, 2280438; 775339, 2281114; 775626, 2281557; 775438, 2281627; 775884, 2283410; 776885, 2283418; 776886, 2283406; 776919, 2283097; 776983, 2282542; 776985, 2282522; 777010, 2282190; 777361, 2282167; return to starting point.

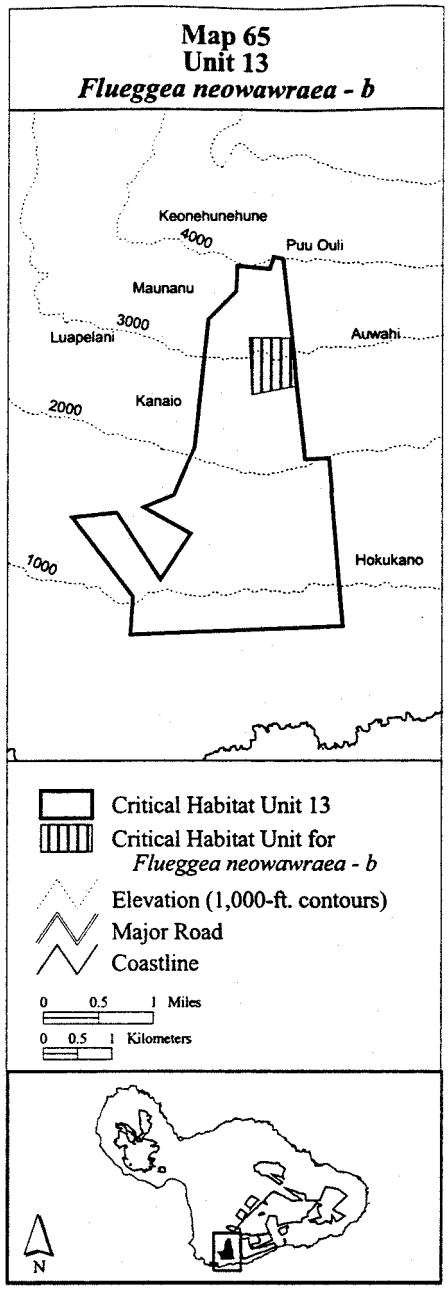
(B) **Note:** Map 64 follows:




(lxv) Maui 13—*Flueggea neowawraea*—b (50 ha; 123 ac).

(A) Unit consists of the following 6 boundary points: Start at 776821, 2283991; 776861, 2283642; 776886, 2283406; 776899, 2283288; 776236, 2283166; 776192, 2283998; return to starting point.

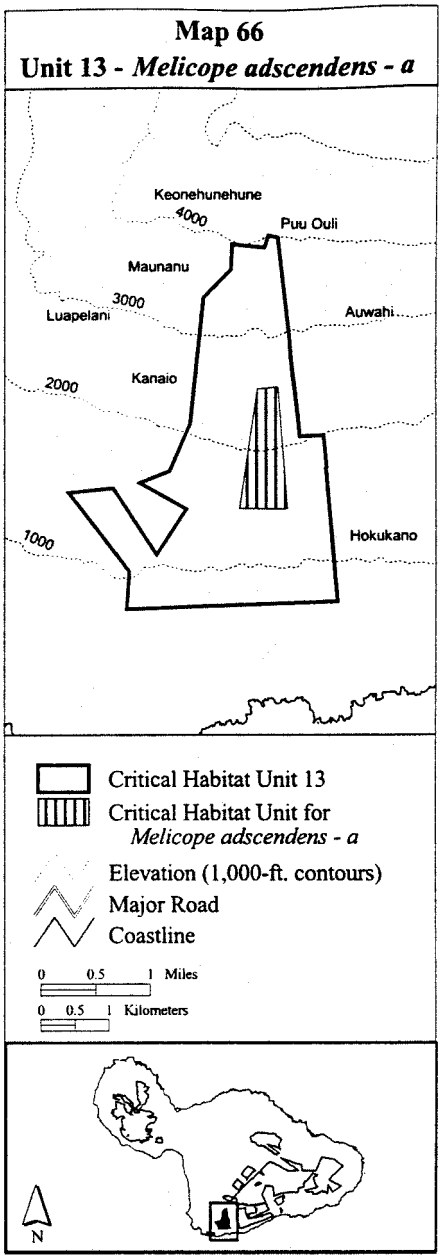
(B) **Note:** Map 65 follows:




(lxvi) Maui 13—*Melicope adscendens*—a (161 ha; 397 ac).

(A) Unit consists of the following 12 boundary points: Start at 776003, 2284682; 776019, 2285054; 776489, 2284998; 776709, 2284972; 776737, 2284731; 776802, 2284151; 776844, 2283785; 776865, 2283600; 776886, 2283406; 776919, 2283097; 776928, 2283019; 775938, 2283164; return to starting point.

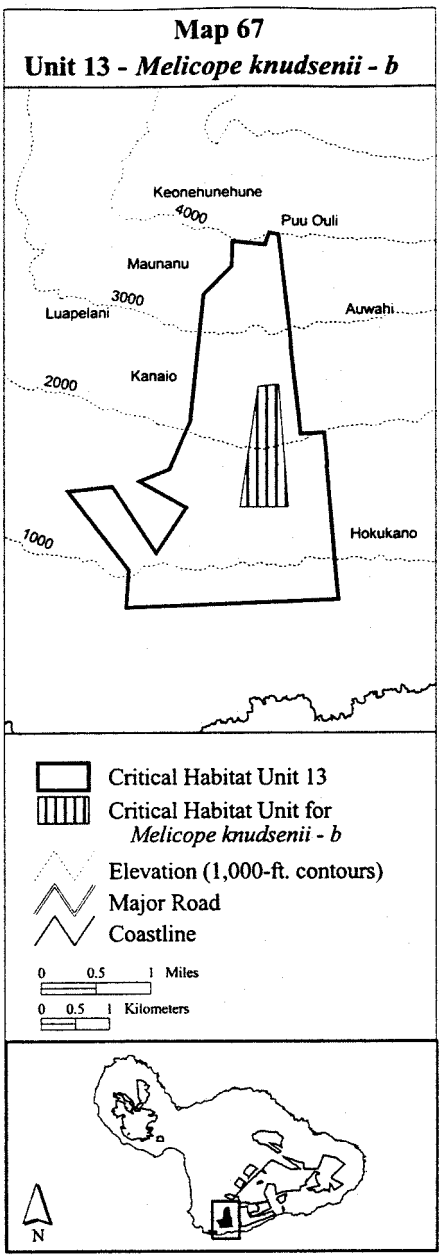
(B) **Note:** Map 66 follows:




(lxvii) Maui 13—*Melicope knudsenii*—b (163 ha; 403 ac).

(A) Unit consists of the following 11 boundary points: Start at 776489, 2284998; 776552, 2285180; 776688, 2285156; 776737, 2284731; 776802, 2284151; 776854, 2283698; 776863, 2283625; 776886, 2283406; 776919, 2283097; 776948, 2282847; 775700, 2282749; return to starting point.

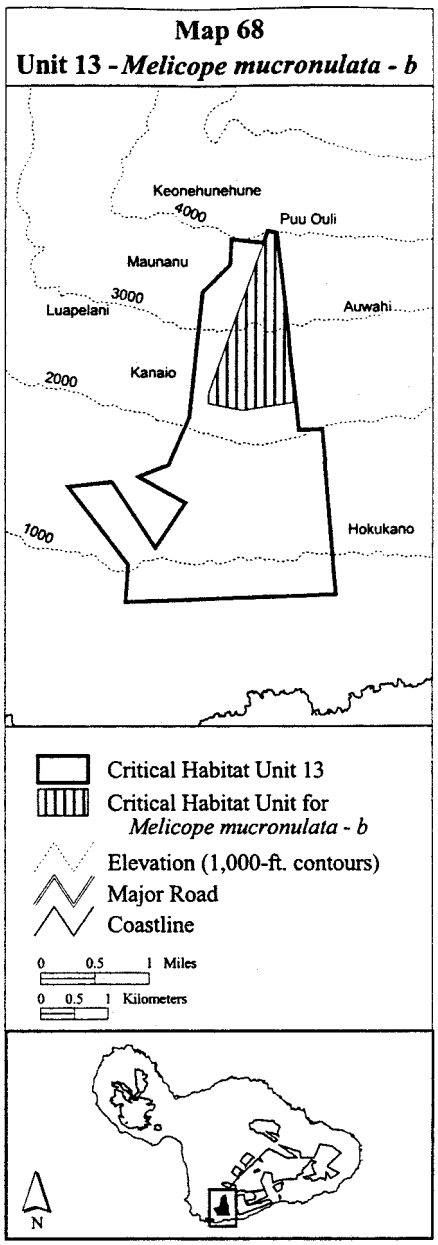
(B) **Note:** Map 67 follows:




(lxviii) Maui 13—*Melicope mucronulata*—b (195 ha; 481 ac).

(A) Unit consists of the following 13 boundary points: Start at 776560, 2285179; 776688, 2285156; 776737, 2284731; 776802, 2284151; 776834, 2283873; 776873, 2283524; 776886, 2283406; 776919, 2283097; 776973, 2282631; 776189, 2282501; 775681, 2282604; 775689, 2282754; 776094, 2283897; return to starting point.

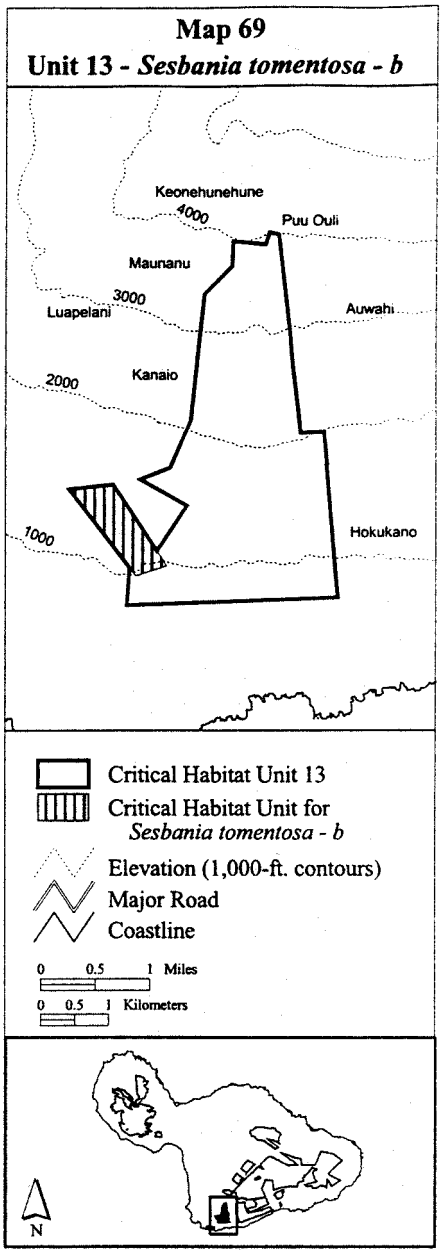
(B) **Note:** Map 68 follows:




(lxix) Maui 13—*Sesbania tomentosa*—b (79 ha; 195 ac).

(A) Unit consists of the following 6 boundary points: Start at 774498, 2280191; 773607, 2281357; 774253, 2281429; 774901, 2280438; 775045, 2280217; 774598, 2280060; return to starting point.

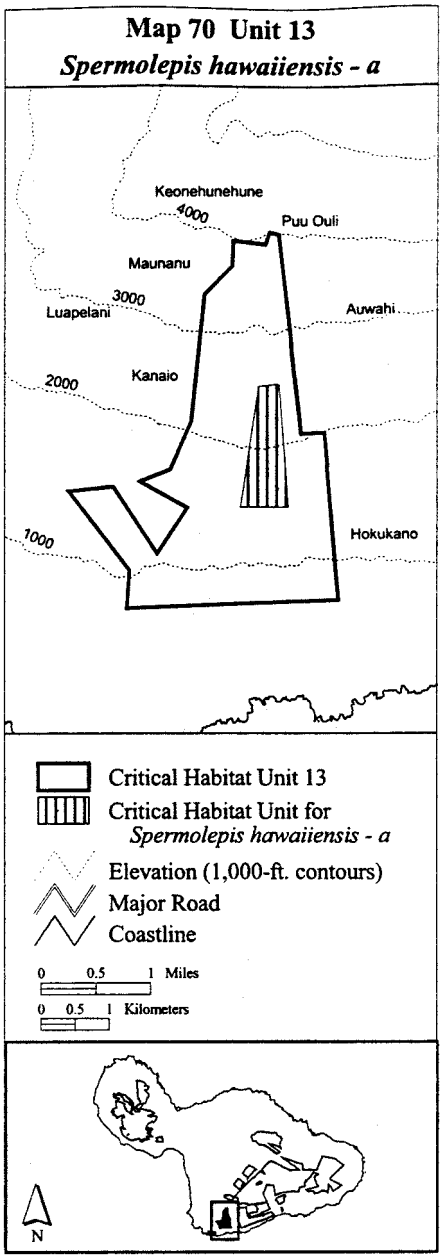
(B) **Note:** Map 69 follows:




(lxx) Maui 13—*Spermolepis hawaiiensis*—a (91 ha; 225 ac).

(A) Unit consists of the following 4 boundary points: Start at 776697, 2282941; 776828, 2281119; 776127, 2281124; 776388, 2282905; return to starting point.

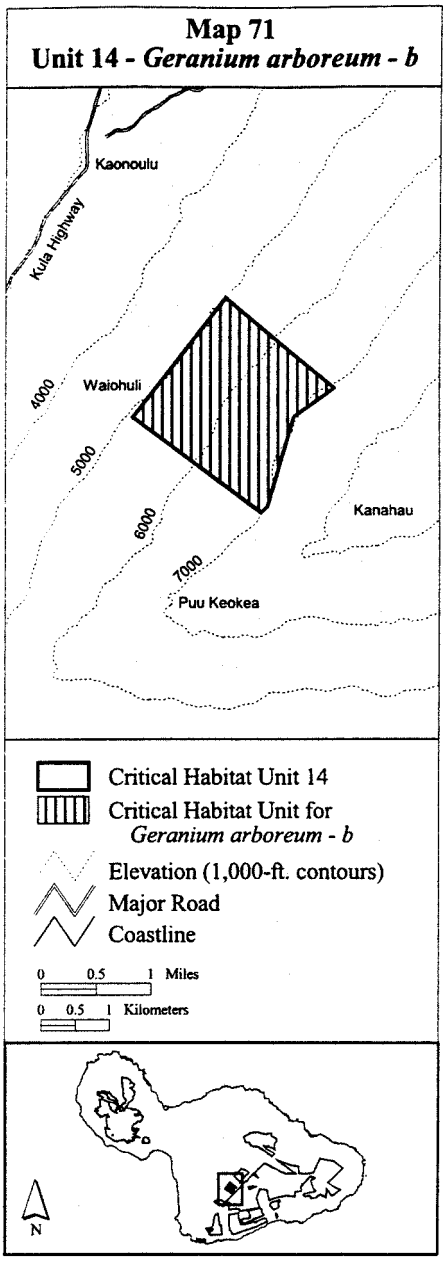
(B) **Note:** Map 70 follows:




(lxxi) Maui 14—*Geranium arboreum*—b (452 ha; 1,116 ac).

(A) Unit consists of the following 9 boundary points: Start at 780754, 2291599; 780710, 2291446; 780373, 2290270; 780279, 2290173; 780278, 2290174; 778398, 2291590; 779750, 2293350; 781334, 2292030; 781340, 2292025; return to starting point.

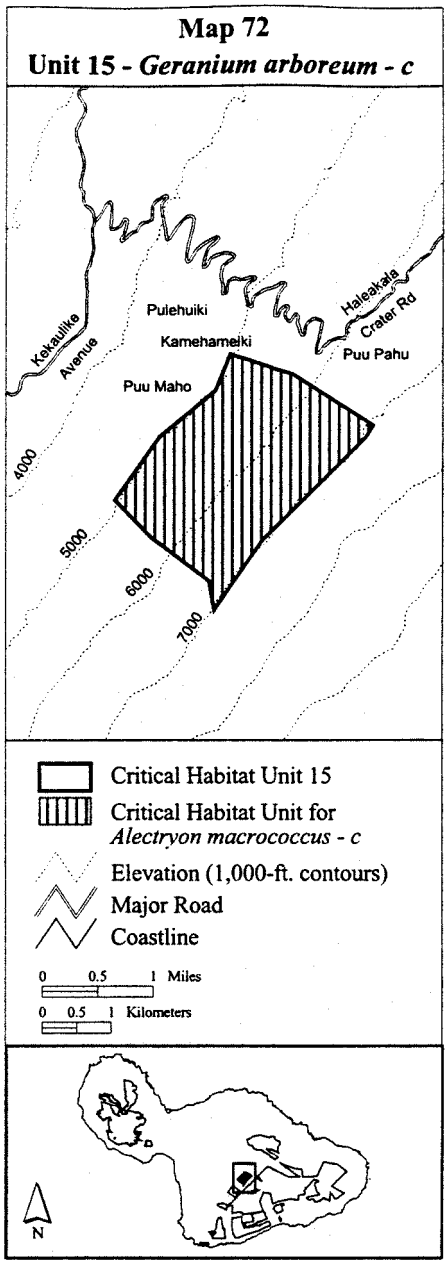
(B) **Note:** Map 71 follows:




(lxxii) Maui 15—*Geranium arboreum*—c (667 ha; 1,648 ac).

(A) Unit consists of the following 39 boundary points: Start at 783428, 2296641; 784570, 2295895; 784440, 2295690; 784206, 2295457; 782957, 2294208; 782956, 2294207; 782421, 2293422; 782263, 2293191; 782223, 2293416; 782187, 2293615; 781338, 2294254; 781096, 2294510; 780818, 2294804; 781473, 2295735; 782282, 2296409; 782490, 2296948; 782522, 2296937; 782582, 2296918; 782616, 2296907; 782636, 2296900; 782656, 2296893; 782679, 2296886; 782713, 2296875; 782816, 2296841; 782839, 2296833; 782858, 2296827; 782895, 2296816; 782965, 2296793; 783029, 2296772; 783050, 2296765; 783073, 2296758; 783093, 2296751; 783114, 2296744; 783182, 2296721; 783227, 2296707; 783263, 2296695; 783282, 2296689; 783304, 2296681; 783388, 2296654; return to starting point.

(B) **Note:** Map 72 follows:

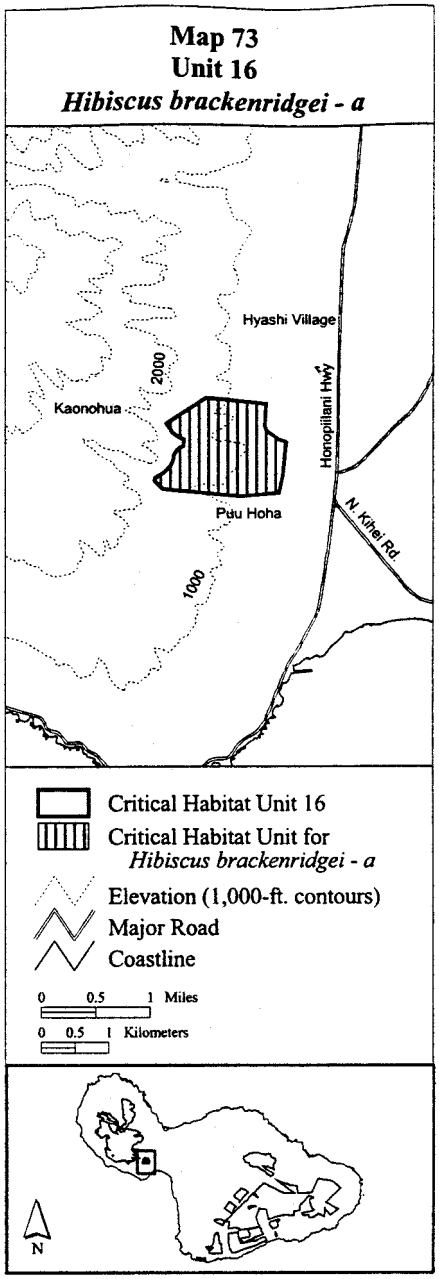



(lxxiii) Maui 16—*Hibiscus brackenridgei*—a (212 ha; 523 ac).

(A) Unit consists of the following 27 boundary points: Start at 756769, 2303771; 756794, 2303787; 756914, 2303864; 757007, 2303958; 757033, 2304013; 757058, 2304068; 757053, 2304123; 757071, 2304153; 757104, 2304208; 757162, 2304244; 757198, 2304267; 757206, 2304365; 757138, 2304395; 757037, 2304471; 756959, 2304605; 757541, 2304994; 758421, 2304900; 758402, 2304566; 758427, 2304491; 758605, 2304369; 758716, 2304323; 758665, 2303806; 758665,

2303805; 758615, 2303558; 758067, 2303509; 756894, 2303623; 756774, 2303746; return to starting point.

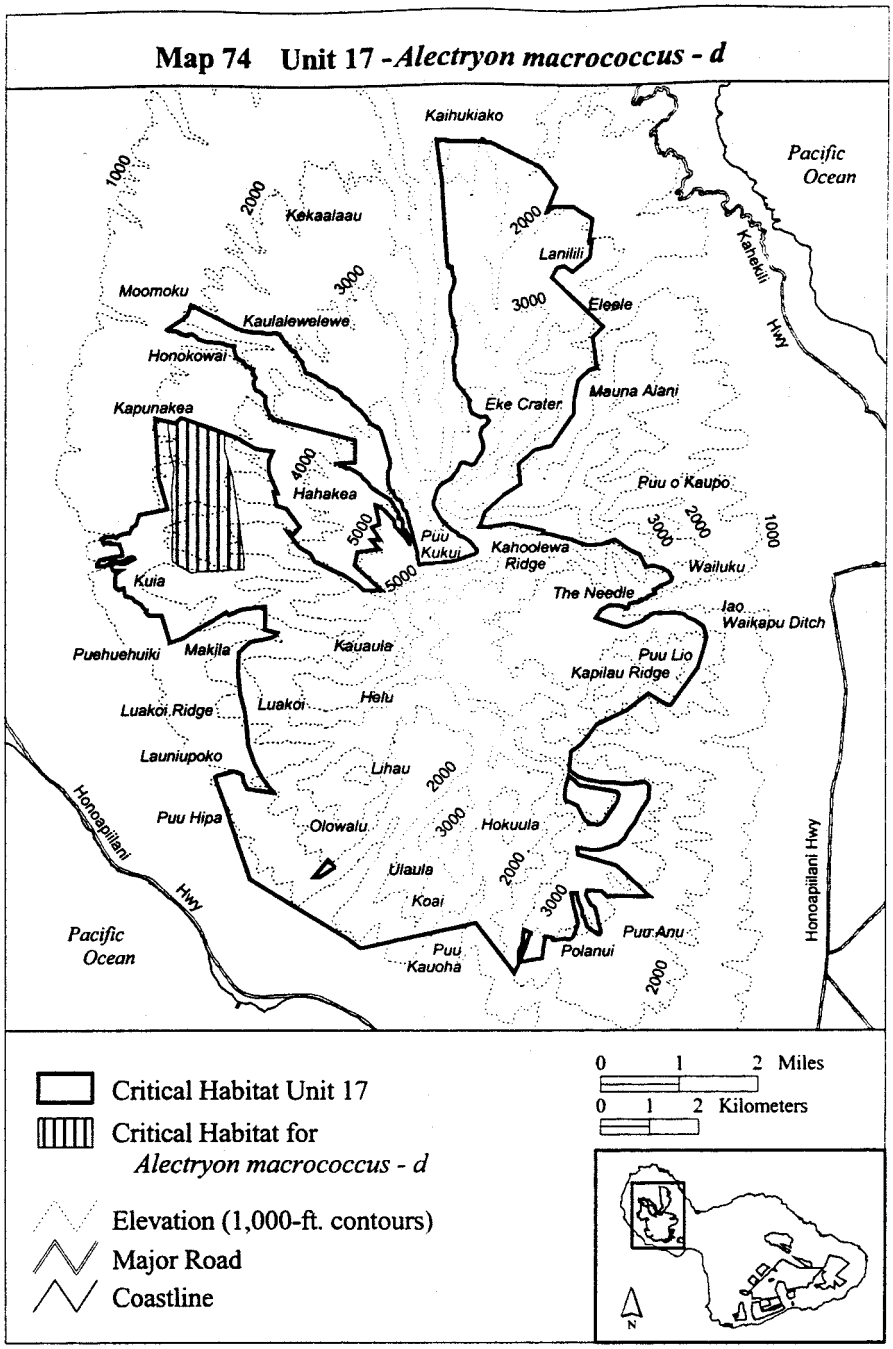
(B) **Note:** Map 73 follows:




(lxxiv) Maui 17—*Alectryon macrococcus*—d (391 ha; 965 ac).

(A) Unit consists of the following 27 boundary points: Start at 746095, 2314835; 746096, 2314835; 746207, 2314953; 746887, 2314706; 747096, 2314630; 747103, 2314277; 747172, 2314023; 747194, 2313958; 747189, 2313958; 747258, 2313703; 747500, 2311983; 747492, 2311912; 747502, 2311779; 746629, 2311755; 746420, 2311719; 746022, 2311962; 746024, 2312026; 746020, 2312039; 746014, 2312318; 746038, 2312650; 746002, 2313394; 746052, 2313940; 746048, 2313940; 745960, 2314381; 745954, 2314592; 745934, 2314718; 745938, 2314873; return to starting point.

(B) **Note:** Map 74 follows:

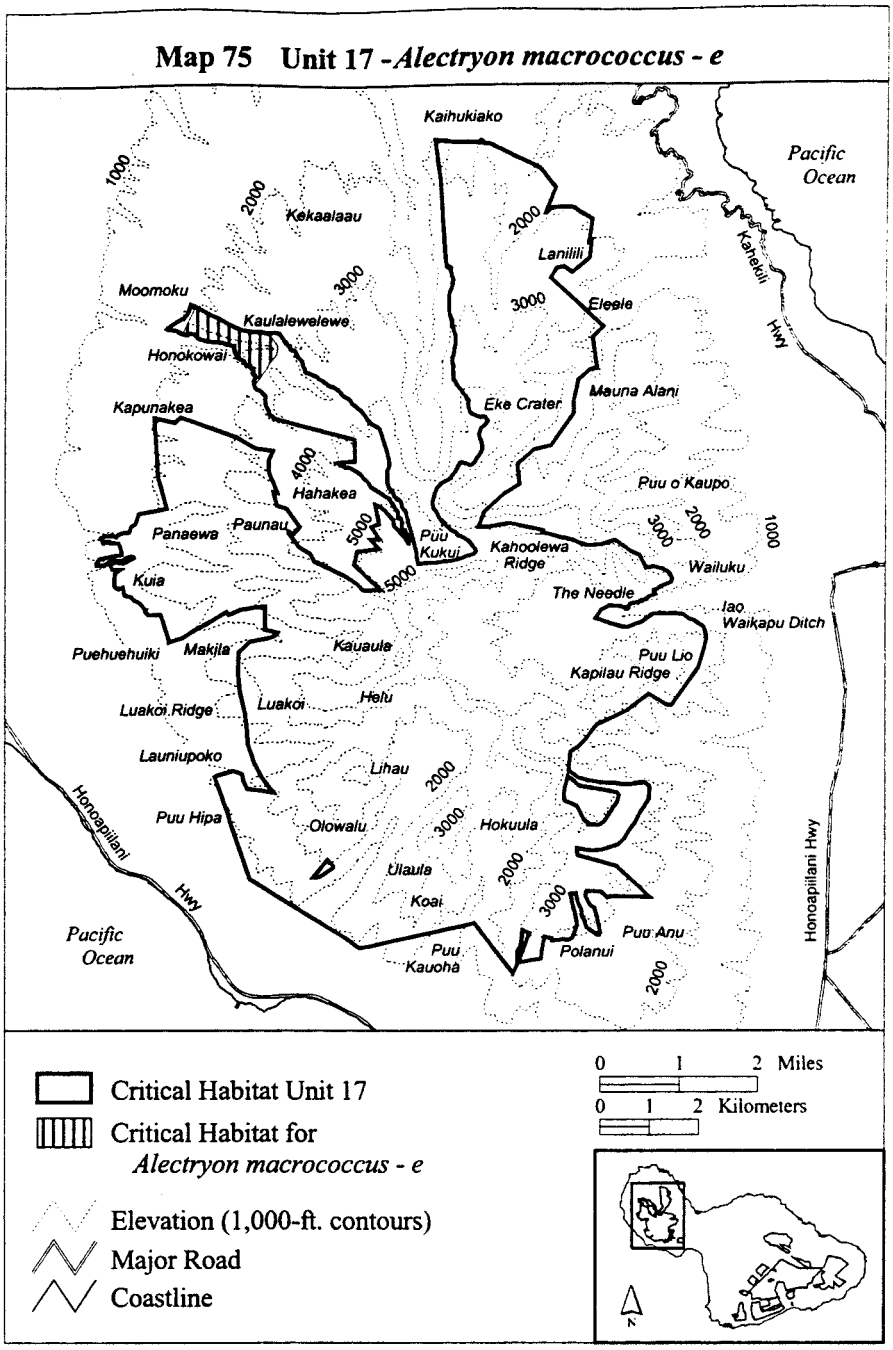



(lxxv) Maui 17—*Alectryon macrococcus*—e (110 ha; 271 ac).

(A) Unit consists of the following 105 boundary points: Start at 747695, 2315652; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836, 2316520; 746786, 2316524; 746741, 2316526; 746698, 2316533; 746655, 2316550; 746617, 2316562; 746584, 2316571; 746551, 2316595; 746533, 2316622; 746505, 2316643; 746458, 2316680; 746457, 2316680; 746411, 2316689; 746410, 2316689; 746348, 2316682; 746338, 2316683; 746337, 2316682; 746335, 2316658; 746329, 2316659; 746231, 2316679; 746501, 2317239; 746647, 2317164; 746706, 2317135; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747715, 2316716; 747716, 2316715; 747717,

2316715; 747937, 2316652; 748040, 2316630; 748046, 2316620; 748049, 2316619; 748181, 2316434; 748179, 2316409; 748181, 2316406; 748176, 2316380; 748164, 2316249; 748053, 2316110; 747990, 2316024; 747963, 2315953; 747889, 2315855; 747846, 2315782; 747792, 2315728; 747733, 2315650; return to starting point.

(B) **Note:** Map 75 follows:

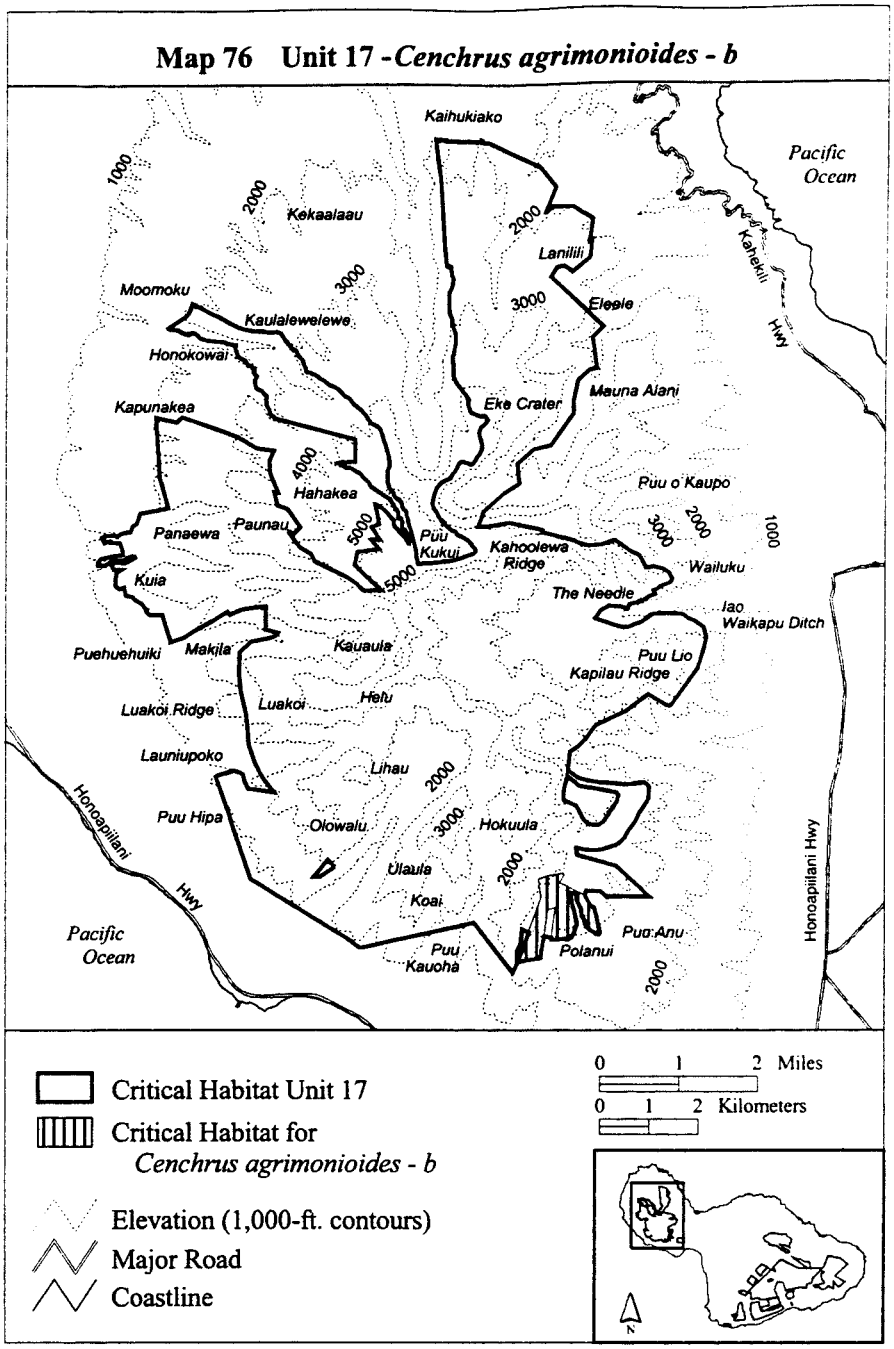



(lxxvi) Maui 17—*Cenchrus agrimonioides*—b (119 ha; 293 ac).

(A) Unit consists of the following 55 boundary points: Start at 753366, 2304292; 753617, 2305024; 753566, 2305394; 753780, 2305464; 754068, 2305512; 754084, 2305461; 754013, 2305321; 754480, 2305078; 754546, 2305000; 754621, 2304863; 754699, 2304812; 754764, 2304356; 754769, 2304263; 754770, 2304254; 754759, 2304261; 754670, 2304324; 754542, 2304415; 754352, 2305097; 754319, 2305108; 754132, 2305170; 754163, 2305075; 754239, 2304985; 754242, 2304971; 754278, 2304785; 754347, 2304463; 754340, 2304443; 754333, 2304422; 754326, 2304400; 754314, 2304365; 754314, 2304364; 754278, 2304259; 754277, 2304259; 754068, 2304164; 754067, 2304164; 754066, 2304164; 754065, 2304164; 753918, 2304149; 753825, 2304139; 753832, 2304195; 753908, 2304800; 753751, 2304765; 753675, 2304217; 753632, 2303912; 753617, 2303805; 753611, 2303762; 753577, 2303756; 753550, 2303751; 753534, 2303749; 753531, 2303748; 753152, 2303682; 753163, 2303713; 753304, 2304113; 753310,

2304130; 753365, 2304285; 753367, 2304292; return to starting point.

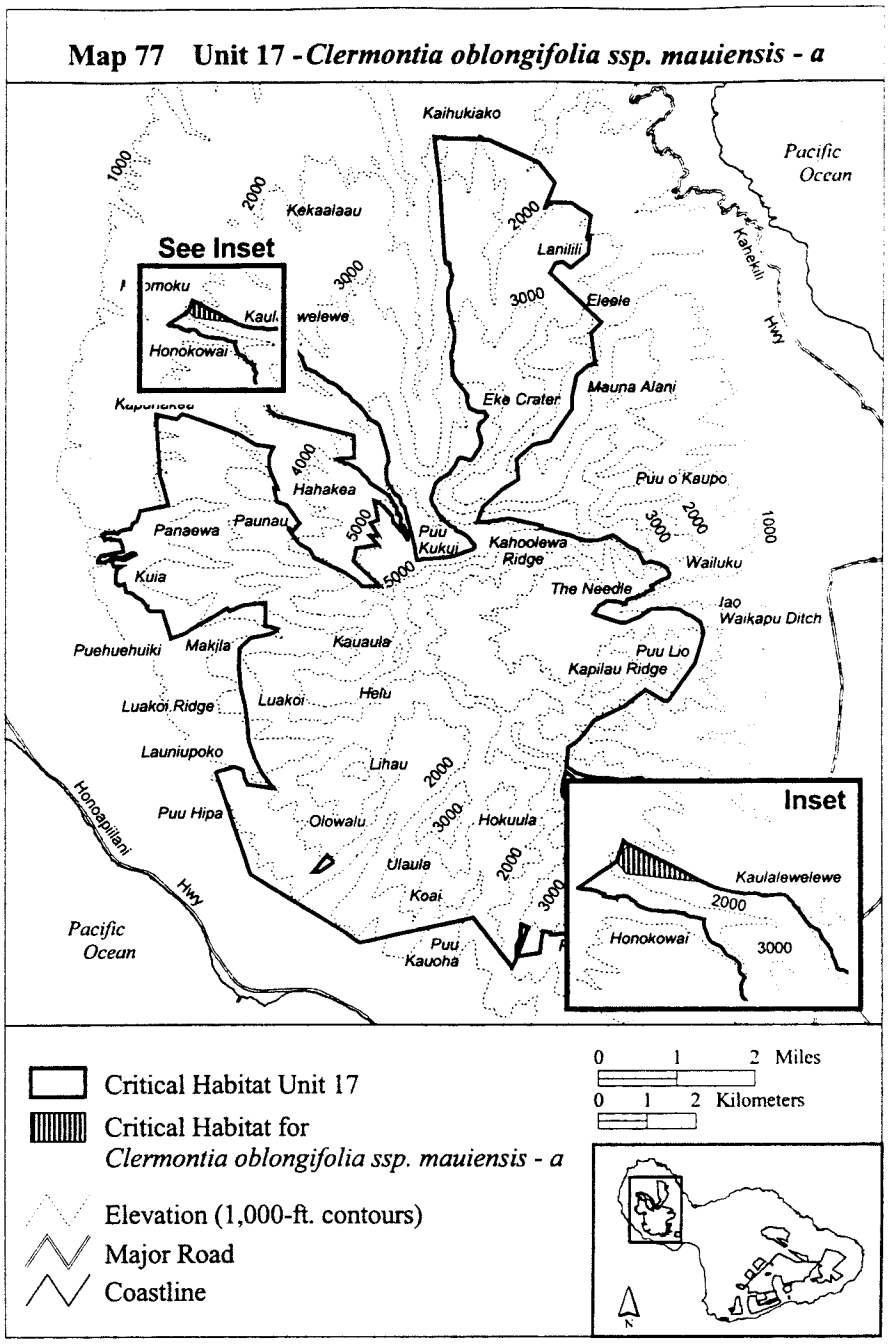
(B) **Note:** Map 76 follows:




(lxxvii) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a (16 ha; 40 ac).

(A) Unit consists of the following 12 boundary points: Start at 746327, 2317071; 746357, 2317155; 746471, 2317255; 746647, 2317164; 746706, 2317135; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747288, 2316836; 746433, 2316935; 746323, 2317068; return to starting point.

(B) **Note:** Map 77 follows:

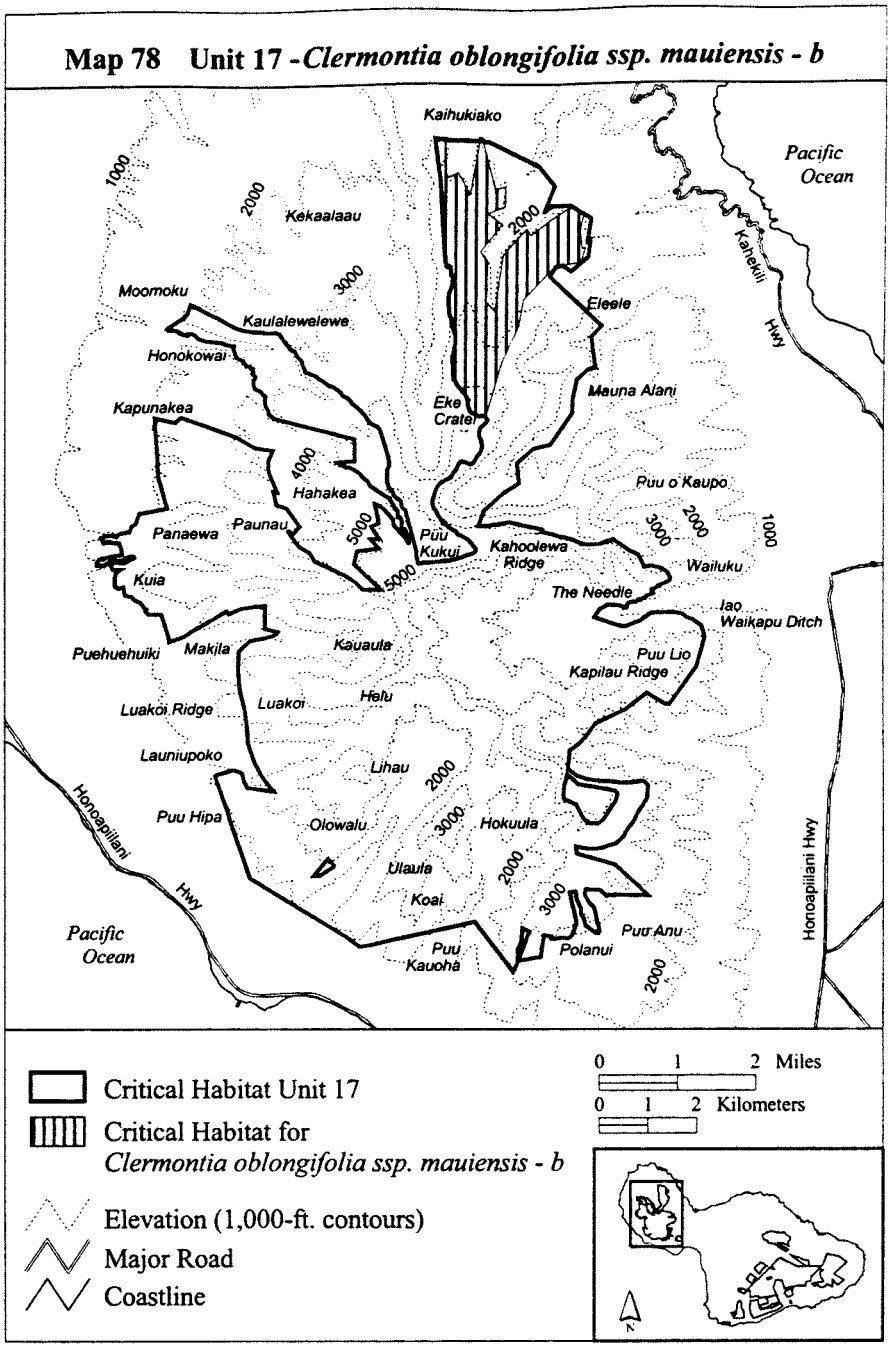



(lxxviii) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b (696 ha; 1,720 ac).

(A) Unit consists of the following 130 boundary points: Start at 752453, 2314975; 752453, 2314976; 752416, 2314975; 752381, 2314973; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752026, 2315438; 751991, 2315478; 751949, 2315532; 751900, 2315589; 751856, 2315640; 751831, 2315694; 751805, 2315739; 751802, 2315745; 751780, 2316007; 751791, 2316023; 751792, 2316024; 751792, 2316025; 751785, 2316046; 751774, 2316078; 751771, 2316121; 751767, 2316164; 751778, 2316192; 751794, 2316230; 751799, 2316258; 751807, 2316311; 751812, 2316339; 751828, 2316408; 751840, 2316469; 751842, 2316535; 751836, 2316587; 751832, 2316640; 751828, 2316678; 751828, 2316679; 751812, 2316711; 751793, 2316765; 751774, 2316831; 751763, 2316879; 751754, 2316929; 751744, 2317001; 751727, 2317051; 751703, 2317090; 751693, 2317225; 751691, 2317254; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665,

2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751599, 2318608; 751517, 2319810; 751458, 2320229; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751402, 2320630; 751401, 2320638; 751430, 2320630; 751621, 2320578; 751649, 2319822; 751885, 2319941; 752122, 2319497; 752334, 2320586; 752346, 2320647; 752379, 2320632; 752380, 2320629; 752654, 2319615; 752861, 2319645; 752861, 2319260; 752506, 2319113; 752802, 2318906; 752358, 2318344; 752506, 2318166; 752477, 2317338; 752654, 2317131; 752832, 2318285; 753305, 2318817; 753393, 2318669; 753778, 2318965; 754192, 2319231; 754441, 2319131; 754485, 2319104; 754399, 2318787; 754458, 2318403; 754519, 2318419; 754431, 2318127; 754060, 2318058; 753902, 2318028; 753875, 2318023; 753250, 2317363; 753146, 2316807; 752799, 2316077; 752486, 2315000; 752460, 2314964; return to starting point.

(B) **Note:** Map 78 follows:

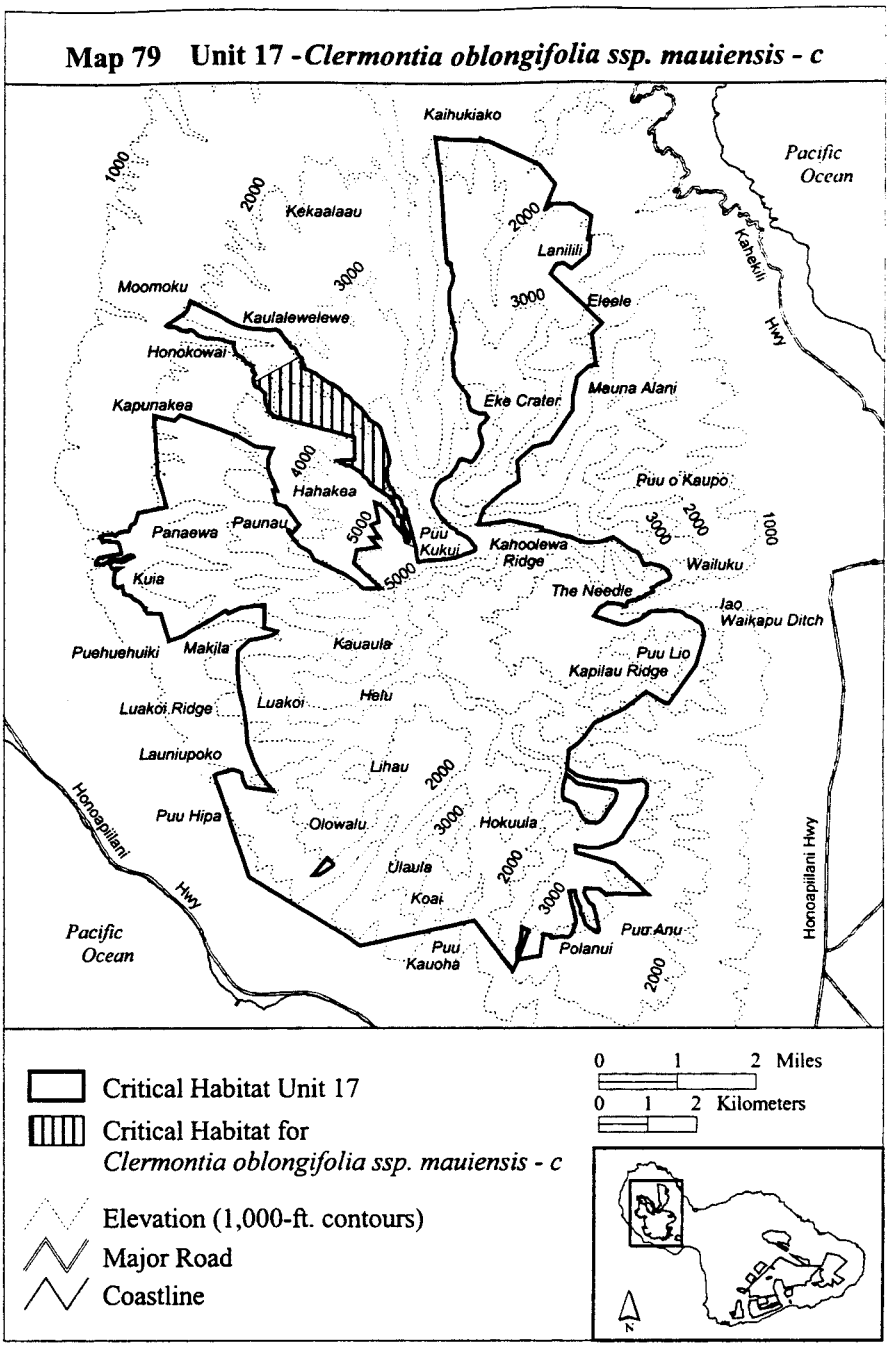



(lxxix) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c (296 ha; 732 ac).

(A) Unit consists of the following 262 boundary points: Start at 750654, 2312939; 750658, 2312963; 750658, 2312964; 750644, 2312989; 750610, 2313159; 750421, 2313289; 750102, 2313508; 750074, 2313542; 750046, 2313594; 750046, 2313595; 749977, 2313657; 749957, 2313674; 749879,

2313766; 749865, 2313785; 749864, 2313785; 749692, 2313889; 749655, 2313912; 749653, 2313912; 749594, 2313900; 749427, 2313998; 749481, 2314008; 749517, 2314015; 749719, 2314022; 749762, 2314024; 749763, 2314024; 749764, 2314024; 749764, 2314025; 749764, 2314060; 749776, 2314062; 749776, 2314445; 749768, 2314447; 749769, 2314498; 749768, 2314500; 749767, 2314500; 748184, 2314906; 748105, 2314940; 748092, 2314945; 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747772, 2315512; 747727, 2315626; 748615, 2316119; 748666, 2316120; 748680, 2316102; 748682, 2316095; 748687, 2316079; 748691, 2316057; 748698, 2316026; 748698, 2316025; 748717, 2315987; 748727, 2315962; 748733, 2315944; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748796, 2315863; 748806, 2315862; 748826, 2315861; 748849, 2315847; 748876, 2315834; 748913, 2315824; 748949, 2315807; 748960, 2315800; 749000, 2315773; 749021, 2315756; 749067, 2315724; 749090, 2315709; 749140, 2315671; 749173, 2315647; 749188, 2315640; 749205, 2315627; 749223, 2315614; 749244, 2315605; 749332, 2315568; 749353, 2315555; 749385, 2315535; 749404, 2315524; 749421, 2315514; 749470, 2315477; 749479, 2315464; 749486, 2315451; 749500, 2315430; 749524, 2315402; 749550, 2315385; 749571, 2315373; 749617, 2315351; 749628, 2315342; 749652, 2315326; 749666, 2315306; 749677, 2315288; 749682, 2315280; 749701, 2315256; 749720, 2315236; 749736, 2315224; 749781, 2315186; 749804, 2315173; 749833, 2315147; 749874, 2315098; 749888, 2315088; 749934, 2315046; 749960, 2315009; 750020, 2314928; 750057, 2314876; 750072, 2314855; 750097, 2314830; 750120, 2314809; 750138, 2314798; 750173, 2314786; 750215, 2314763; 750223, 2314758; 750232, 2314754; 750246, 2314737; 750265, 2314720; 750286, 2314703; 750288, 2314702; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313946; 750479, 2313933; 750476, 2313919; 750468, 2313903; 750450, 2313871; 750441, 2313851; 750441, 2313850; 750438, 2313827; 750440, 2313794; 750439, 2313772; 750436, 2313747; 750437, 2313723; 750437, 2313700; 750439, 2313671; 750438, 2313647; 750435, 2313610; 750436, 2313597; 750436, 2313596; 750441, 2313585; 750451, 2313562; 750456, 2313545; 750463, 2313528; 750465, 2313510; 750469, 2313497; 750469, 2313496; 750477, 2313484; 750491, 2313465; 750505, 2313443; 750510, 2313432; 750515, 2313420; 750526, 2313409; 750541, 2313398; 750551, 2313389; 750560, 2313367; 750565, 2313356; 750572, 2313334; 750578, 2313319; 750591, 2313304; 750609, 2313283; 750640, 2313257; 750643, 2313255; 750652, 2313247; 750674, 2313233; 750689, 2313219; 750704, 2313203; 750713, 2313180; 750725, 2313151; 750736, 2313118; 750747, 2313077; 750753, 2313062; 750767, 2313040; 750774, 2313031; 750792, 2313015; 750803, 2313003; 750815, 2312997; 750834, 2312921; 750866, 2312797; 750864, 2312784; 750864, 2312768; 750864, 2312767; 750868, 2312756; 750877, 2312736; 750881, 2312727; 750882, 2312717; 750888, 2312691; 750895, 2312668; 750904, 2312647; 750904, 2312646; 750905, 2312646; 751008, 2312240; 751019, 2312199; 751038, 2312126; 751038, 2312124; 751038, 2312092; 751037, 2312087; 751022, 2312131; 751013, 2312201; 750784, 2312291; 750742, 2312502; 750763, 2312476; 750804, 2312434; 750835, 2312384; 750877, 2312324; 750877, 2312323; 750878, 2312323; 750879, 2312323; 750880, 2312324; 750889, 2312378; 750889, 2312379; 750885, 2312387; 750887, 2312412; 750887, 2312413; 750876, 2312455; 750851, 2312517; 750819, 2312576; 750799, 2312595; 750799, 2312596; 750798, 2312596; 750757, 2312591; 750749, 2312590; 750747, 2312611; 750734, 2312726; 750739, 2312751; 750739, 2312752; 750730, 2312793; 750712, 2312846; 750711, 2312846; 750711, 2312847; 750691, 2312851; 750690, 2312851; 750687, 2312849; 750672, 2312852; return to starting point.

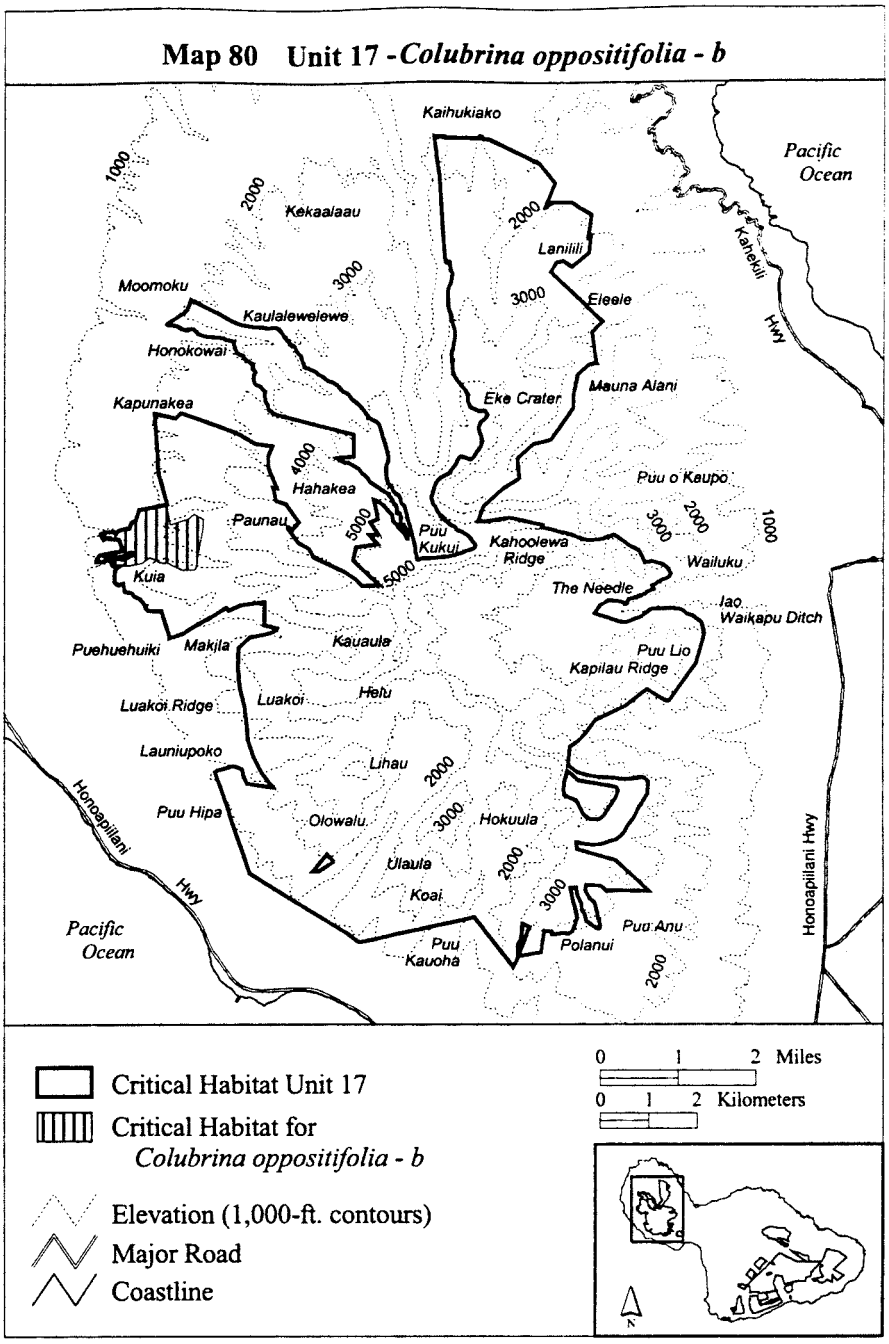
(B) **Note:** Map 79 follows:




(lxxx) Maui 17—*Colubrina oppositifolia*–b (176 ha; 436 ac).

(A) Unit consists of the following 67 boundary points: Start at 744959, 2311780; 744794, 2311780; 744757, 2311853; 744803, 2311913; 744873, 2311930; 745003, 2311908; 745103, 2311941; 745246, 2312013; 745237, 2312047; 745184, 2312054; 745082, 2312024; 744998, 2311962; 744940, 2311972; 744855, 2311959; 744843, 2311979; 744786, 2311969; 744644, 2311877; 744574, 2311856; 744542, 2311859; 744531, 2311866; 744526, 2311860; 744468, 2311866; 744468, 2311918; 744513, 2311972; 744523, 2311989; 744820, 2312059; 744992, 2312075; 744984, 2312177; 744929, 2312317; 744741, 2312341; 744737, 2312339; 744736, 2312339; 744734, 2312365; 744653, 2312345; 744609, 2312328; 744558, 2312437; 744633, 2312480; 744679, 2312478; 744722, 2312477; 744785, 2312485; 744871, 2312454; 744945, 2312517; 745143, 2312557; 745196, 2312680; 745264, 2312714; 745351, 2312931; 745805, 2313017; 745826, 2313019; 745913, 2313025; 745975, 2312628; 746367, 2312736; 746475, 2312844; 746618, 2312761; 746666, 2312733; 746657, 2312639; 746654, 2312523; 746558, 2311971; 746539, 2311801; 746492, 2311692; 746250, 2311692; 746219, 2311706; 746197, 2311706; 745959, 2311825; 745773, 2311844; 745572, 2311939; 745404, 2311822; 745147, 2311780; return to starting point.

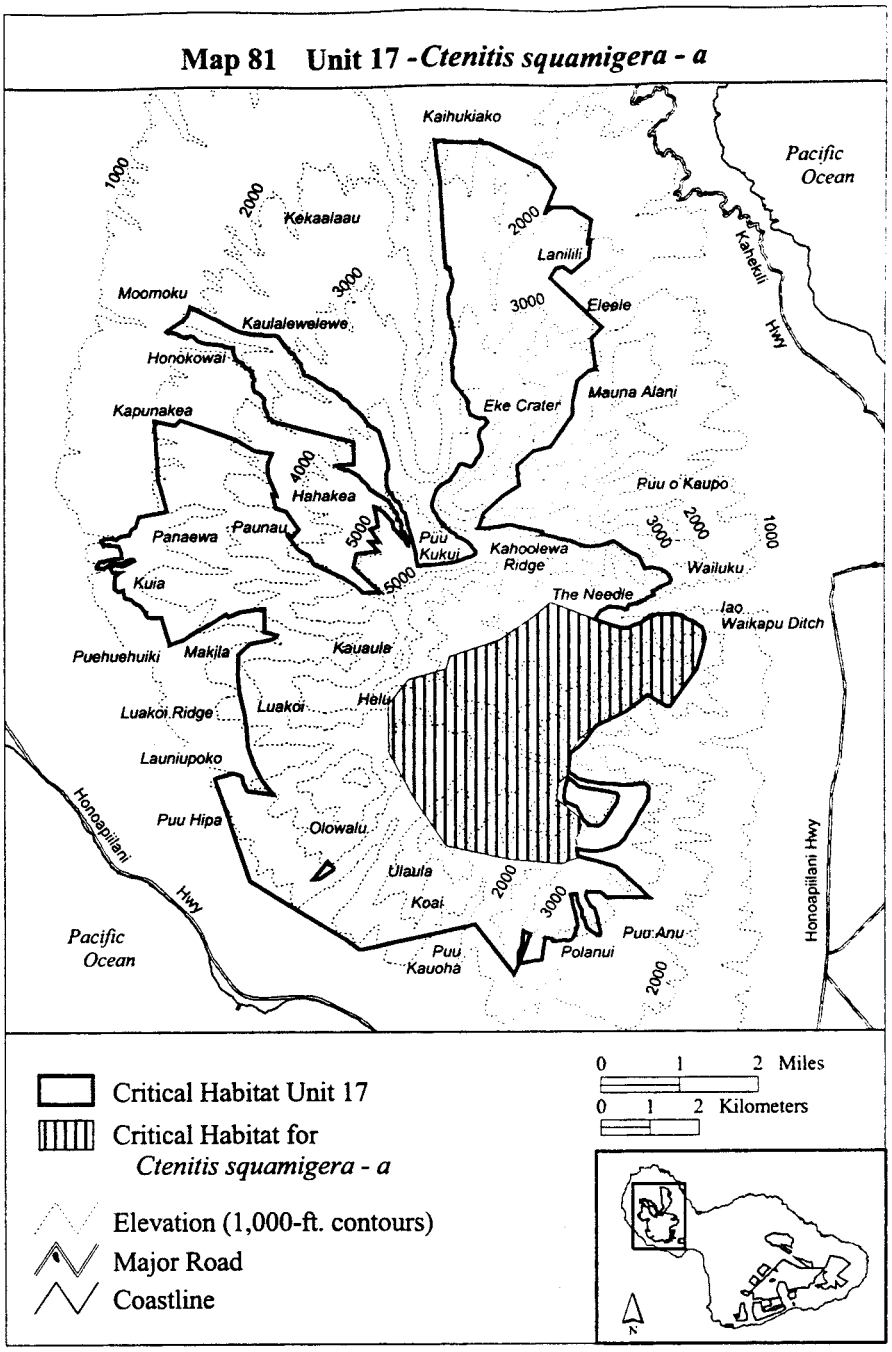
(B) **Note:** Map 80 follows:




(lxxxi) Maui 17—*Ctenitis squamigera*—a (1,979 ha; 4,891 ac).

(A) Unit consists of the following 58 boundary points: Start at 754711, 2310770; 755224, 2310599; 755234, 2310596; 755269, 2310584; 755320, 2310567; 755364, 2310585; 755366, 2310585; 755661, 2310703; 755670, 2310709; 756015, 2310849; 756300, 2310859; 756582, 2310767; 756724, 2310720; 756903, 2310594; 756939, 2310479; 756941, 2310469; 756961, 2310369; 756961, 2310368; 756967, 2310338; 756918, 2310152; 756801, 2309745; 756244, 2308954; 756153, 2308971; 755784, 2309203; 755328, 2308843; 754727, 2308566; 754703, 2308555; 754391, 2308291; 754206, 2308013; 754199, 2308002; 754164, 2307624; 754157, 2307555; 753944, 2307384; 753924, 2307060; 754322, 2306732; 754390, 2306683; 754409, 2306473; 754314, 2306226; 754335, 2306032; 754344, 2305953; 754346, 2305896; 754350, 2305895; 754350, 2305894; 754356, 2305843; 754191, 2305795; 754037, 2305734; 752927, 2305830; 751646, 2306112; 751009, 2307051; 750478, 2308025; 750460, 2309016; 750885, 2309547; 751648, 2309754; 751721, 2310011; 752535, 2310277; 752735, 2310348; 753433, 2310829; 753806, 2311124; return to starting point.

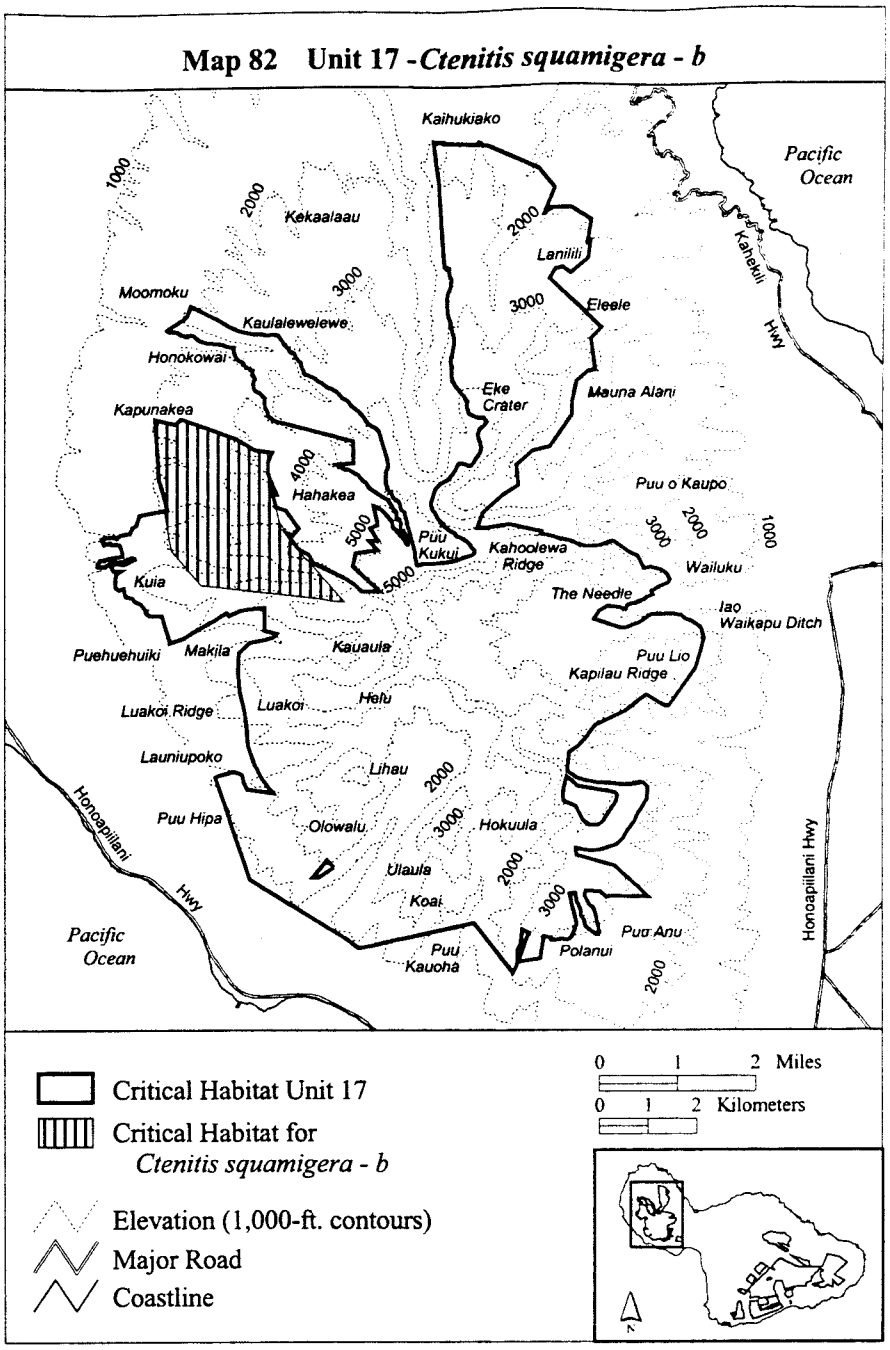
(B) **Note:** Map 81 follows:




(lxxxii) Maui 17—*Ctenitis squamigera*—b (816 ha; 2,017 ac).

(A) Unit consists of the following 33 boundary points: Start at 745855, 2313035; 745916, 2313043; 745773, 2313571; 745745, 2313671; 745742, 2313671; 745733, 2313825; 745726, 2313936; 745666, 2314939; 746095, 2314835; 746096, 2314835; 746207, 2314953; 746887, 2314706; 747359, 2314534; 747735, 2314300; 747988, 2314266; 747997, 2314050; 748006, 2313828; 748025, 2313740; 748103, 2313389; 748166, 2313105; 748233, 2312800; 748392, 2312568; 748570, 2312307; 748631, 2312228; 748652, 2312200; 748748, 2312058; 748822, 2312005; 749297, 2311460; 749584, 2311129; 749324, 2311150; 749143, 2311192; 746617, 2311468; 745999, 2312213; return to starting point.

(B) **Note:** Map 82 follows:

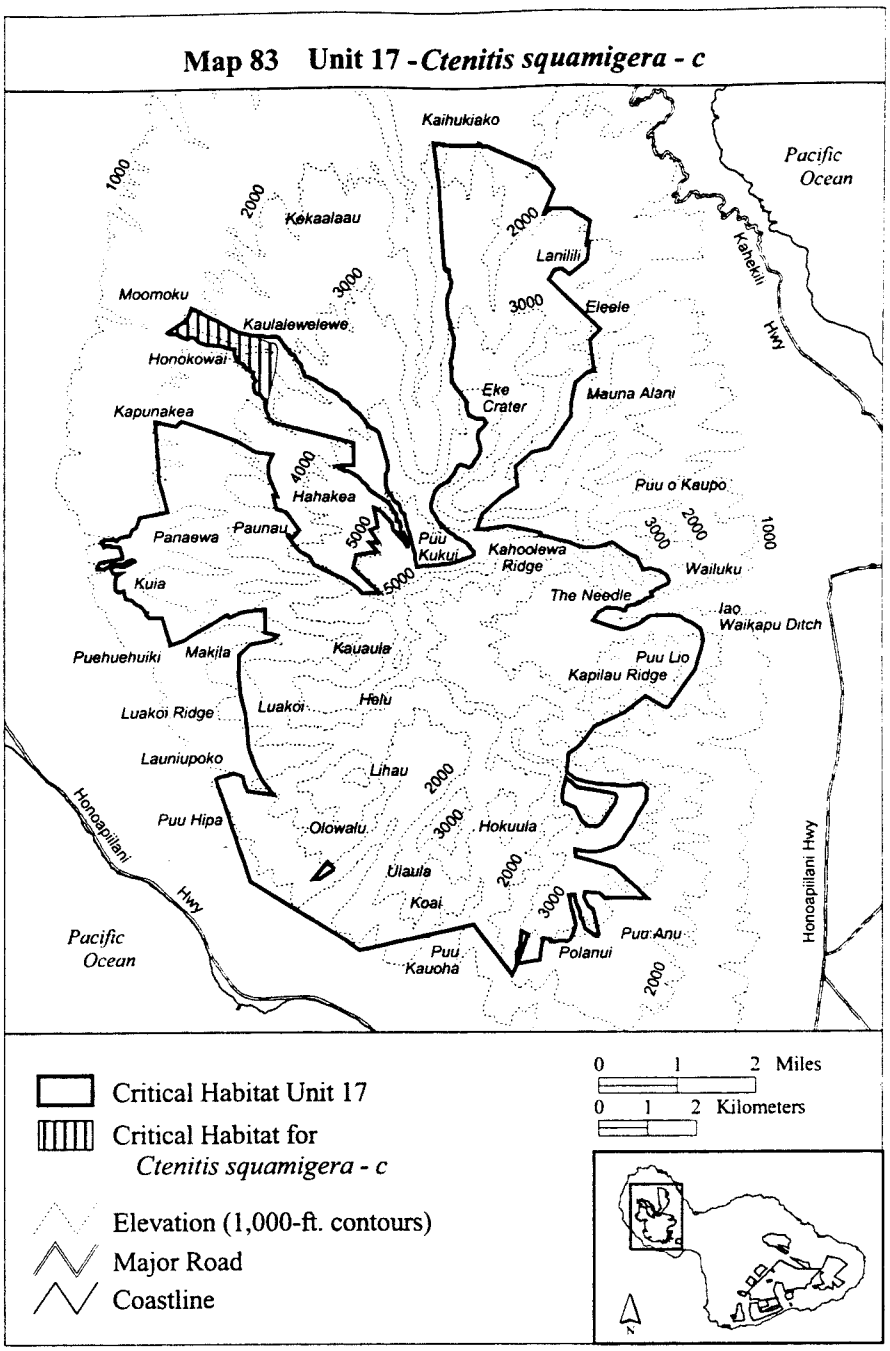



(lxxxiii) Maui 17—*Ctenitis squamigera*—c (137 ha; 338 ac).

(A) Unit consists of the following 133 boundary points: Start at 747966, 2315141; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747702, 2315820; 747691, 2315827; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836, 2316520; 746786, 2316524; 746741, 2316526; 746698, 2316533; 746655, 2316550; 746617, 2316562; 746584, 2316571; 746551, 2316595; 746533, 2316622; 746505,

2316643; 746458, 2316680; 746457, 2316680; 746411, 2316689; 746410, 2316689; 746348, 2316682; 746338, 2316683; 746337, 2316682; 746335, 2316658; 746329, 2316659; 746194, 2316687; 746199, 2316707; 746200, 2316707; 746199, 2316708; 746198, 2316709; 746186, 2316712; 746160, 2316720; 746128, 2316738; 746127, 2316738; 746095, 2316749; 746058, 2316757; 746020, 2316765; 745994, 2316766; 745962, 2316761; 745913, 2316779; 745961, 2316812; 746173, 2316962; 746267, 2317022; 746270, 2317031; 746278, 2317037; 746327, 2317071; 746357, 2317155; 746377, 2317211; 746405, 2317289; 746423, 2317280; 747344, 2316808; 747450, 2316773; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747715, 2316716; 747716, 2316715; 747719, 2316715; 747767, 2316674; 747991, 2316589; 748152, 2316547; 748190, 2316422; 748188, 2316396; 748181, 2316327; 748153, 2316030; 747996, 2315412; return to starting point.

(B) **Note:** Map 83 follows:

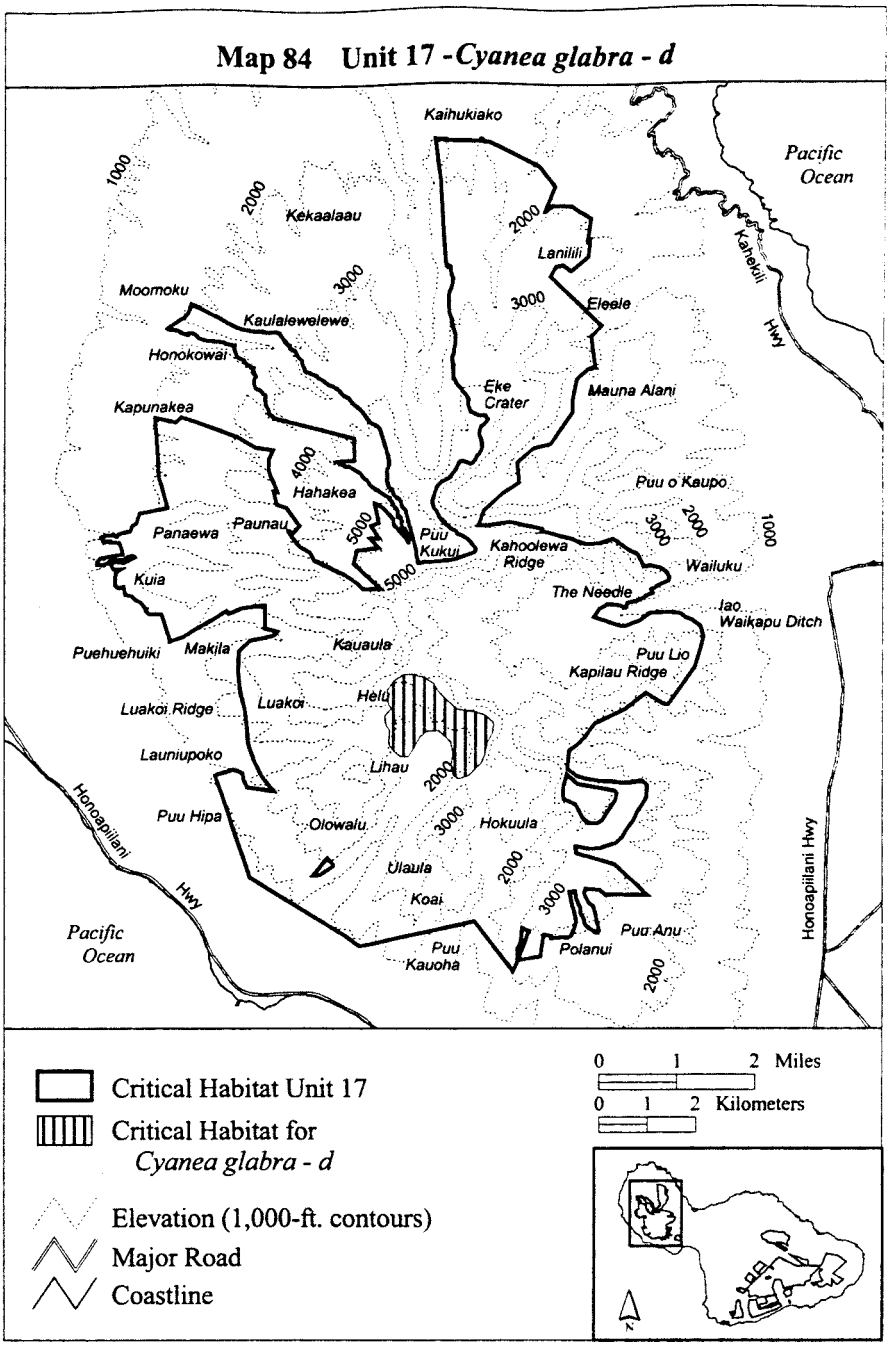



(lxxxiv) Maui 17—*Cyanea glabra*—d (255 ha; 630 ac).

(A) Unit consists of the following 36 boundary points: Start at 750480, 2308143; 750494, 2308421; 750414, 2308545; 750406, 2308713; 750523, 2308867; 750465, 2308969; 750450, 2309254; 750575, 2309437; 750794, 2309576; 750969, 2309576; 751203, 2309517; 751401, 2309386; 751474, 2309254; 751664, 2309057; 751905, 2308859; 752286, 2308801; 752468,

2308742; 752636, 2308589; 752607, 2308362; 752505, 2308165; 752461, 2307938; 752381, 2307755; 752125, 2307492; 751913, 2307434; 751803, 2307507; 751766, 2307712; 751781, 2307880; 751781, 2308019; 751744, 2308194; 751511, 2308421; 751262, 2308406; 751130, 2308296; 750969, 2308019; 750882, 2307872; 750736, 2307872; 750545, 2308026; return to starting point.

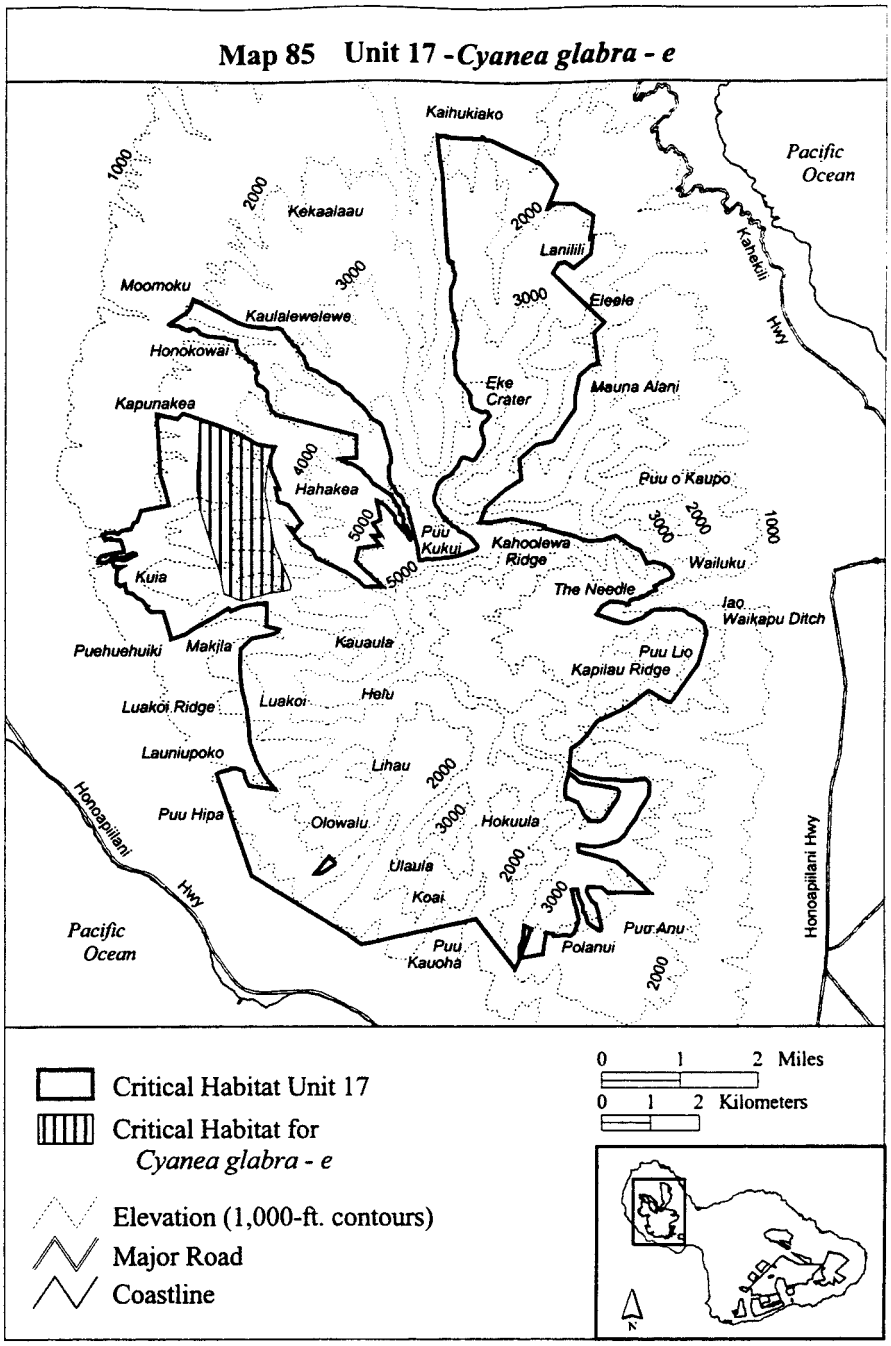
(B) **Note:** Map 84 follows:




(lxxxv) Maui 17—*Cyanea glabra*—e (470 ha; 1,163 ac).

(A) Unit consists of the following 28 boundary points: Start at 746593, 2314813; 746887, 2314706; 747359, 2314534; 747735, 2314300; 748095, 2314252; 748080, 2314231; 747997, 2314050; 747967, 2313985; 747921, 2313749; 747890, 2313343; 748044, 2312415; 748090, 2312169; 748396, 2311456; 748418, 2311379; 748403, 2311287; 748254, 2311251; 747983, 2311220; 747495, 2311082; 747412, 2311052; 747044, 2311200; 746967, 2311589; 746567, 2312918; 746485, 2313343; 746485, 2313738; 746526, 2314164; 746521, 2314359; 746546, 2314733; 746555, 2314791; return to starting point.

(B) **Note:** Map 85 follows:

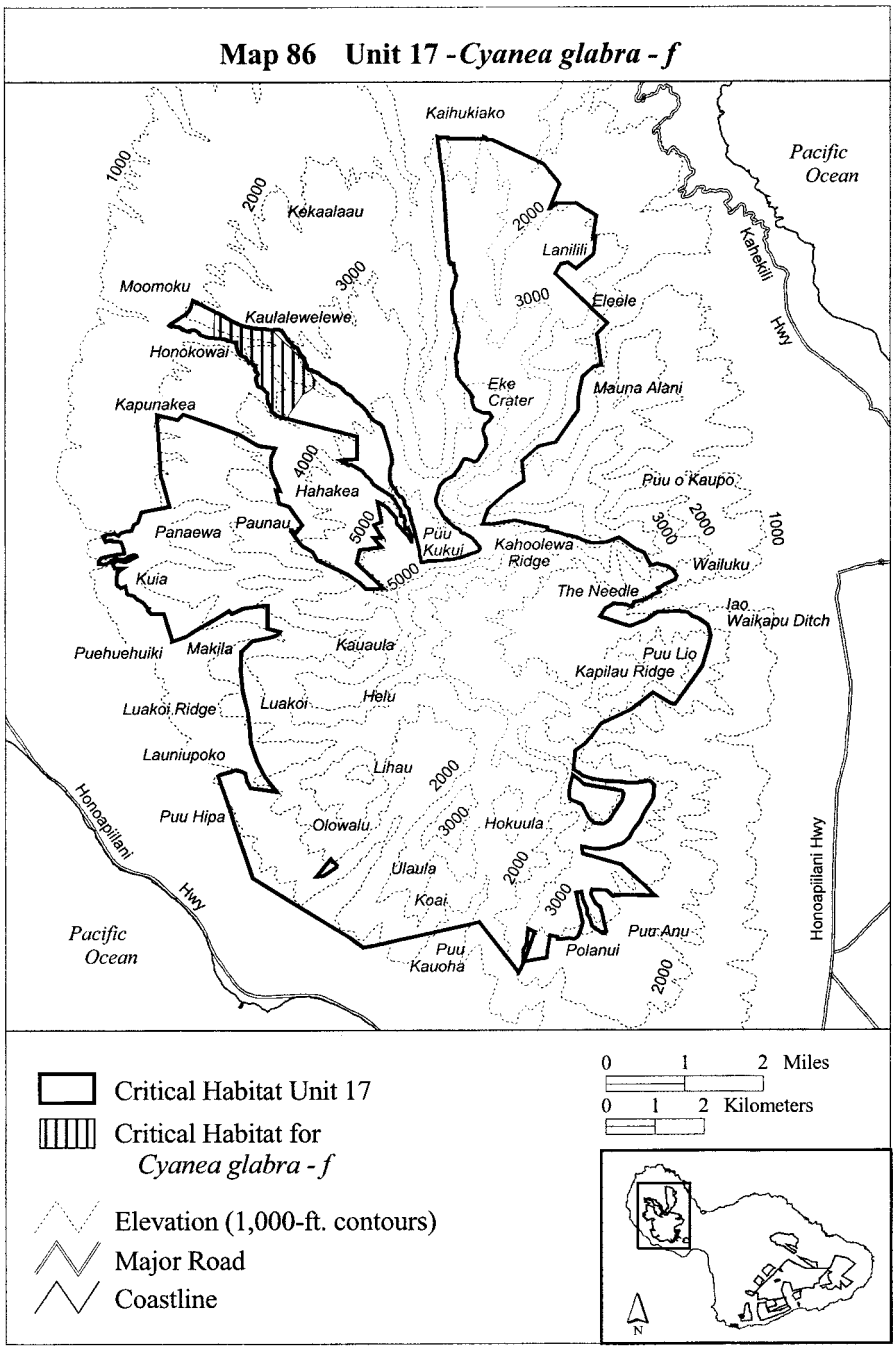



(lxxxvi) Maui 17—*Cyanea glabra*—f (188 ha; 465 ac).

(A) Unit consists of the following 122 boundary points: Start at 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836,

2316520; 746828, 2316521; 746834, 2316631; 746839, 2316939; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747450, 2316773; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747829, 2316717; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748029, 2316693; 748649, 2316082; 748735, 2315935; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748775, 2315867; 748793, 2315836; 748906, 2315667; 748901, 2315549; 748798, 2315451; 748660, 2315374; 748372, 2314933; 748352, 2314863; 748326, 2314870; return to starting point.

(B) **Note:** Map 86 follows:

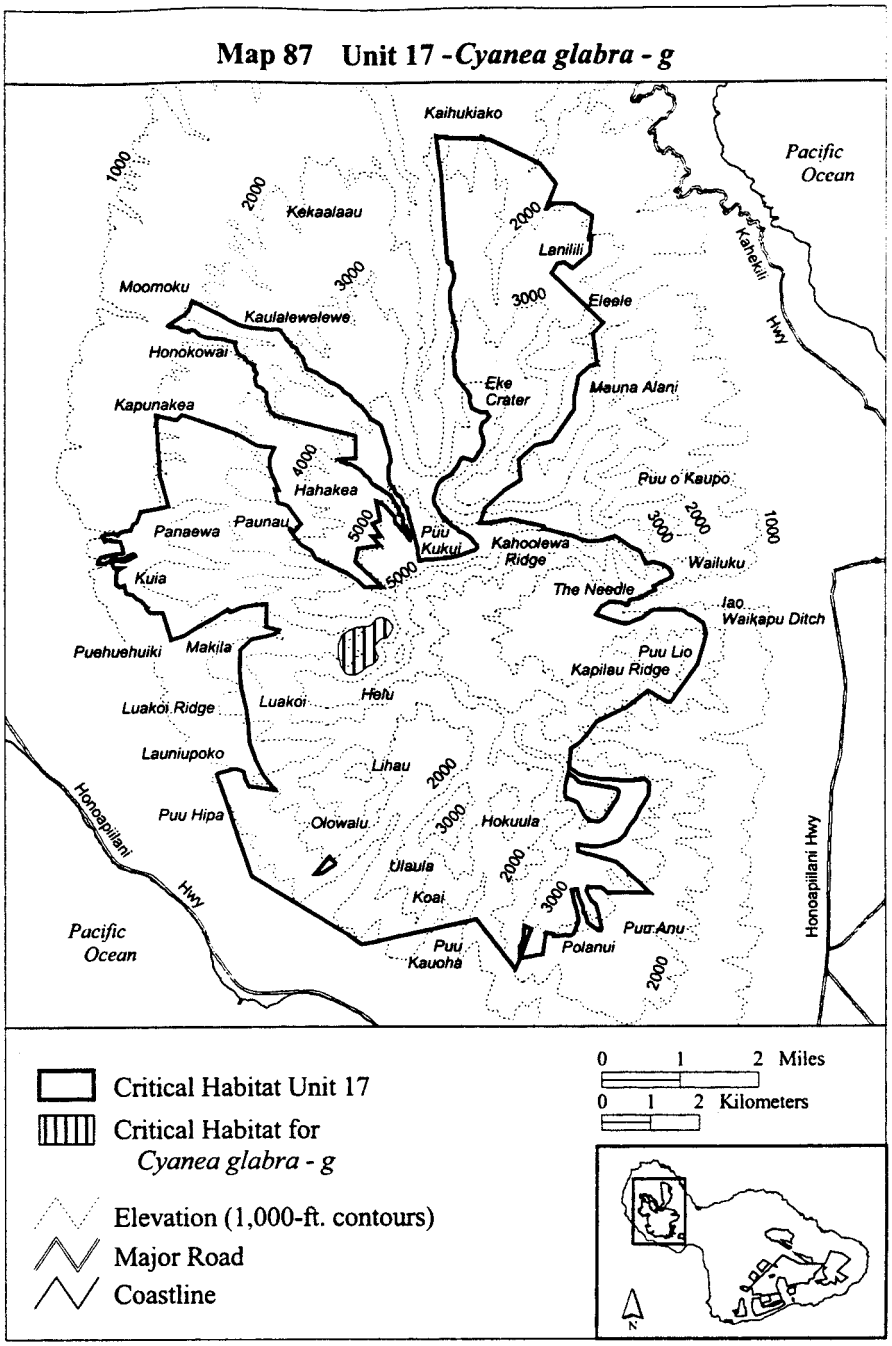



(lxxxvii) Maui 17—*Cyanea glabra*—g (79 ha; 195 ac).

(A) Unit consists of the following 33 boundary points: Start at 749398, 2310143; 749470, 2310348; 749639, 2310451; 749793, 2310523; 750055, 2310548; 750137, 2310615; 750188, 2310687; 750190, 2310697; 750274, 2310725; 750348, 2310711; 750440, 2310656; 750505, 2310582; 750523, 2310503; 750496, 2310420; 750440, 2310332; 750385, 2310295; 750292, 2310277; 750204, 2310203; 750149, 2310105; 750167, 2310022; 750223, 2309925; 750209, 2309842; 750144,

2309773; 750006, 2309708; 749881, 2309611; 749770, 2309532; 749691, 2309527; 749585, 2309541; 749502, 2309629; 749437, 2309759; 749444, 2309766; 749408, 2309876; 749398, 2309979; return to starting point.

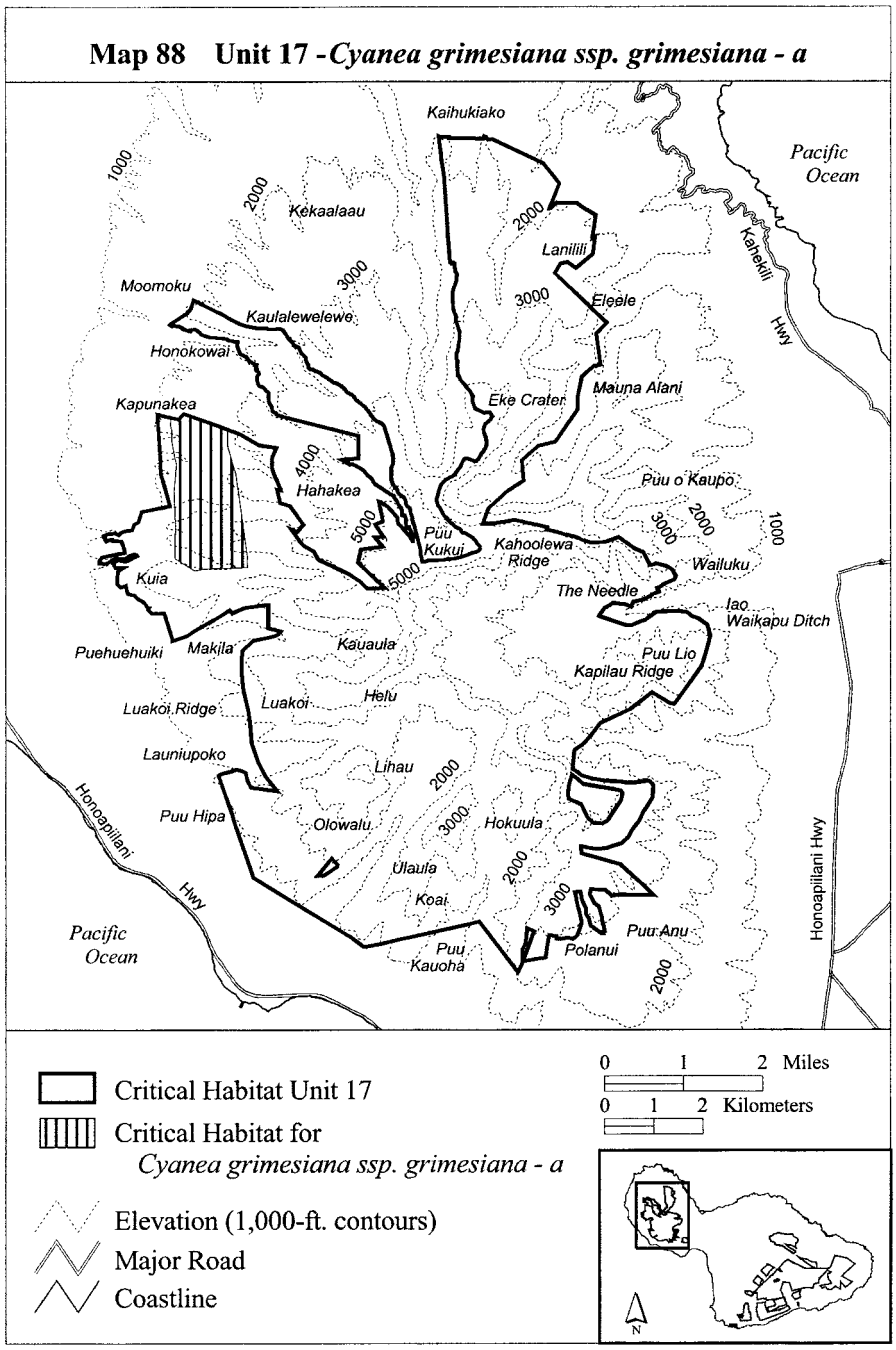
(B) **Note:** Map 87 follows:




(lxxxviii) Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a (920 ha; 2,273 ac).

(A) Unit consists of the following 26 boundary points: Start at 755402, 2311063; 755355, 2310968; 755230, 2311019; 755226, 2311019; 754833, 2311178; 753854, 2311761; 753088, 2311437; 753109, 2310920; 752629, 2309941; 753391, 2309839; 754118, 2310001; 755127, 2310494; 755241, 2309743; 754863, 2309251; 753812, 2308620; 751175, 2309545; 751031, 2309863; 750935, 2311100; 751464, 2311599; 751968, 2311905; 753055, 2312211; 753463, 2312289; 754058, 2312313; 754688, 2312061; 755127, 2311731; 755547, 2311353; return to starting point.

(B) **Note:** Map 88 follows:

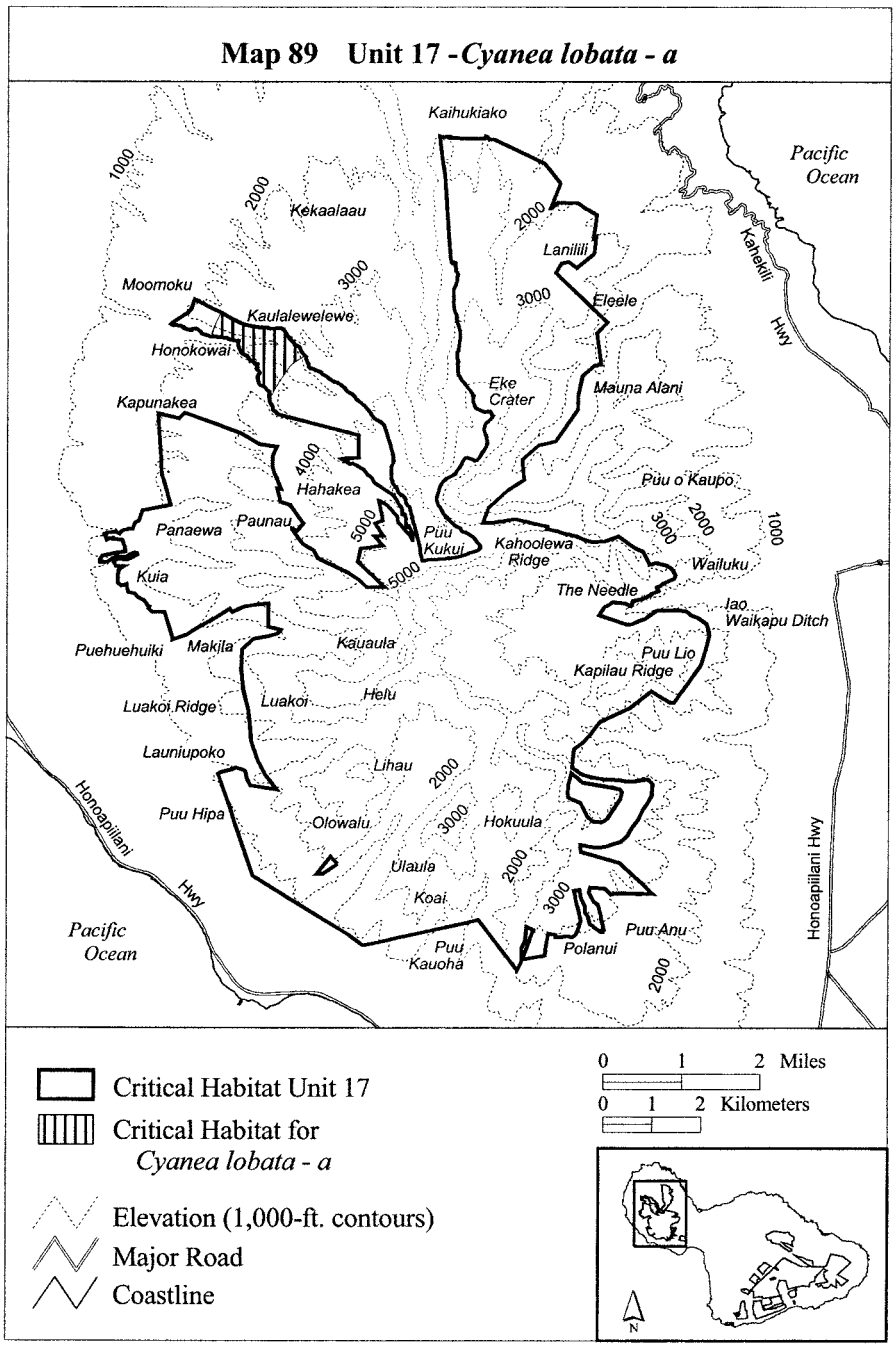



(lxxxix) Maui 17—*Cyanea lobata*—a (131 ha; 324 ac).

(A) Unit consists of the following 133 boundary points: Start at 747973, 2315130; 747957, 2315156; 747952, 2315167; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747103, 2316475; 747094, 2316483; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746850, 2316519; 746759, 2316594; 746828, 2316776; 746943, 2317018; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602,

2316733; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748041, 2316695; 748056, 2316696; 748113, 2316703; 748141, 2316706; 748159, 2316704; 748168, 2316702; 748201, 2316684; 748211, 2316678; 748218, 2316670; 748236, 2316643; 748254, 2316624; 748267, 2316607; 748276, 2316584; 748310, 2316551; 748349, 2316494; 748389, 2316441; 748415, 2316408; 748446, 2316368; 748446, 2316367; 748505, 2316331; 748531, 2316319; 748548, 2316311; 748549, 2316310; 748562, 2316282; 748574, 2316250; 748575, 2316245; 748585, 2316225; 748587, 2316220; 748589, 2316217; 748596, 2316201; 748610, 2316189; 748613, 2316186; 748649, 2316141; 748655, 2316134; 748446, 2315991; 748398, 2315949; 748126, 2315586; 748029, 2315400; 748003, 2315327; 747976, 2315313; return to starting point.

(B) **Note:** Map 89 follows:

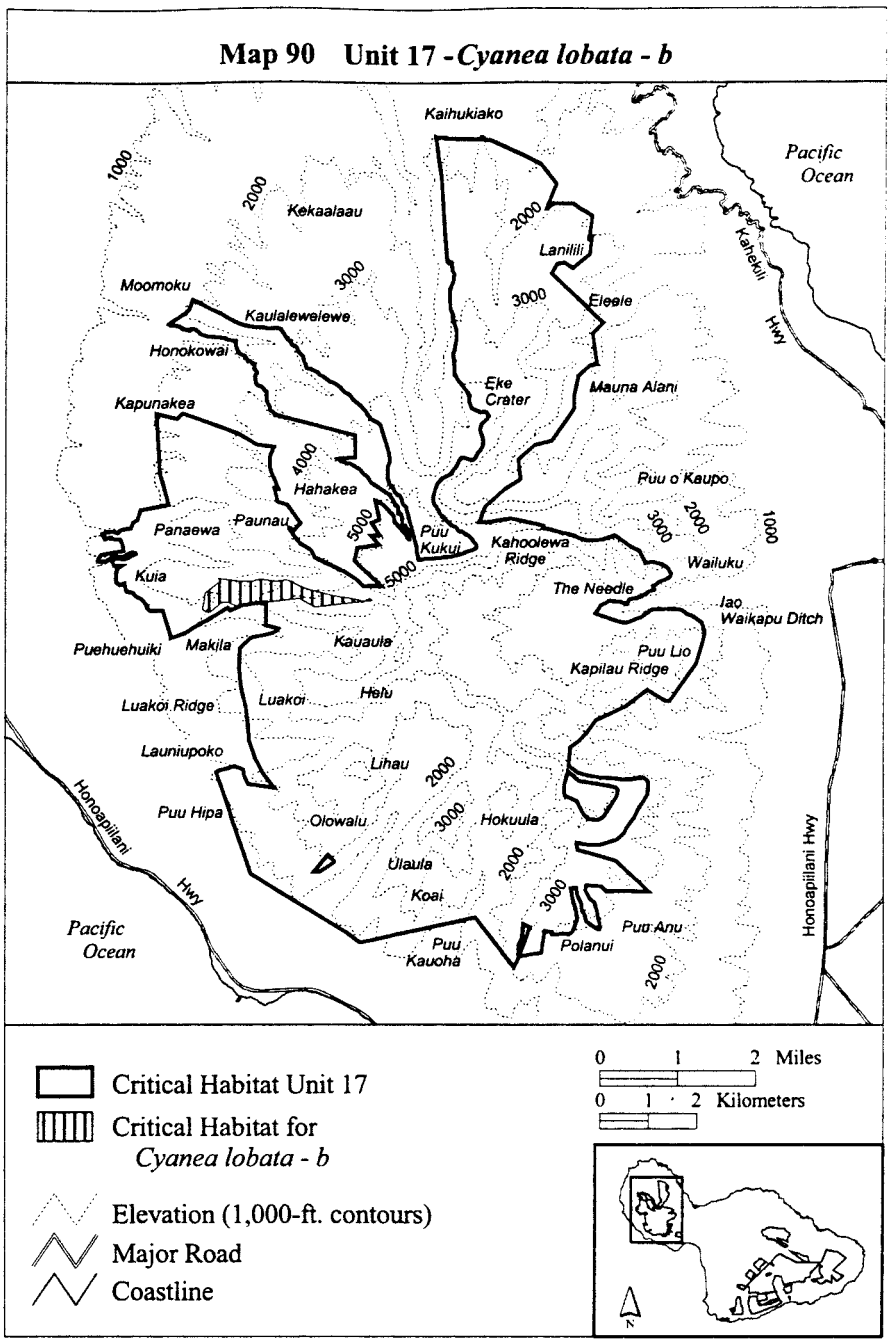



(xc) Maui 17—*Cyanea lobata*—b (114 ha; 282 ac).

(A) Unit consists of the following 35 boundary points: Start at 747903, 2311009; 747443, 2310953; 747432, 2310952; 747407, 2310938; 747319, 2310932; 747154, 2311018; 747024, 2311018; 746814, 2310852; 746755, 2310801; 746678, 2310811; 746652, 2310844; 746630, 2310853; 746617, 2310888; 746652, 2311053; 746661, 2311200; 746971, 2311433; 746952,

2311505; 747422, 2311441; 747662, 2311441; 747812, 2311501; 748142, 2311441; 748322, 2311471; 748472, 2311441; 748564, 2311384; 748784, 2311284; 748999, 2311226; 749324, 2311150; 749769, 2311083; 749908, 2311040; 749987, 2311042; 750063, 2311077; 750068, 2311092; 750118, 2311050; 748942, 2310916; 748618, 2311096; return to starting point.

(B) **Note:** Map 90 follows:

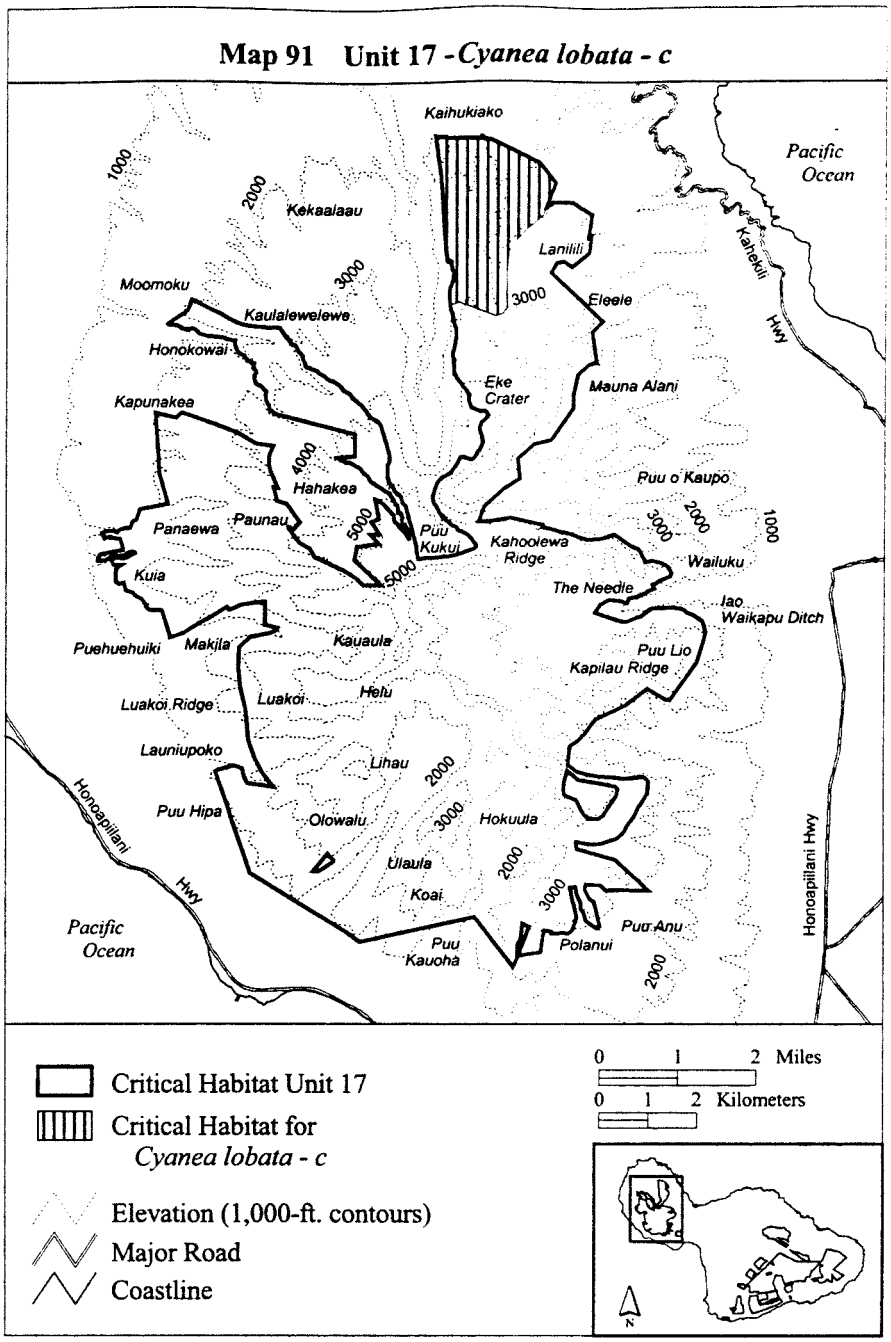



(xci) Maui 17—*Cyanea lobata*—c (578 ha; 1,427 ac).

(A) Unit consists of the following 62 boundary points: Start at 751691, 2317255; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665, 2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751599, 2318608; 751517, 2319810; 751458, 2320230; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751406, 2320602; 751619, 2320598; 752334, 2320586; 752403, 2320585; 752415, 2320564; 752418, 2320564; 752509, 2320573; 752522, 2320567; 753547, 2320078; 753862, 2319691; 753884, 2319664; 753681, 2319159; 753622, 2319012; 753234, 2318678; 753089, 2318512; 752913,

2318248; 752876, 2317830; 752886, 2317088; 752845, 2317055; 752810, 2316993; 752718, 2316956; 752684, 2316929; 752465, 2317006; 751895, 2317211; 751704, 2317136; return to starting point.

(B) **Note:** Map 91 follows:

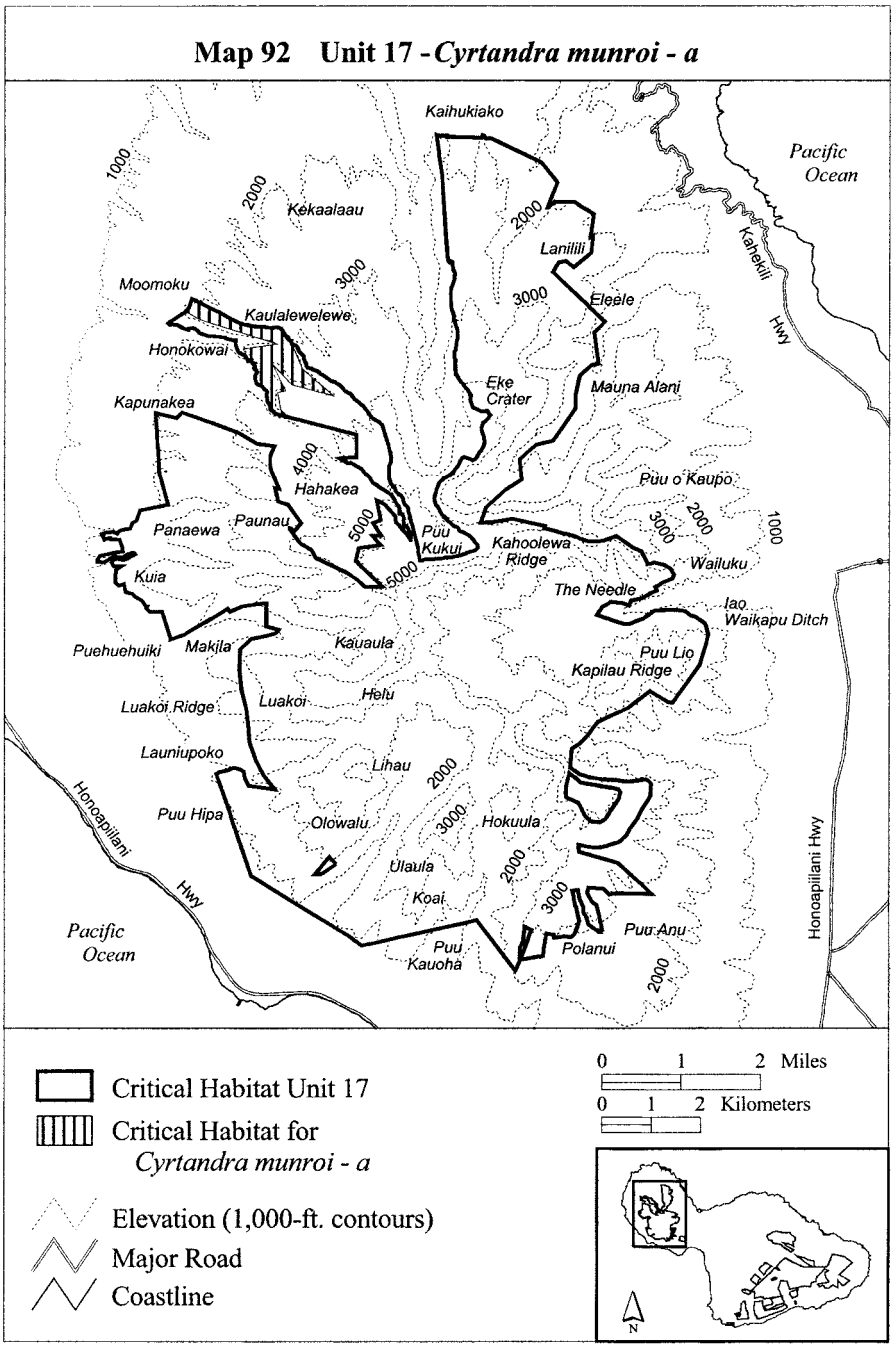



(xcii) Maui 17—*Cyrtandra munroi*—a (156 ha; 386 ac).

(A) Unit consists of the following 95 boundary points: Start at 748364, 2314860; 748184, 2314906; 748126, 2314931; 748112, 2314937; 748019, 2315110; 747987, 2315114; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747728, 2315776; 747736, 2315775; 747729, 2315788; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747711, 2315815; 747676, 2315871; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747594, 2316008; 747441, 2316258; 748156, 2316363; 746590, 2316862; 746278, 2317037; 746327, 2317071; 746397, 2317266; 746423,

2317280; 746706, 2317135; 747190, 2316887; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747829, 2316717; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748041, 2316695; 748056, 2316696; 748113, 2316703; 748141, 2316706; 748159, 2316704; 748168, 2316702; 748201, 2316684; 748211, 2316678; 748218, 2316670; 748236, 2316643; 748254, 2316624; 748267, 2316607; 748276, 2316584; 748310, 2316551; 748349, 2316494; 748389, 2316441; 748415, 2316408; 748434, 2316383; 748660, 2315859; 749291, 2315291; 748450, 2315523; 748051, 2315943; 748324, 2315397; 748156, 2315355; 748219, 2314997; return to starting point.

(B) **Note:** Map 92 follows:

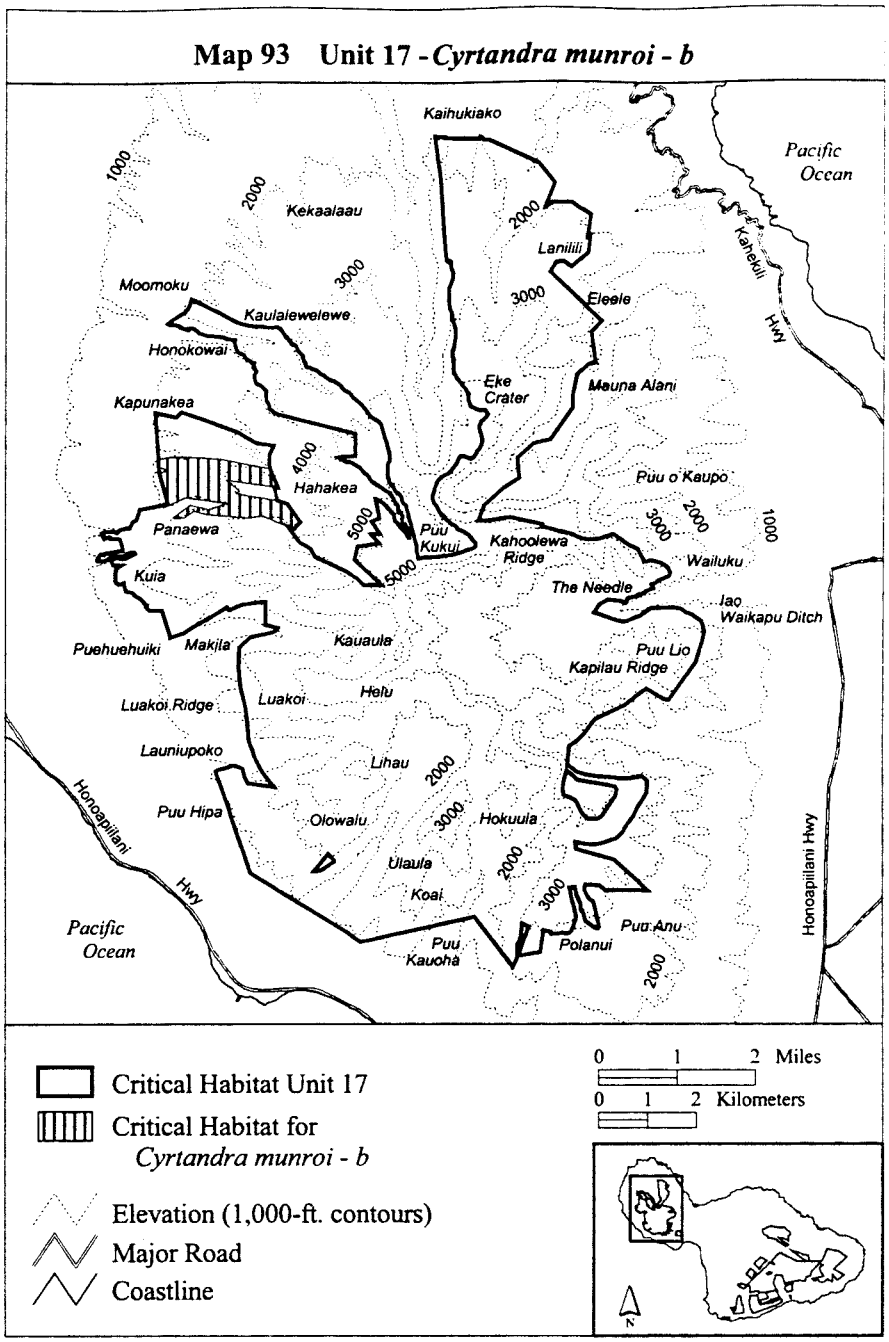



(xciii) Maui 17—*Cyrtandra munroi*—b (238 ha; 589 ac).

(A) Unit consists of the following 40 boundary points: Start at 745826, 2313019; 745846, 2313034; 745916, 2313043; 745773, 2313571; 745748, 2313661; 745886, 2313757; 745733, 2313825; 745730, 2313826; 745724, 2313911; 745726, 2313936; 745729, 2313970; 745961, 2314006; 746362, 2314006; 746980, 2313974; 748012, 2313772; 748025, 2313740; 748177, 2313379; 748103, 2313389; 747126, 2313526; 747399, 2313295; 747315, 2313253; 748093, 2313127; 748166, 2313105; 748366, 2313043; 748639, 2312664; 748513, 2312517; 748392, 2312568; 747862, 2312790; 747601,

2312741; 746746, 2312824; 746468, 2312889; 746275, 2312760; 746103, 2312739; 746034, 2312754; 746391, 2313022; 746769, 2312917; 747126, 2313043; 746286, 2313169; 745836, 2312964; 745821, 2313015; return to starting point.

(B) **Note:** Map 93 follows:

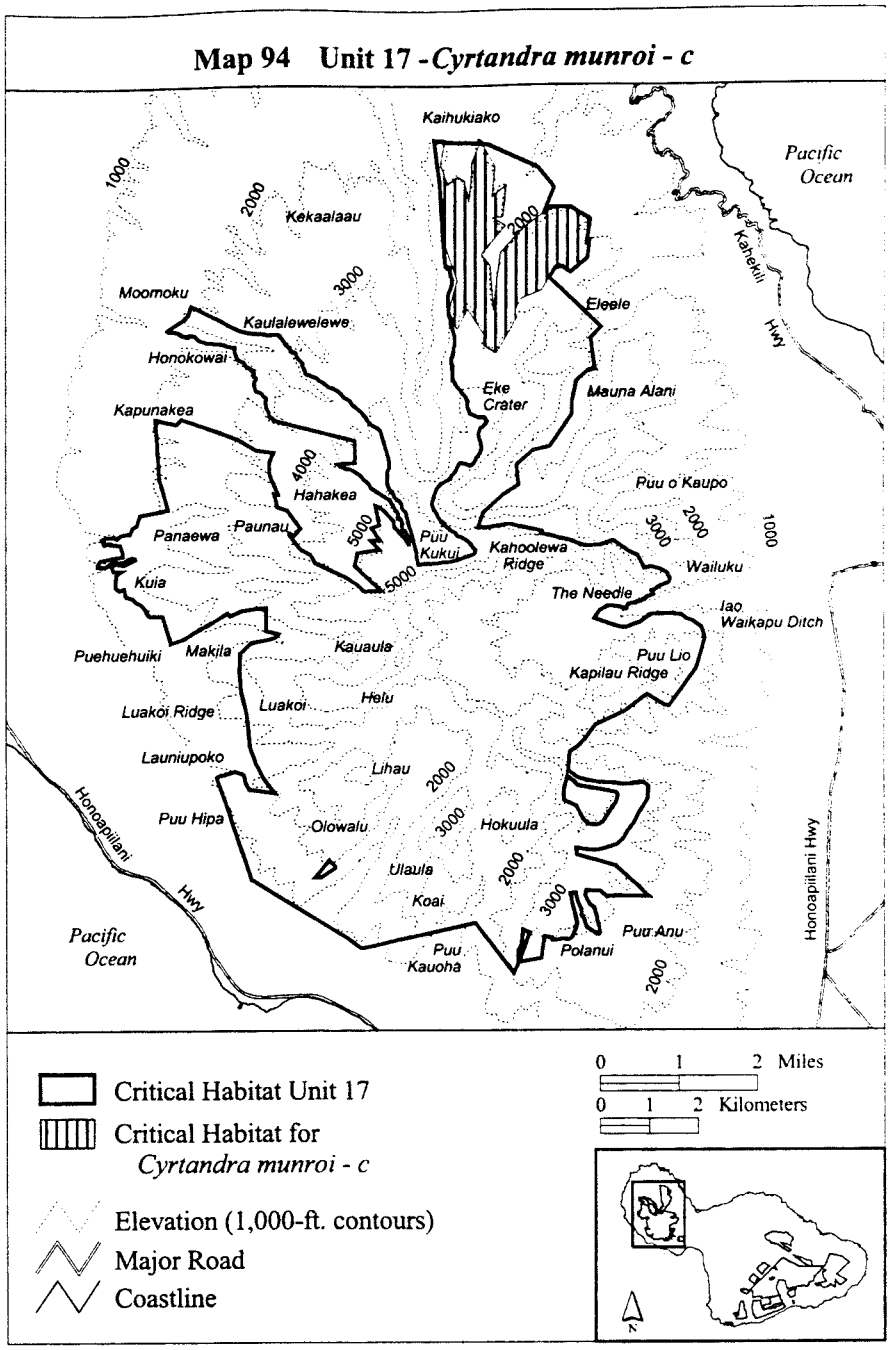



(xciv) Maui 17—*Cyrtandra munroi*—c (603 ha; 1,490 ac).

(A) Unit consists of the following 62 boundary points: Start at 751599, 2318608; 751517, 2319810; 751458, 2320238; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751402, 2320630; 751430, 2320630; 751624, 2320630; 751619, 2320598; 751540, 2320146; 751687, 2319726; 751897, 2319894; 752023, 2319831; 752128, 2319390; 752191, 2319978; 752191, 2320188; 752380, 2320629; 752380, 2320630; 752418, 2320564; 752675, 2320125; 752612, 2319495; 752906, 2319726; 752843, 2319096; 752654, 2319053; 752885, 2318906; 752401, 2318318; 752570, 2318087; 752633, 2317183; 752780, 2318339; 753263, 2318864; 753681, 2319159; 753684, 2319161; 753684, 2319160; 753831, 2319264; 754230, 2319264; 754381, 2319169; 754437, 2319134; 754441, 2319131; 754485, 2319104; 754628, 2319014; 754566, 2318549; 754622, 2318566; 754580, 2318228; 754222, 2317936; 754060, 2318058; 753962, 2318131; 753902, 2318028; 753788, 2317835; 753638, 2317579; 753215, 2317416; 753086,

2317157; 753119, 2317020; 752717, 2316300; 752443, 2316447; 752443, 2316679; 752107, 2317204; 751897, 2316784; 751861, 2316826; 751721, 2317157; 751884, 2317774; return to starting point.

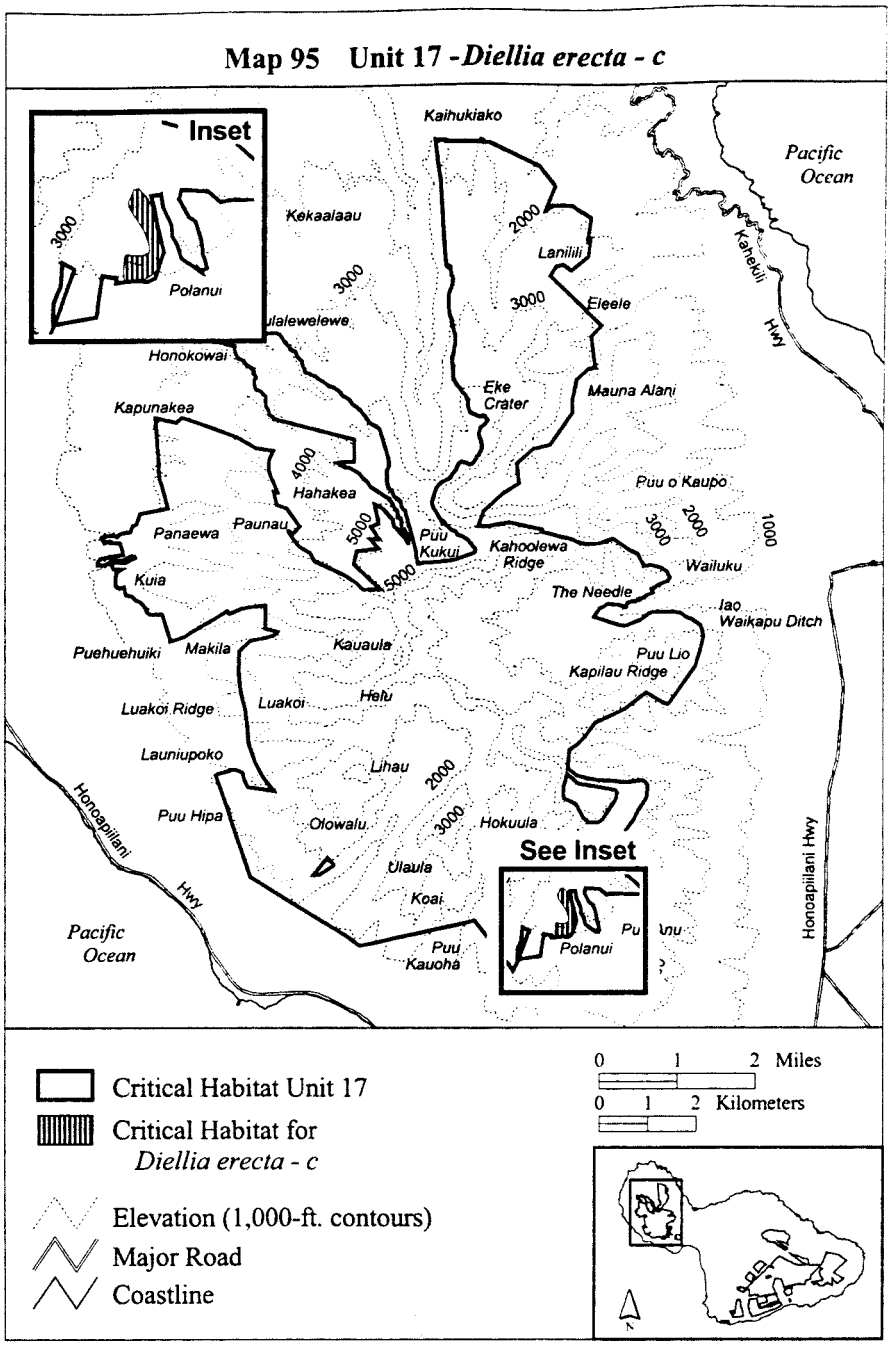
(B) **Note:** Map 94 follows:




(xcv) Maui 17—*Diellia erecta*—c (22 ha; 55 ac).

(A) Unit consists of the following 28 boundary points: Start at 754348, 2304465; 754342, 2304448; 754333, 2304422; 754330, 2304413; 754327, 2304404; 754314, 2304365; 754306, 2304342; 754244, 2304245; 754151, 2304186; 753923, 2304157; 753916, 2304179; 753904, 2304271; 753923, 2304437; 753945, 2304452; 753997, 2304441; 754126, 2304441; 754188, 2304474; 754185, 2304570; 754133, 2304717; 753971, 2304953; 753963, 2305019; 754019, 2305159; 754078, 2305174; 754177, 2305056; 754236, 2304923; 754258, 2304820; 754258, 2304743; 754306, 2304647; return to starting point.

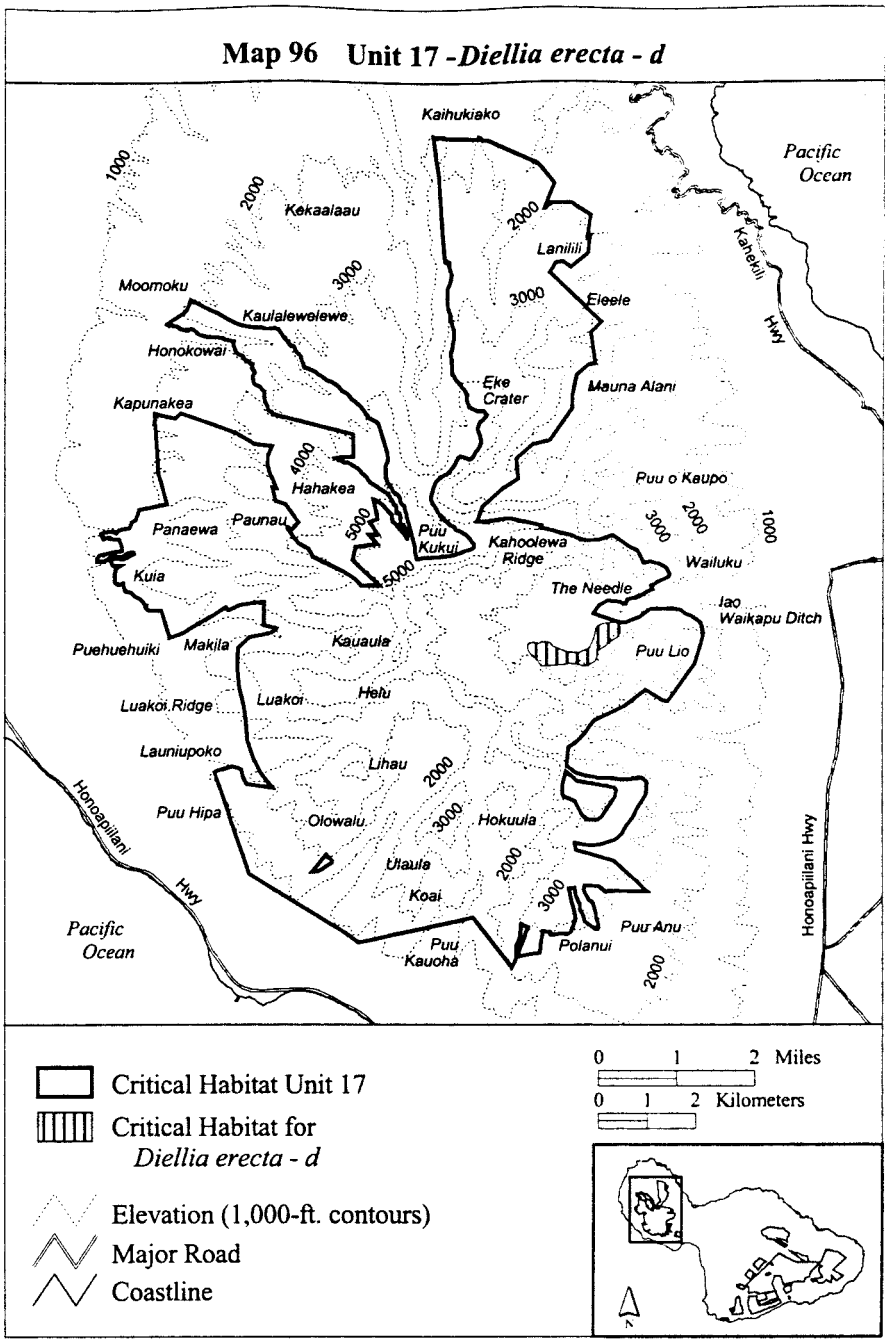
(B) **Note:** Map 95 follows:




(xcvi) Maui 17—*Diellia erecta*—d (70 ha; 172 ac).

(A) Unit consists of the following 36 boundary points: Start at 755224, 2310599; 755233, 2310600; 755234, 2310596; 755254, 2310511; 755254, 2310380; 755223, 2310289; 755066, 2310201; 754953, 2310084; 754848, 2310040; 754796, 2309997; 754796, 2309936; 754748, 2309779; 754591, 2309692; 754495, 2309692; 754404, 2309722; 754277, 2309731; 754216, 2309744; 754129, 2309718; 753641, 2309683; 753549, 2309805; 753423, 2309923; 753362, 2310023; 753362, 2310136; 753480, 2310171; 753589, 2310145; 753658, 2310188; 753754, 2310193; 753811, 2310162; 753863, 2310097; 754173, 2309970; 754408, 2309962; 754626, 2310066; 754713, 2310276; 754744, 2310446; 754796, 2310524; 754922, 2310572; return to starting point.

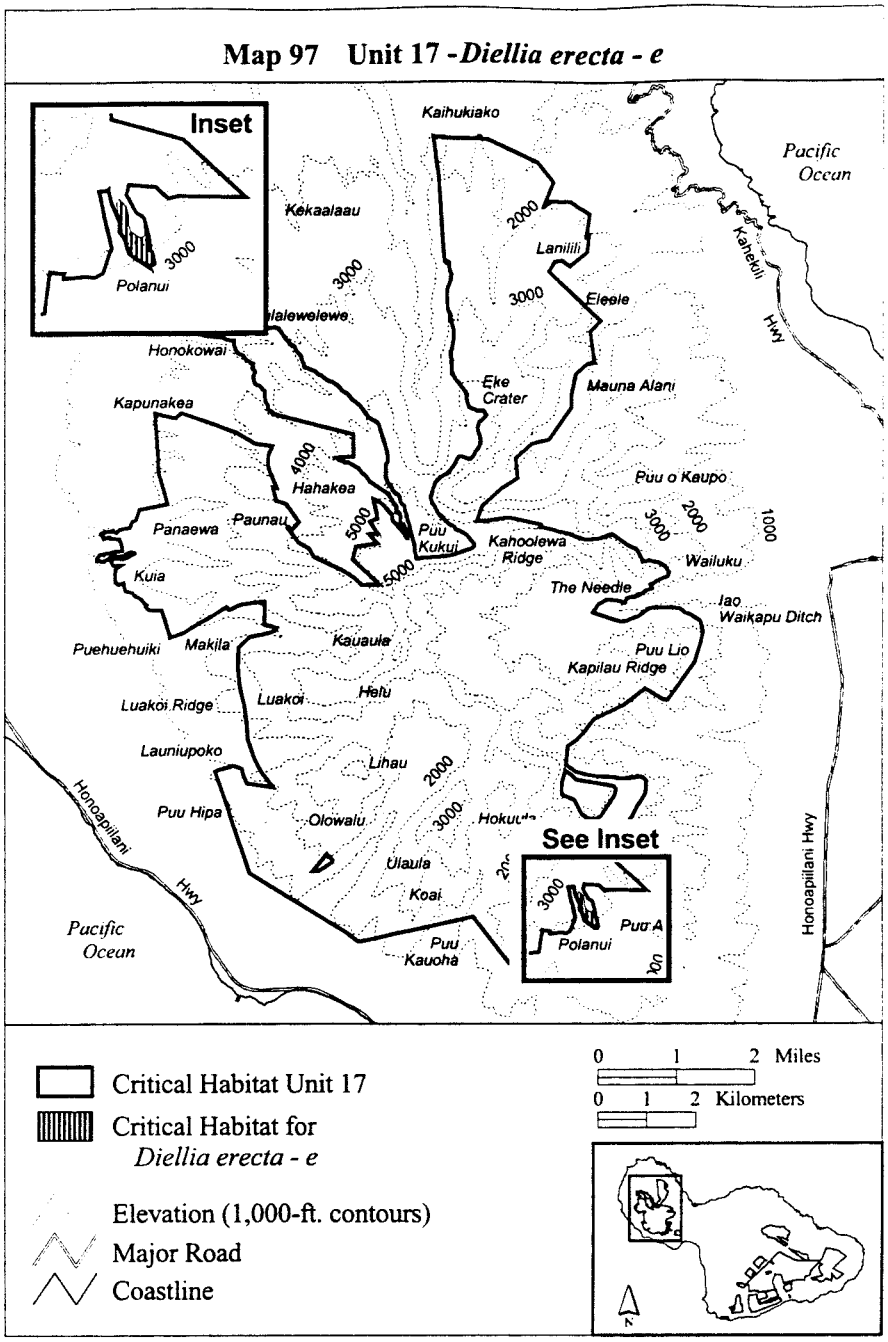
(B) **Note:** Map 96 follows:




(xcvii) Maui 17—*Diellia erecta*—e (12 ha; 29 ac).

(A) Unit consists of the following 29 boundary points: Start at 754760, 2304616; 754771, 2304529; 754782, 2304447; 754796, 2304431; 754826, 2304297; 754824, 2304296; 754782, 2304278; 754773, 2304280; 754723, 2304289; 754601, 2304370; 754538, 2304427; 754486, 2304579; 754443, 2304647; 754438, 2304725; 754437, 2304765; 754435, 2304770; 754432, 2304809; 754406, 2304960; 754432, 2305008; 754513, 2304931; 754542, 2304817; 754542, 2304724; 754561, 2304654; 754638, 2304599; 754693, 2304584; 754715, 2304617; 754708, 2304702; 754712, 2304743; 754722, 2304737; return to starting point.

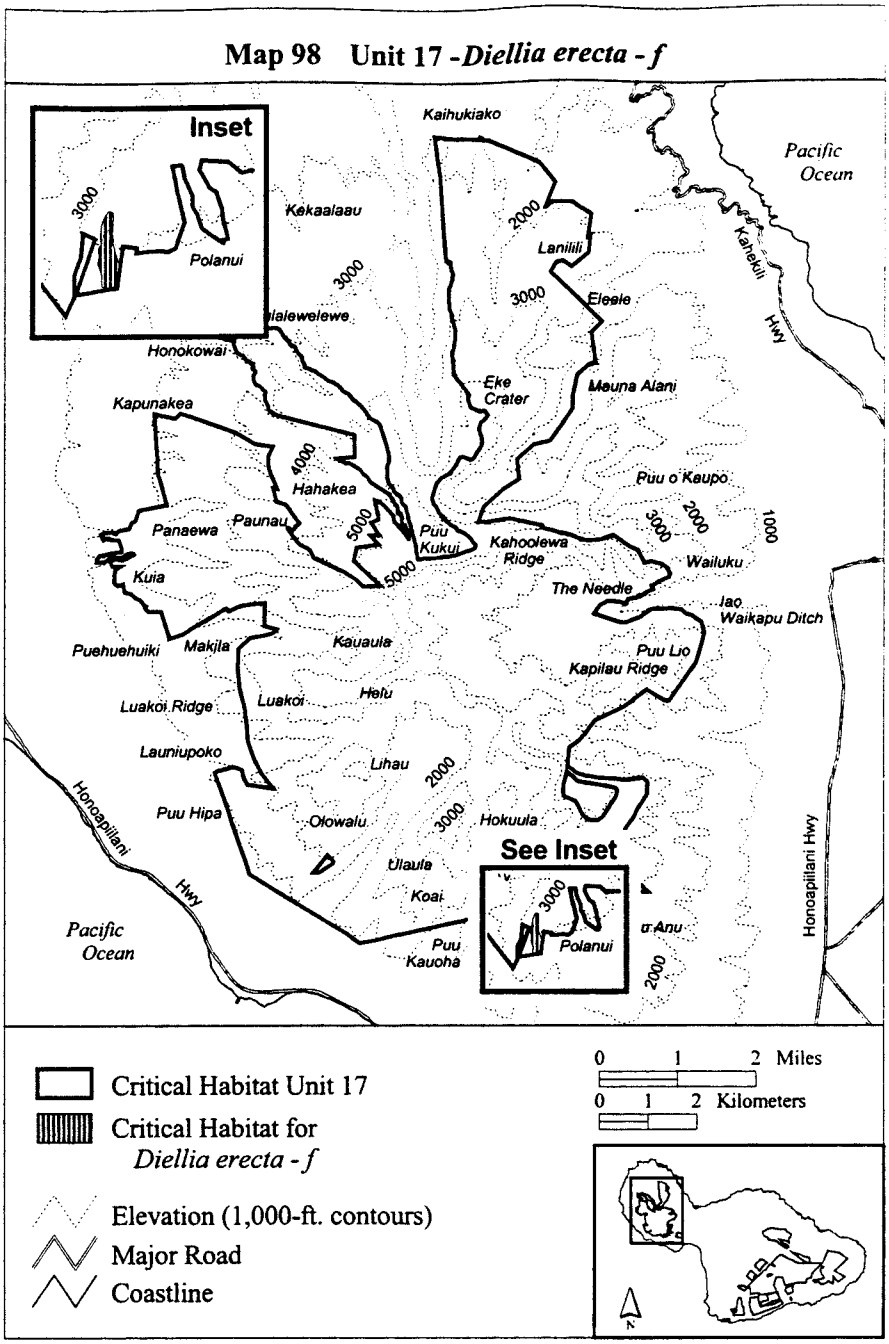
(B) **Note:** Map 97 follows:




(xcviii) Maui 17—*Diellia erecta*—f (14 ha; 34 ac).

(A) Unit consists of the following 26 boundary points: Start at 753632, 2303912; 753625, 2303862; 753619, 2303819; 753617, 2303805; 753606, 2303762; 753541, 2303750; 753534, 2303749; 753531, 2303748; 753440, 2303770; 753436, 2303843; 753444, 2303891; 753396, 2304028; 753410, 2304101; 753403, 2304190; 753429, 2304234; 753422, 2304323; 753436, 2304448; 753469, 2304533; 753517, 2304603; 753565, 2304584; 753569, 2304536; 753565, 2304407; 753558, 2304356; 753569, 2304289; 753565, 2304238; 753632, 2304017; return to starting point.

(B) **Note:** Map 98 follows:

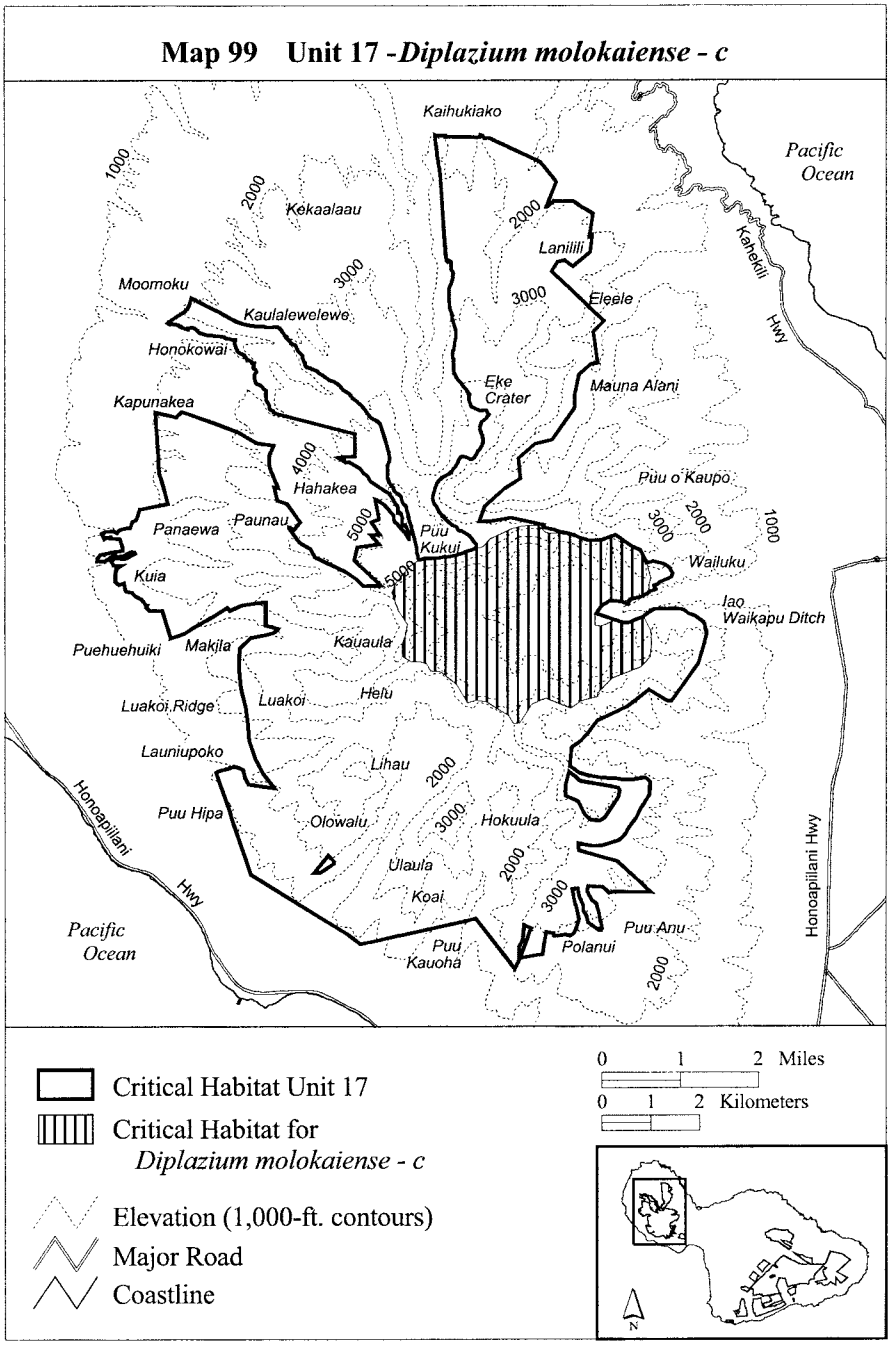



(xcix) Maui 17—*Diplazium molokaiense*—c (1,495 ha; 3,693 ac).

(A) Unit consists of the following 104 boundary points: Start at 754546, 2312287; 754606, 2312288; 754610, 2312288; 754834, 2312292; 755095, 2312393; 755436, 2312152; 755603, 2312078; 755737, 2311831; 755740, 2311819; 755830, 2311503; 755790, 2311369; 755790, 2311220; 755790, 2311209; 755633, 2311121; 755402, 2311063; 755230, 2311019; 754988, 2311042; 754931, 2311008; 754820, 2310941; 754711, 2310770; 754680, 2310721; 754687, 2310533; 754794, 2310520; 754921, 2310553; 755041, 2310620; 755269, 2310584; 755294, 2310580; 755295, 2310580; 755357, 2310584; 755364, 2310585; 755366, 2310585; 755395, 2310587; 755690, 2310701; 755823, 2310420; 755837, 2310132; 755810, 2309871; 755636, 2309671; 755034, 2309443; 754723, 2309107; 754733, 2309062; 754399, 2308969; 754265, 2308862; 754185, 2308821; 753679, 2309015; 753403, 2308902; 753162, 2308507; 753021, 2308494; 752921, 2308661; 752767, 2308768; 752647, 2308828; 752480, 2308948; 752259, 2308982; 752072, 2308935; 751858, 2309310; 751530, 2309577; 751323, 2309597; 751242, 2309744; 751129, 2309778; 750935, 2309778; 750741, 2309898; 750741, 2310145; 750801, 2310333; 750841, 2310553; 750661, 2310848; 750527, 2311202; 750607, 2311396; 750888, 2311744; 751101, 2311891; 751115, 2311894; 751125, 2311897; 751138, 2311901; 751197, 2311915; 751210, 2311916; 751252, 2311917; 751334, 2311913; 751353, 2311910; 751415, 2311923; 751428, 2311924; 751575, 2311921; 751719, 2311957; 751730, 2311960; 751766, 2311969; 751772, 2311971; 751845, 2311984; 751888,

2311992; 751889, 2311992; 751963, 2312014; 751997, 2312034; 752095, 2312064; 752096, 2312064; 752393, 2312158; 752547, 2312326; 752774, 2312419; 752975, 2312526; 753137, 2312560; 753296, 2312593; 753510, 2312586; 753690, 2312439; 753831, 2312419; 754009, 2312447; 754051, 2312453; 754245, 2312393; 754379, 2312336; 754499, 2312286; return to starting point.

(B) **Note:** Map 99 follows:

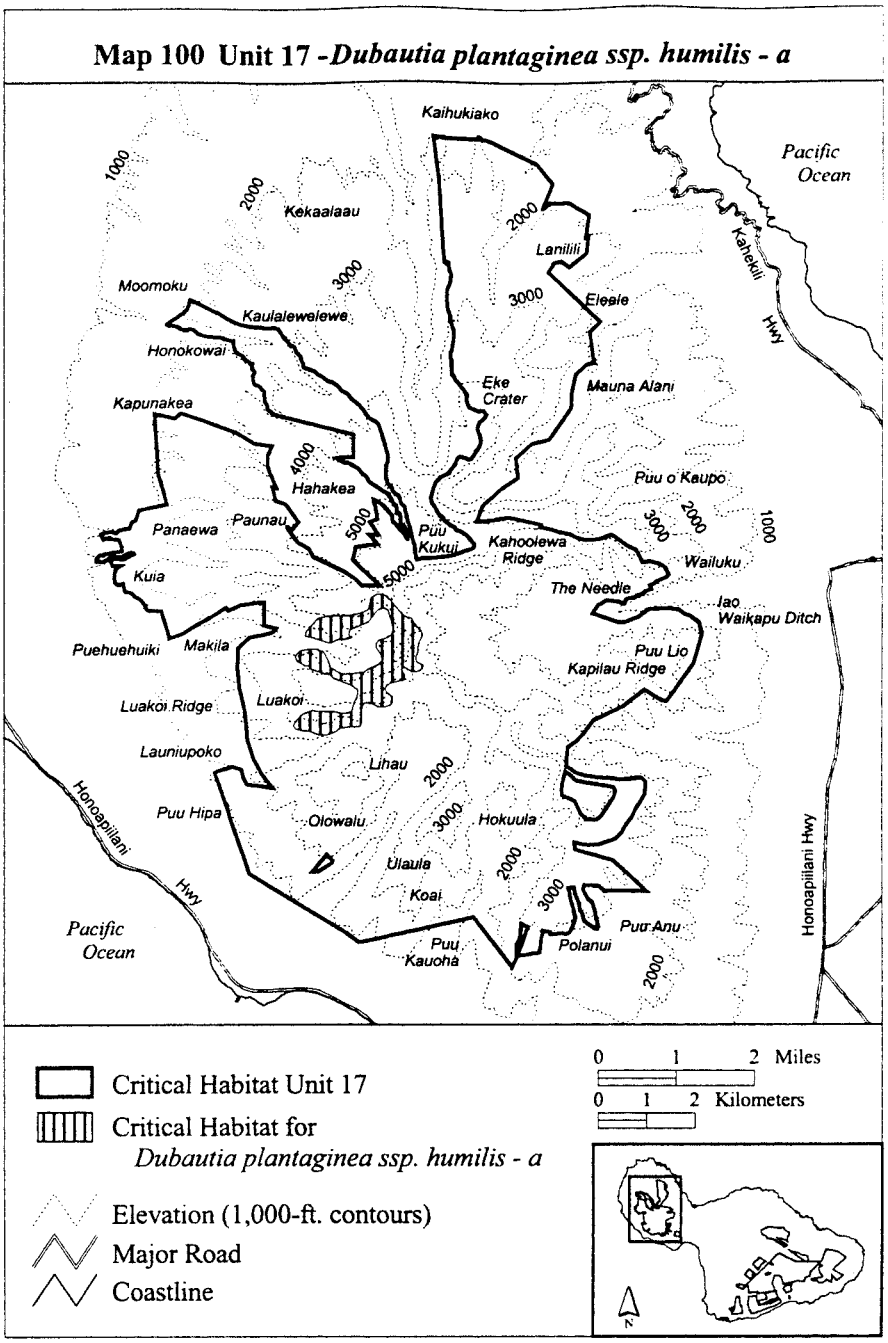



(c) Maui 17—*Dubautia plantaginea* ssp. *humilis*—a (293 ha; 723 ac).

(A) Unit consists of the following 125 boundary points: Start at 750756, 2309574; 750804, 2309536; 750834, 2309494; 750822, 2309406; 750716, 2309394; 750457, 2309300; 750422, 2309212; 750451, 2309153; 750581, 2309053; 750581, 2308953; 750557, 2308895; 750410, 2308848; 750298, 2308848; 750116, 2308936; 750004, 2308936; 749946, 2308818; 749940, 2308653; 749940, 2308495; 749916, 2308454; 749810, 2308430; 749722, 2308430; 749505, 2308412; 749410, 2308336; 749228, 2308271; 749058, 2308271; 748869, 2308348; 748681, 2308365; 748587, 2308383; 748528, 2308459; 748617, 2308589; 748711, 2308689; 748922, 2308783; 749016, 2308753; 749158, 2308753; 749352, 2308753; 749516, 2308712; 749652, 2308718; 749734, 2308753; 749804, 2308971; 749840, 2309042; 749860, 2309196; 749755, 2309277; 749635, 2309321; 749341, 2309445; 749279, 2309518; 749193, 2309518; 748880,

2309633; 748847, 2309691; 748794, 2309691; 748592, 2309801; 748577, 2309878; 748659, 2309998; 748847, 2310041; 749020, 2310032; 749159, 2309974; 749231, 2309825; 749293, 2309657; 749447, 2309561; 749553, 2309522; 749735, 2309527; 749995, 2309570; 750105, 2309647; 750283, 2309719; 750360, 2309806; 750322, 2309931; 750230, 2310080; 750240, 2310137; 750298, 2310229; 750447, 2310267; 750548, 2310344; 750596, 2310459; 750524, 2310671; 750471, 2310849; 750389, 2310887; 750269, 2310849; 750077, 2310599; 749687, 2310426; 749673, 2310363; 749678, 2310306; 749711, 2310262; 749659, 2310238; 749466, 2310238; 749313, 2310157; 749106, 2310209; 748952, 2310267; 748779, 2310301; 748799, 2310402; 749039, 2310671; 749245, 2310728; 749495, 2310724; 749639, 2310728; 749841, 2310757; 750048, 2310820; 750077, 2310863; 750120, 2311094; 750274, 2311175; 750432, 2311146; 750466, 2311103; 750557, 2311031; 750610, 2310949; 750663, 2310887; 750716, 2310805; 750845, 2310709; 750956, 2310680; 751009, 2310589; 751042, 2310536; 751124, 2310459; 751172, 2310407; 751182, 2310320; 751163, 2310248; 751124, 2310176; 751105, 2310075; 751095, 2309974; 751066, 2309888; 751057, 2309811; 751081, 2309767; 751143, 2309739; 751211, 2309700; 751196, 2309643; 751163, 2309614; 751095, 2309580; 750990, 2309566; 750927, 2309604; 750831, 2309652; 750778, 2309652; return to starting point.

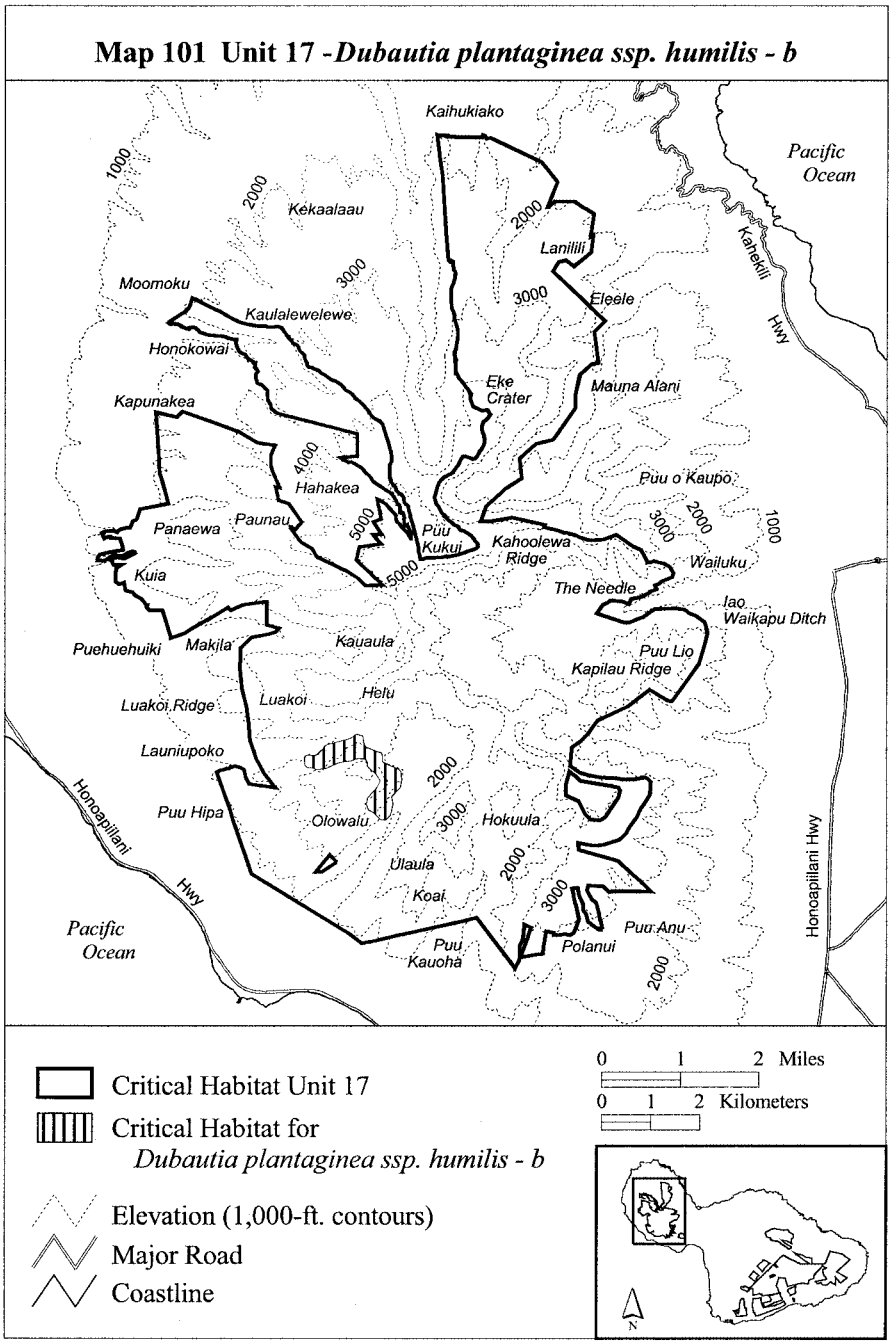
(B) **Note:** Map 100 follows:



(ci) Maui 17—*Dubautia plantaginea* ssp. *humilis*—b (114 ha; 283 ac).

(A) Unit consists of the following 42 boundary points: Start at 748770, 2307854; 748911, 2307842; 749022, 2307918; 749146, 2308060; 749652, 2308195; 749769, 2308283; 749887, 2308248; 749916, 2308101; 749969, 2308007; 750287, 2307895; 750298, 2307813; 750304, 2307713; 750457, 2307630; 750628, 2307566; 750681, 2307507; 750698, 2307336; 750669, 2307178; 750492, 2306983; 750510, 2306836; 750463, 2306601; 750363, 2306507; 750263, 2306519; 750146, 2306648; 750010, 2306719; 749963, 2306831; 749999, 2306960; 750198, 2307195; 750257, 2307325; 750157, 2307466; 749987, 2307619; 749993, 2307666; 749975, 2307748; 749904, 2307771; 749775, 2307771; 749646, 2307724; 749428, 2307695; 749146, 2307571; 748964, 2307542; 748834, 2307583; 748758, 2307583; 748699, 2307654; 748705, 2307830; return to starting point.

(B) **Note:** Map 101 follows:

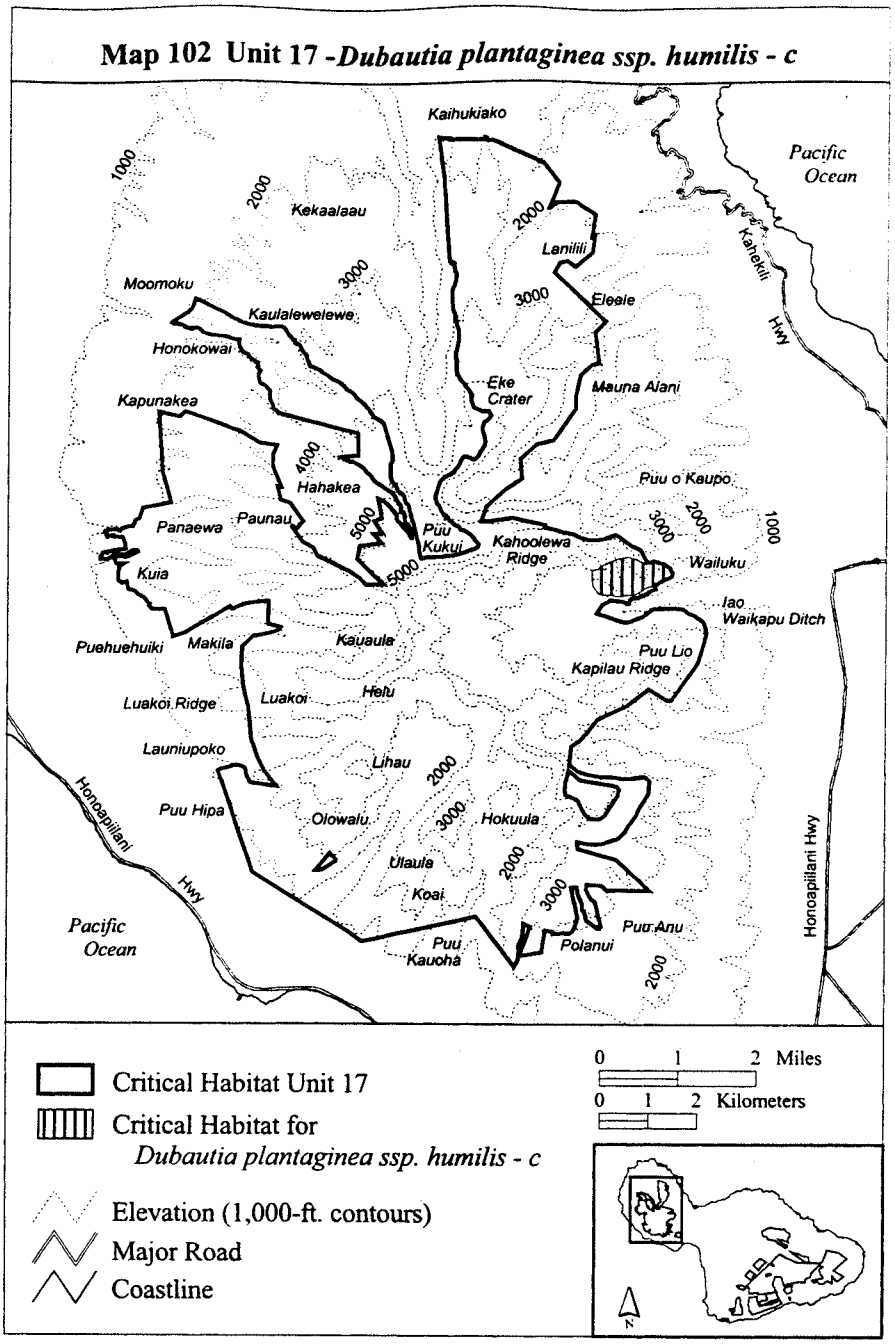



(cii) Maui 17—*Dubautia plantaginea* ssp. *humilis*—c (95 ha; 234 ac).

(A) Unit consists of the following 38 boundary points: Start at 755740, 2311819; 755809, 2311825; 755868, 2311853; 756001, 2311820; 756000, 2311819; 756067, 2311803; 756113, 2311777; 756198, 2311730; 756271, 2311594; 756244, 2311522; 756130, 2311477; 756013, 2311418; 755972, 2311382; 755885, 2311350; 755759, 2311305; 755487, 2311142; 755383,

2311142; 755306, 2311137; 755211, 2311119; 755098, 2311119; 755016, 2311160; 754948, 2311155; 754917, 2311105; 754908, 2311137; 754808, 2311160; 754713, 2311191; 754627, 2311327; 754627, 2311336; 754604, 2311481; 754604, 2311617; 754627, 2311667; 754740, 2311690; 754754, 2311721; 754971, 2311830; 755143, 2311893; 755356, 2311925; 755537, 2311875; 755664, 2311812; return to starting point.

(B) **Note:** Map 102 follows:

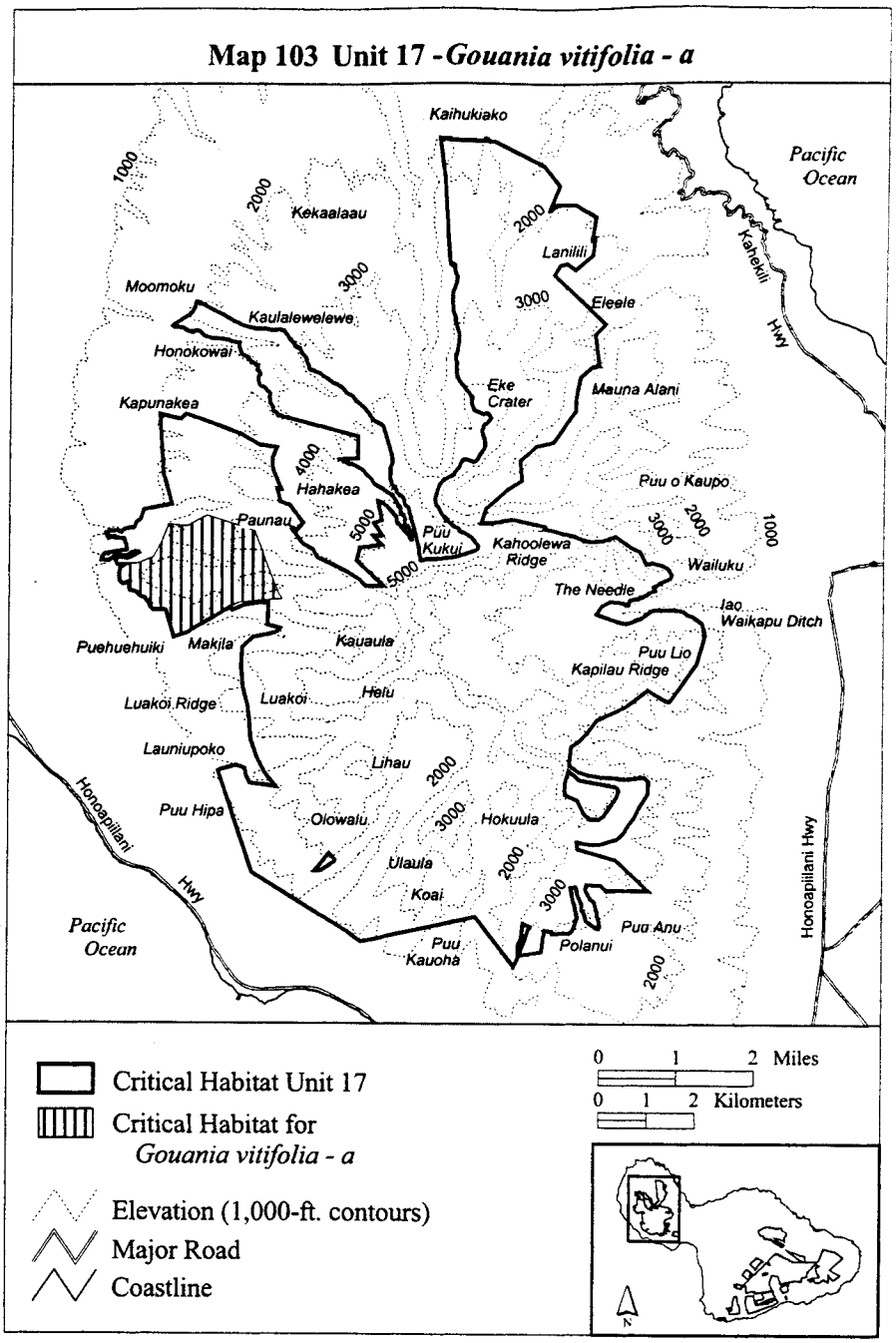



(ciii) Maui 17—*Gouania vitifolia*—a (485 ha; 1,198 ac).

(A) Unit consists of the following 41 boundary points: Start at 747141, 2310897; 746995, 2310813; 746754, 2310674; 746408, 2310474; 746263, 2310363; 745972, 2310265; 745966, 2310304; 745798, 2310840; 745541, 2310836; 745477, 2310914; 745480, 2310933; 745471, 2310939; 745465, 2310964; 745411, 2311024; 745368, 2311075; 745241, 2311145; 745197, 2311199; 745057, 2311247; 745052, 2311257; 745043, 2311276; 745010, 2311405; 744912, 2311365; 744842, 2311439; 744842, 2311486; 744842, 2311603; 744848, 2311671; 744847, 2311673; 744850, 2311702; 744959, 2311780; 744998, 2311808; 745212, 2311808; 745549, 2311923; 745721, 2312269; 745854, 2312631; 746251, 2312595; 746652, 2312824; 747641, 2312506; 747841, 2311974; 748141,

2311198; 748215, 2311076; 747319, 2311000; return to starting point.

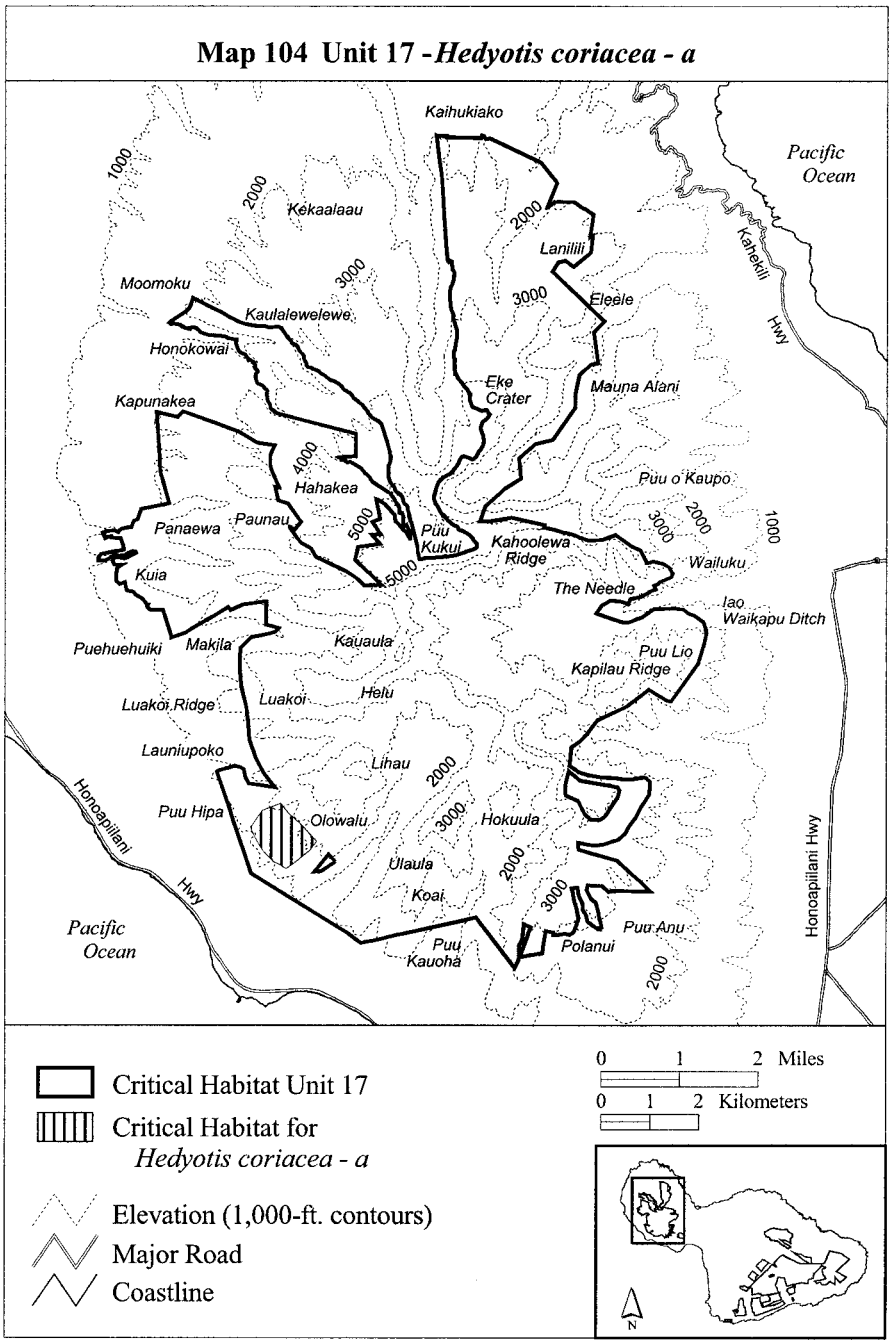
(B) **Note:** Map 103 follows:




(civ) Maui 17—*Hedyotis coriacea*—a (106 ha; 262 ac).

(A) Unit consists of the following 17 boundary points: Start at 748229, 2306846; 748395, 2306645; 748650, 2306411; 748979, 2306067; 748838, 2305871; 748820, 2305865; 748469, 2305574; 748339, 2305505; 748218, 2305574; 748077, 2305651; 747887, 2305845; 747810, 2305946; 747709, 2306127; 747636, 2306281; 747610, 2306361; 747634, 2306377; 747850, 2306700; return to starting point.

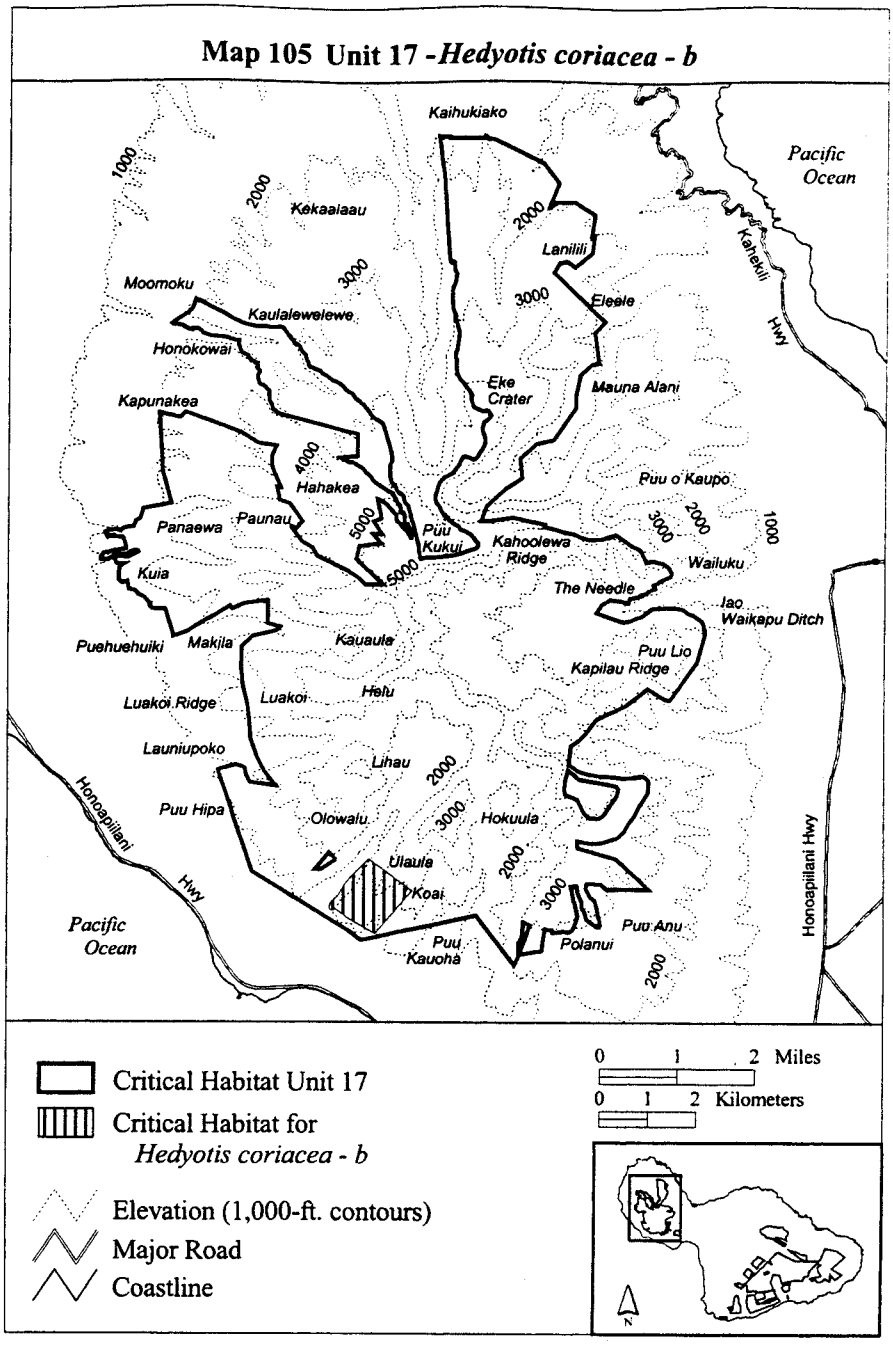
(B) **Note:** Map 104 follows:




(cv) Maui 17—*Hedyotis coriacea*—b (138 ha; 340 ac).

(A) Unit consists of the following 15 boundary points: Start at 750175, 2304106; 750114, 2304143; 749603, 2304436; 749378, 2304612; 749292, 2304605; 749240, 2304605; 749225, 2304642; 749247, 2304740; 749311, 2304807; 749416, 2304901; 749540, 2305122; 749716, 2305336; 749855, 2305464; 750041, 2305656; 750931, 2304991; return to starting point.

(B) **Note:** Map 105 follows:

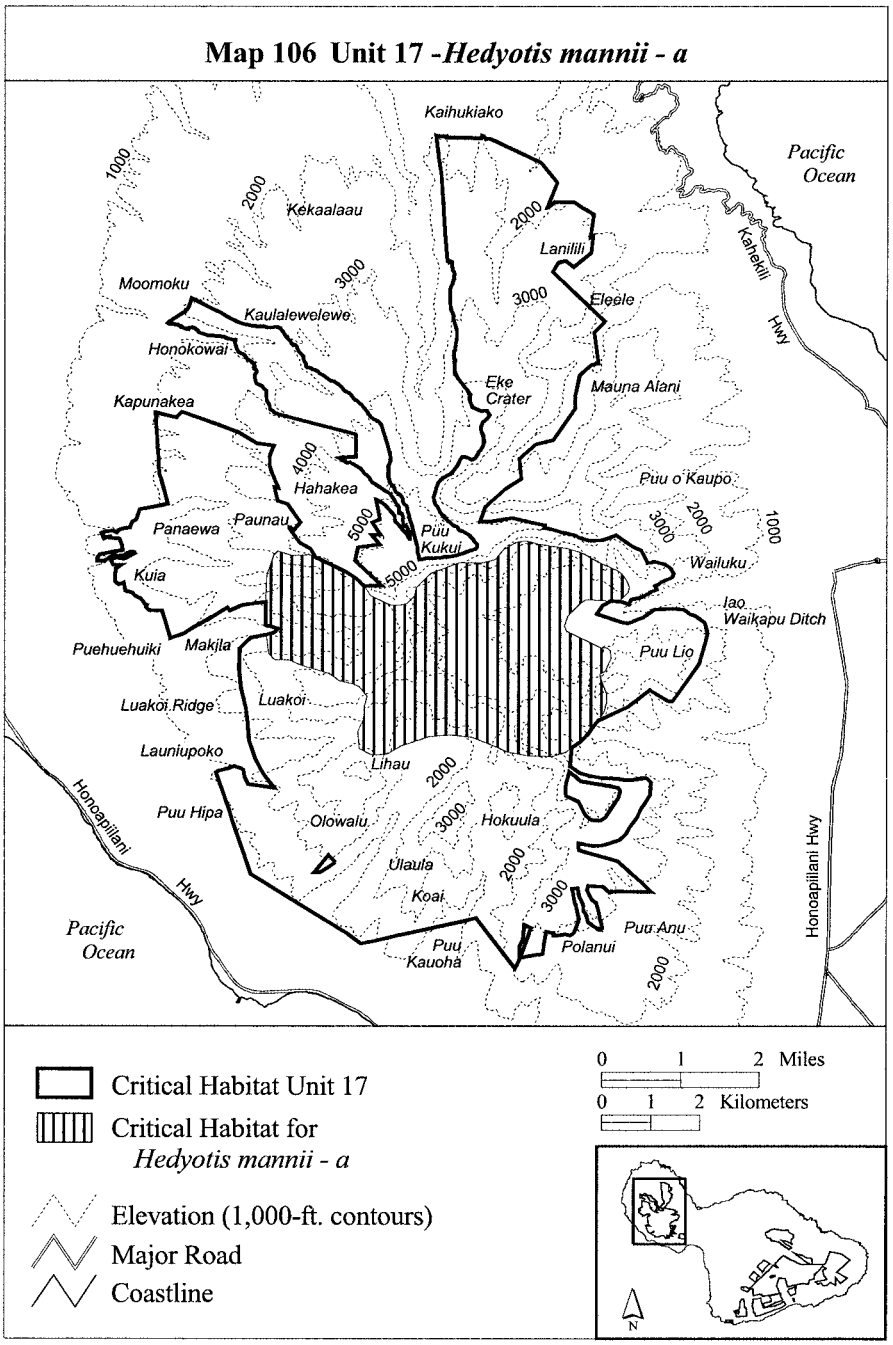



(cvi) Maui 17—*Hedyotis mannii*—a (2,234 ha; 5,521 ac).

(A) Unit consists of the following 91 boundary points: Start at 754727, 2308566; 754627, 2308441; 754539, 2308313; 754379, 2308137; 754206, 2308013; 754067, 2307913; 753787, 2307825; 753291, 2307841; 752907, 2307913; 752547, 2308073; 752153, 2308222; 751739, 2308265; 751304, 2308250; 750705, 2308040; 750420, 2307876; 750121, 2307846; 749836, 2307996; 749821, 2308340; 749939, 2308602; 749944, 2308823; 750001, 2309070; 749859, 2309265; 749711, 2309330; 749709, 2309329; 749451, 2309383; 749360, 2309453; 749225, 2309542; 748982, 2309613; 748668, 2309703; 748413, 2309823; 748114, 2309823; 747994, 2309943; 747935, 2310342; 747935, 2310343; 748094, 2310374; 748180, 2310466; 747930, 2310531; 747921, 2311010; 747919, 2311126; 747942, 2311477; 747949, 2311590; 748084, 2311980; 748174, 2312070; 748443, 2311980; 748833, 2311995; 748934, 2311945; 749571, 2311633; 749803, 2311489; 749939, 2311346; 749971, 2311313; 750085, 2311145; 750491, 2310953; 750699, 2310953; 750827, 2310993; 750971, 2311129; 750974, 2311127; 751010, 2311307; 751322, 2311611; 751900, 2311832; 752386, 2311832; 752622, 2311893; 752820, 2312105; 753056, 2312250; 753254, 2312280; 753543, 2312212; 754098, 2312113; 754402, 2312029; 754775, 2311832; 755109, 2311680; 755208, 2311596; 755307, 2311467; 755368, 2311315; 755337, 2311208; 755201, 2311071; 754934, 2311041; 754496, 2311070; 754383, 2311003; 754117, 2310737; 754049, 2310524; 754079, 2310418; 754794, 2310076; 754904, 2310075; 754980, 2310014; 754995, 2309839; 754919, 2309679; 754889, 2309596; 754767, 2309514; 754827, 2309305; 754907,

2309113; 754907, 2308945; 754851, 2308721; return to starting point.

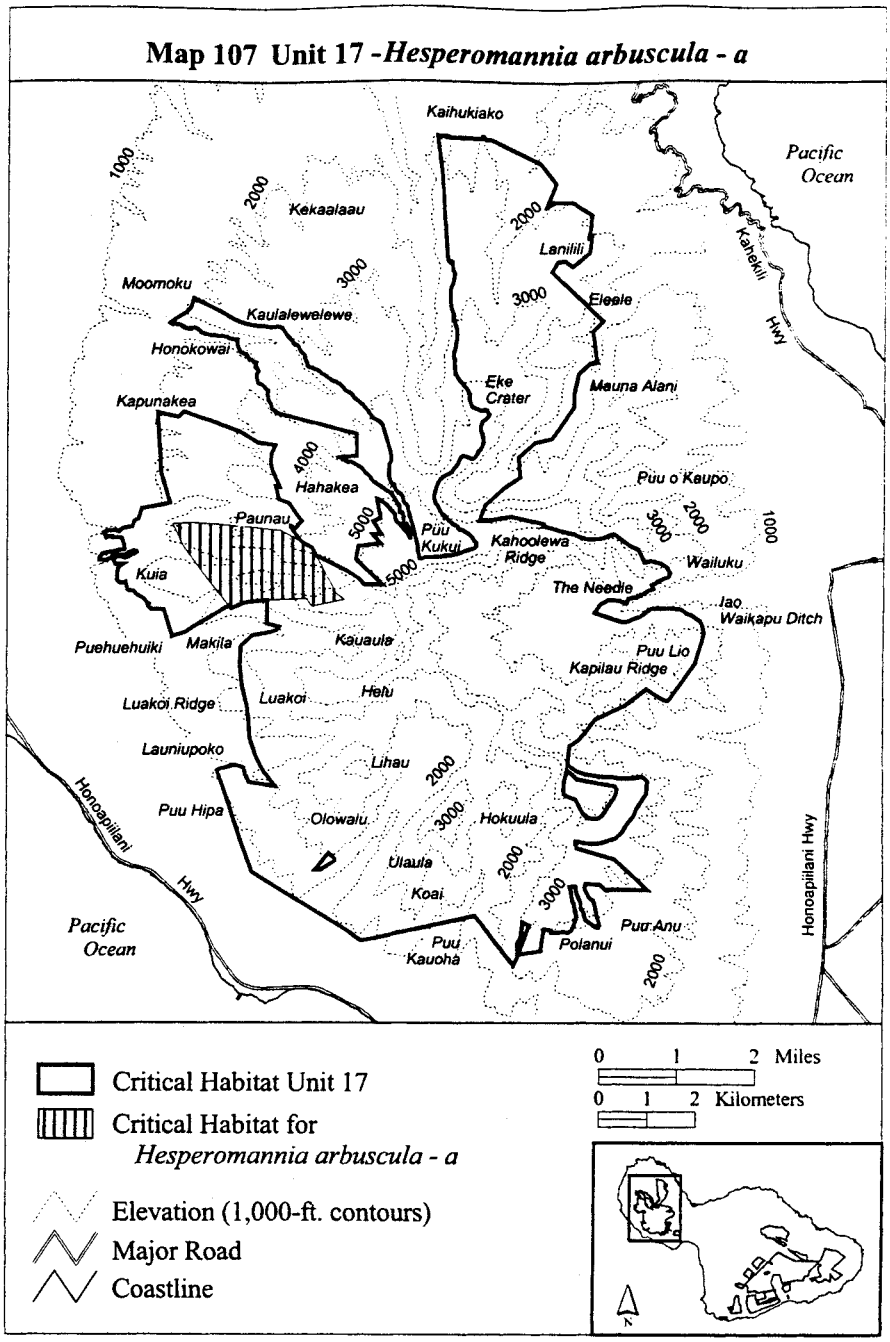
(B) **Note:** Map 106 follows:




(cvii) Maui 17—*Hesperomannia arbuscula*—a (392 ha; 968 ac).

(A) Unit consists of the following 19 boundary points: Start at 747921, 2311010; 747903, 2311009; 747525, 2310992; 747443, 2310953; 747190, 2310834; 747141, 2310897; 746634, 2311554; 746203, 2312157; 745979, 2312604; 746368, 2312645; 748186, 2312479; 748631, 2312228; 748848, 2312105; 748934, 2311945; 749268, 2311327; 749365, 2311159; 749509, 2311034; 748847, 2310882; 748737, 2311047; return to starting point.

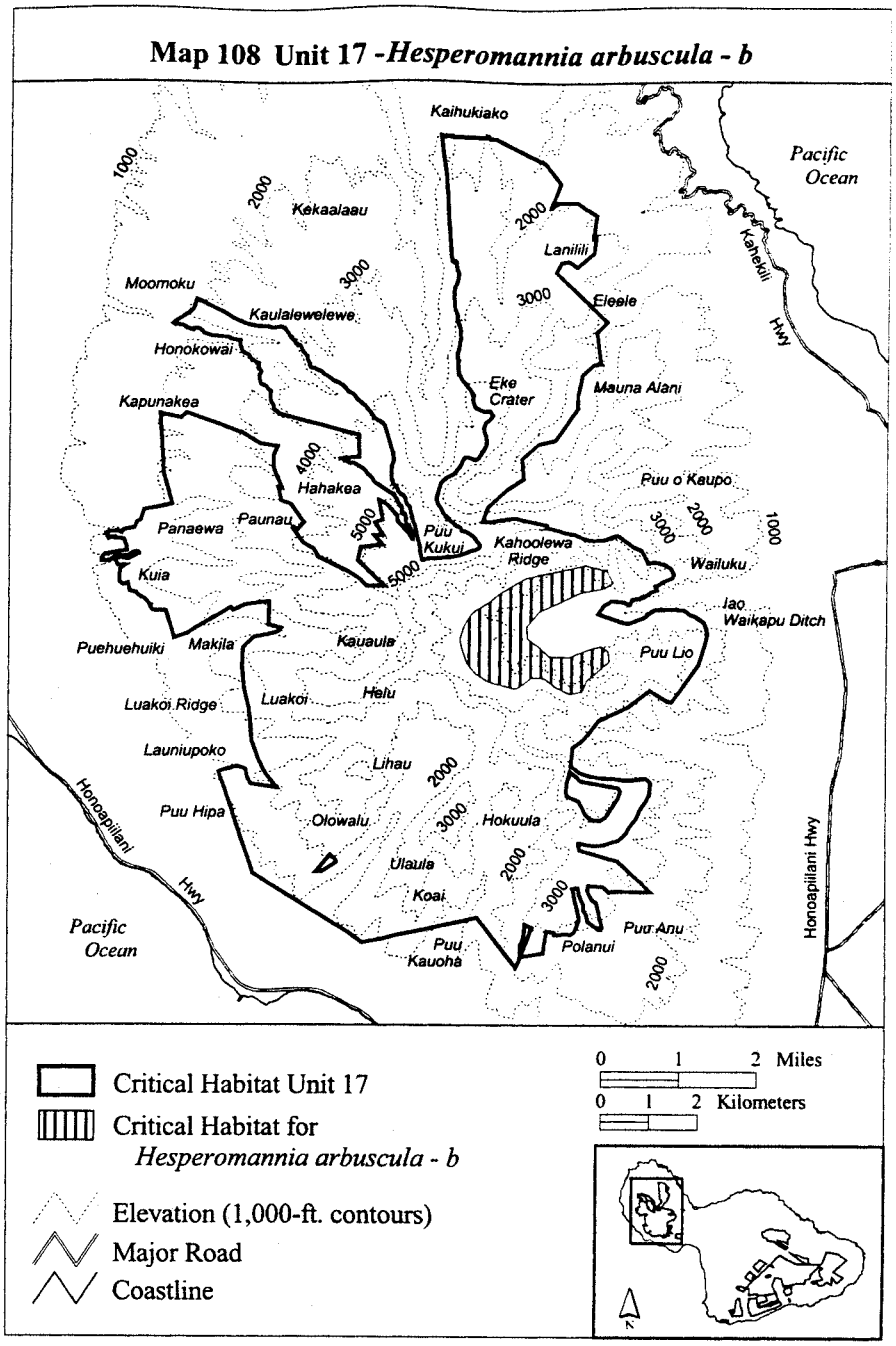
(B) **Note:** Map 107 follows:




(cviii) Maui 17—*Hesperomannia arbuscula*—b (435 ha; 1,076 ac).

(A) Unit consists of the following 36 boundary points: Start at 752168, 2310821; 752476, 2311020; 752645, 2311166; 753026, 2311401; 753239, 2311511; 754450, 2311761; 754890, 2311665; 755015, 2311408; 754831, 2311291; 754347, 2311203; 753481, 2310799; 753232, 2310491; 753247, 2310271; 753459, 2310095; 753701, 2309890; 754112, 2309875; 754567, 2310044; 754773, 2310102; 754912, 2310014; 754949, 2309787; 754736, 2309611; 754479, 2309391; 754391, 2309156; 754142, 2309105; 753841, 2309244; 753599, 2309427; 753349, 2309449; 753078, 2309251; 752982, 2309229; 752461, 2309361; 752190, 2309530; 751999, 2309758; 751904, 2310058; 751860, 2310256; 751955, 2310528; 752087, 2310748; return to starting point.

(B) **Note:** Map 108 follows:

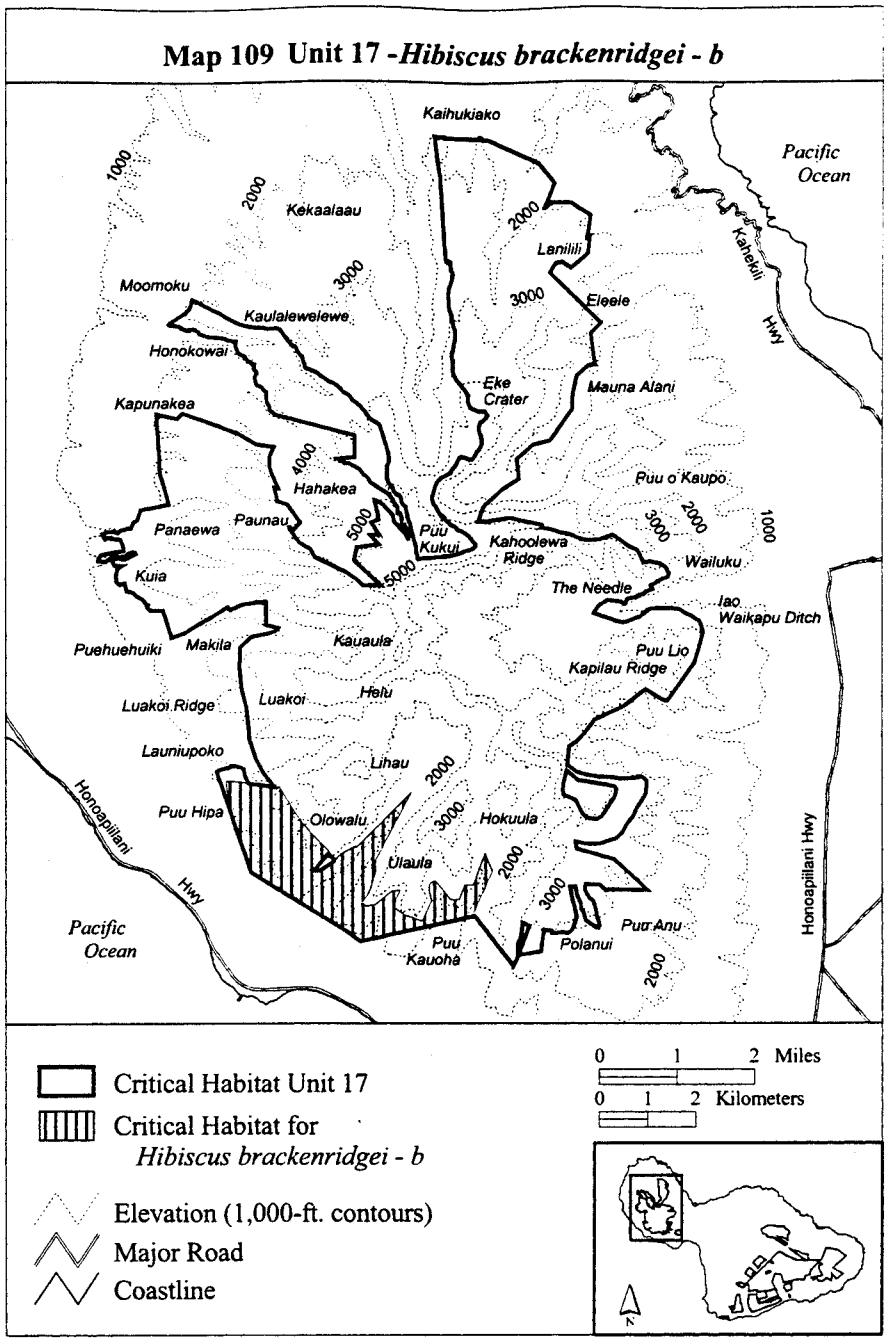



(cix) Maui 17—*Hibiscus brackenridgei*—b (672 ha; 1,661 ac).

(A) Unit consists of the following 60 boundary points: Start at 752075, 2304457; 752048, 2304451; 750687, 2304151; 750686, 2304151; 750403, 2304088; 749884, 2303974; 749722, 2304095; 749666, 2304138; 749584, 2304189; 748359, 2304949; 747620, 2305411; 747479, 2305820; 747343, 2306214; 747263, 2306446; 747200, 2306630; 747191, 2306692; 747101, 2307299; 747121, 2307299; 747120, 2307301; 747329, 2307289; 747571, 2307254; 748096, 2307179; 748214, 2307162; 748499, 2306705; 748671, 2306455; 749034, 2306050; 749215, 2305860; 749378, 2305670; 749491, 2305783; 749783, 2305937; 749811, 2305928; 750938, 2307038; 750193, 2305638; 750202, 2305598; 750197, 2305412; 750122, 2305158; 750027, 2304930; 749905, 2304760; 750011, 2304702; 750197, 2304744; 750446, 2304940; 750546, 2305015; 750695, 2305036; 750679, 2304967; 750621, 2304845; 750589, 2304670; 750818, 2304506; 751161, 2304400; 751352, 2304808; 751305, 2304993; 751305, 2305126; 751352, 2305195; 751442, 2305221; 751741, 2304837; 751924, 2304837; 752039, 2305135; 752222, 2305135; 752452, 2305777; 752612, 2305410; 752197, 2304484; return to starting point.

(B) Excluding the area bounded by the following 11 boundary points (6ha; 15ac): Start at 749362, 2305641; 749057, 2305433; 748930, 2305439; 749226, 2305793; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749362, 2305640; return to starting point.

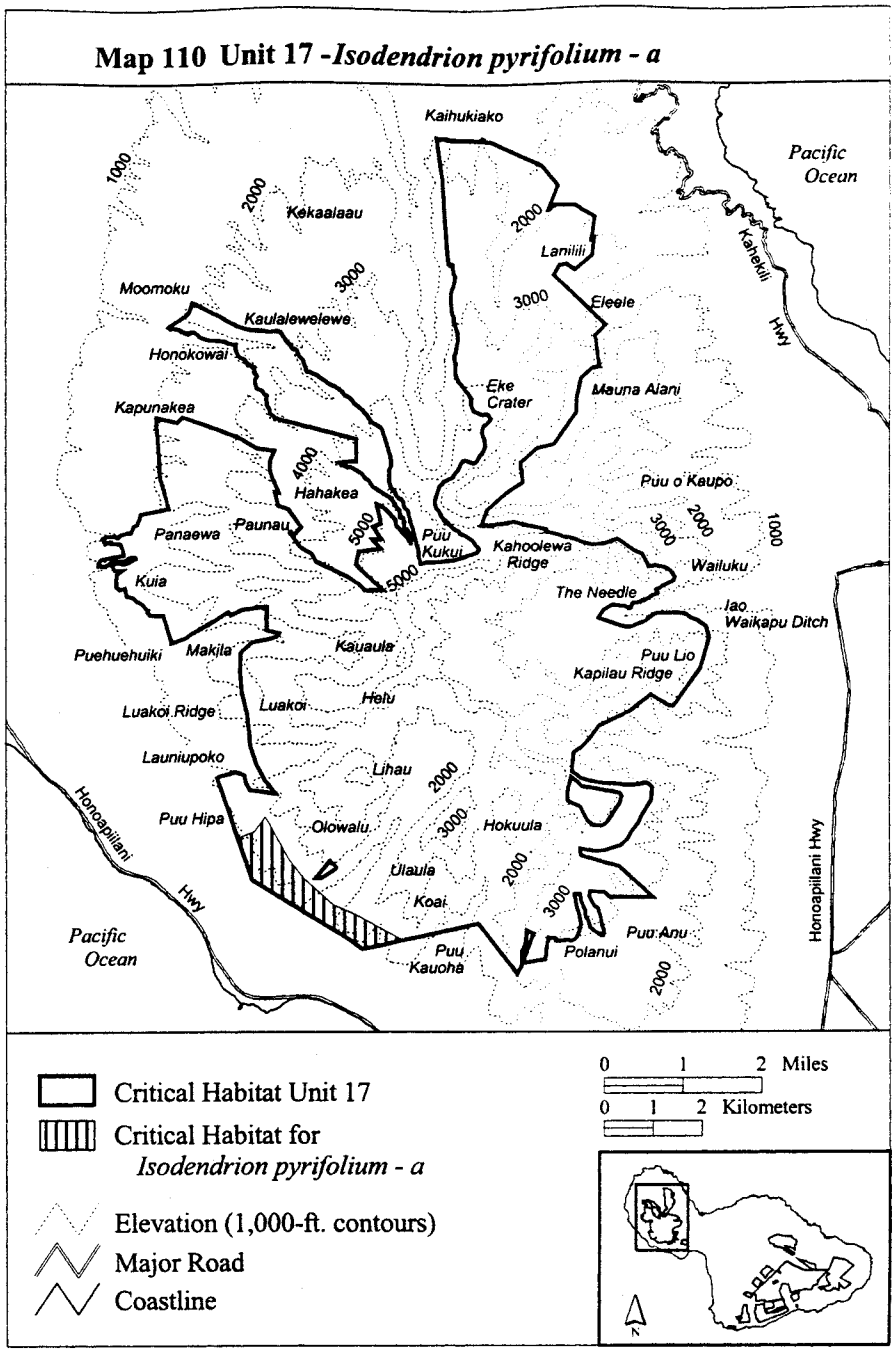
(C) **Note:** Map 109 follows:




(cx) Maui 17—*Isodendrion pyrifolium*—a (224 ha; 555 ac).

(A) Unit consists of the following 20 boundary points: Start at 750686, 2304151; 750460, 2304101; 750214, 2304047; 749928, 2303984; 749903, 2303978; 749898, 2303977; 749722, 2304095; 749584, 2304189; 749409, 2304307; 748359, 2304949; 747620, 2305407; 747479, 2305820; 747331, 2306254; 747670, 2306395; 747898, 2306699; 748388, 2305794; 748679, 2305440; 749287, 2304896; 749758, 2304696; 750700, 2304154; return to starting point.

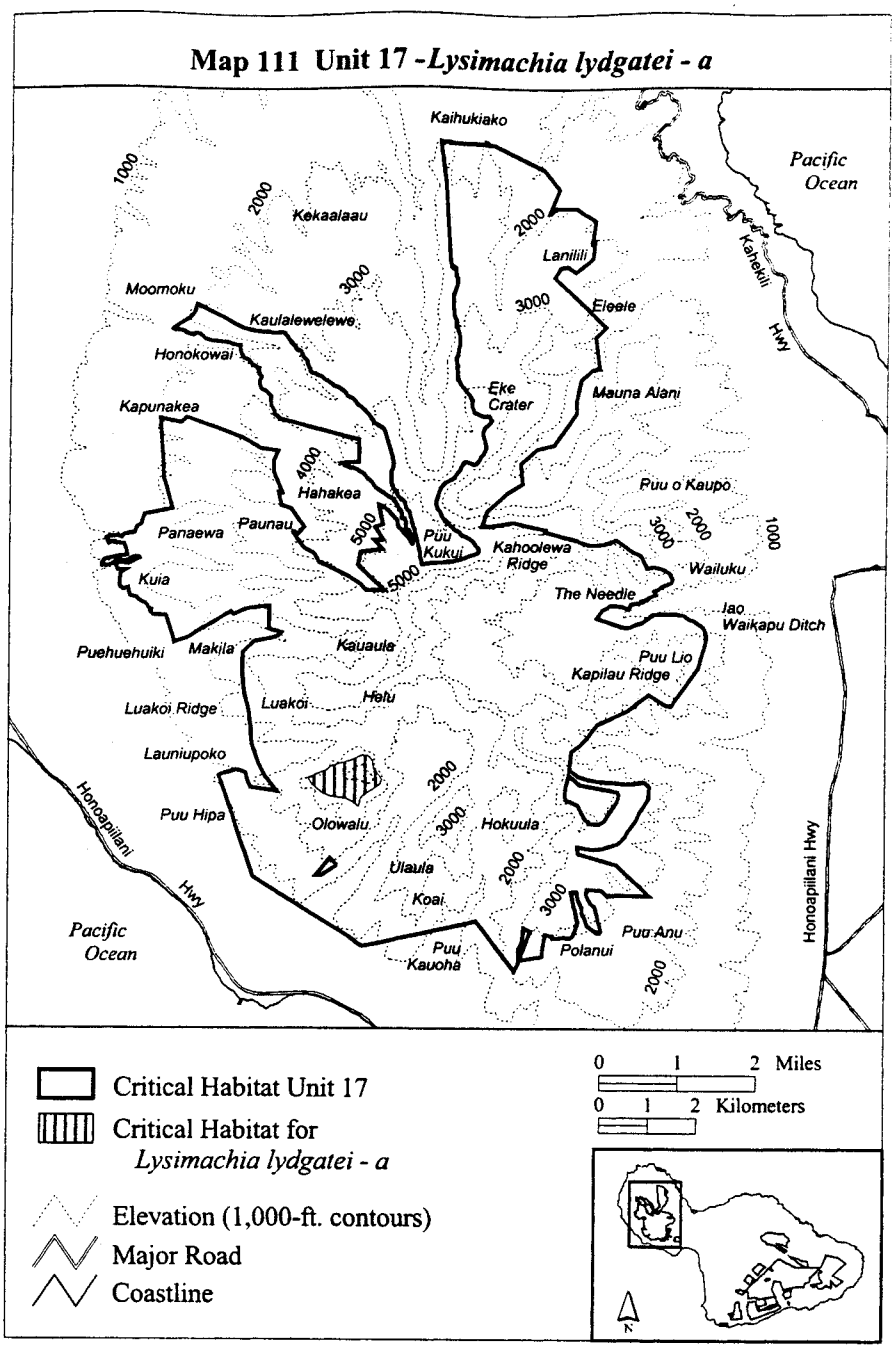
(B) **Note:** Map 110 follows:




(cxi) Maui 17—*Lysimachia lydgatei*—a (89 ha; 221 ac).

(A) Unit consists of the following 28 boundary points: Start at 748761, 2307434; 748761, 2307462; 748898, 2307517; 749159, 2307627; 749233, 2307705; 749329, 2307723; 749389, 2307755; 749654, 2307824; 749737, 2307865; 749879, 2307929; 750007, 2307916; 750080, 2307833; 750099, 2307732; 750103, 2307664; 750186, 2307558; 750273, 2307434; 750250, 2307334; 750076, 2307201; 749911, 2307100; 749842, 2307040; 749801, 2306857; 749663, 2306972; 749549, 2307022; 749480, 2307040; 749242, 2307059; 749086, 2307127; 748830, 2307334; 748761, 2307421; return to starting point.

(B) **Note:** Map 111 follows:



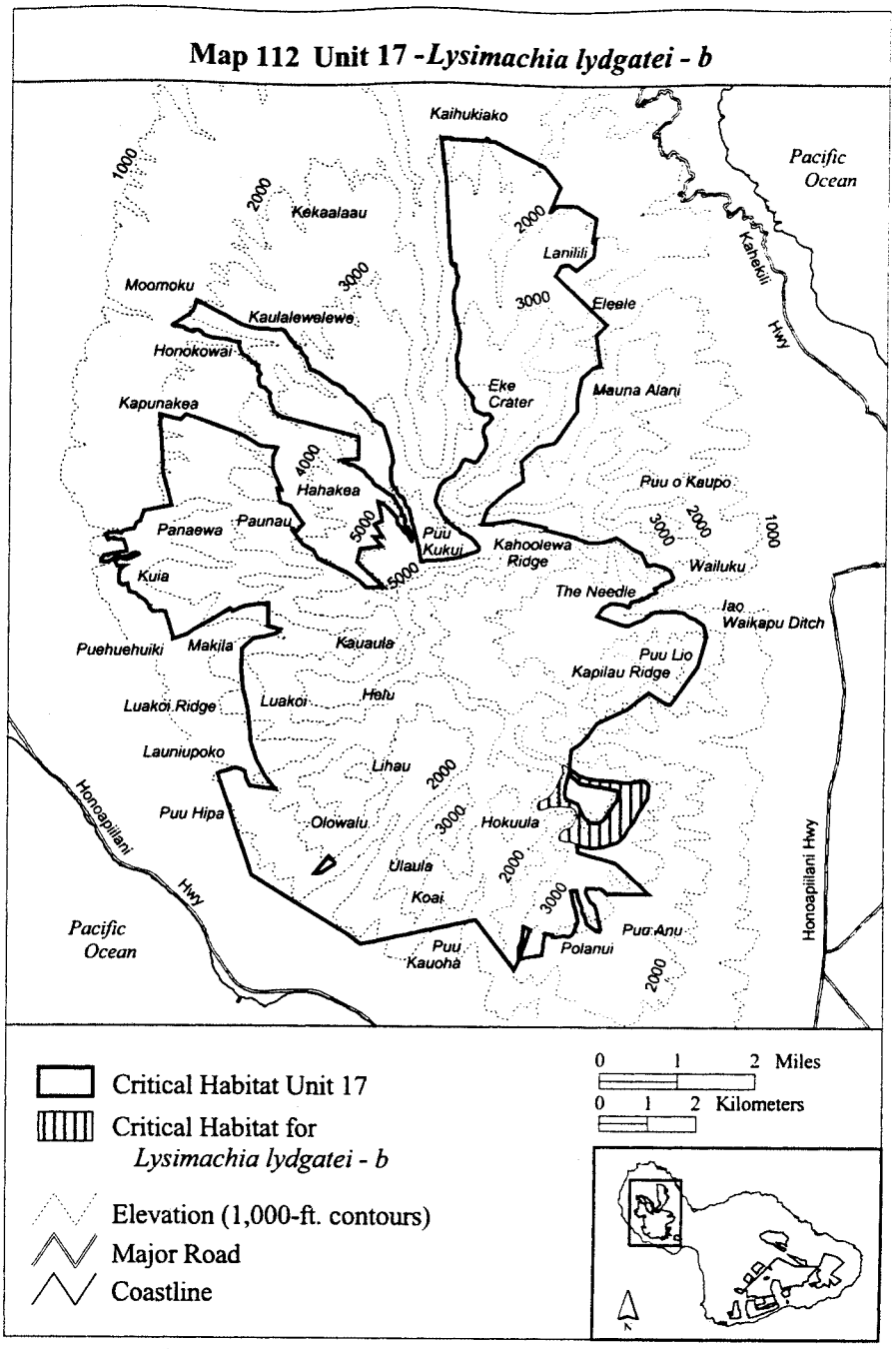

(cxii) Maui 17—*Lysimachia lydgatei*—b (220 ha; 544 ac).

(A) Unit consists of the following 67 boundary points: Start at 754164, 2307624; 754188, 2307607; 754367, 2307487; 754541, 2307436; 754599, 2307426; 754834, 2307383; 755113, 2307365; 755261, 2307345; 755428, 2307345; 755624, 2307370; 755652, 2307375; 755657, 2307376; 755704, 2307385; 755734, 2307365; 755806, 2307294; 755803, 2307069; 755794, 2307046; 755803, 2307043; 755697, 2306874; 755624, 2306756; 755515, 2306552; 755490, 2306519; 755377, 2306367; 755334, 2306276; 755319, 2306243; 755262, 2306193; 755163, 2306105; 755088, 2306079; 755078, 2306075; 754935, 2306024; 754857, 2305996; 754748, 2305990; 754614, 2305982; 754412, 2306019; 754341, 2306032; 754341, 2306031; 754336, 2306037; 754319, 2306054; 754254, 2306105; 754083, 2306112; 753970, 2306152; 753941, 2306203; 753985, 2306280; 754050, 2306349; 754192, 2306403; 754247, 2306469; 754327, 2306603; 754312, 2306694; 754272, 2306781; 754214, 2306829; 753999, 2306850; 753861, 2306832; 753774, 2306836; 753618, 2306774; 753523, 2306770; 753494, 2306847; 753541, 2306949; 753640, 2306978; 753730, 2307025; 753825, 2307130; 753890, 2307243; 753940, 2307388; 754036, 2307519; 754021, 2307625; 754007, 2307650; 754021, 2307697; 754054, 2307701; return to starting point.

(B) Excluding the area bounded by the following 19 boundary points (62ha; 153ac): Start at 754495, 2306605; 754472, 2306625; 754334, 2306901; 754090, 2307018; 754065, 2307098; 754087, 2307266; 754141, 2307512; 754162, 2307496; 754243, 2307436;

754381, 2307316; 755039, 2307210; 755145, 2307181; 755188, 2307116; 755155, 2306981; 755028, 2306781; 754890, 2306567; 754808, 2306523; 754788, 2306512; 754588, 2306523; return to starting point.

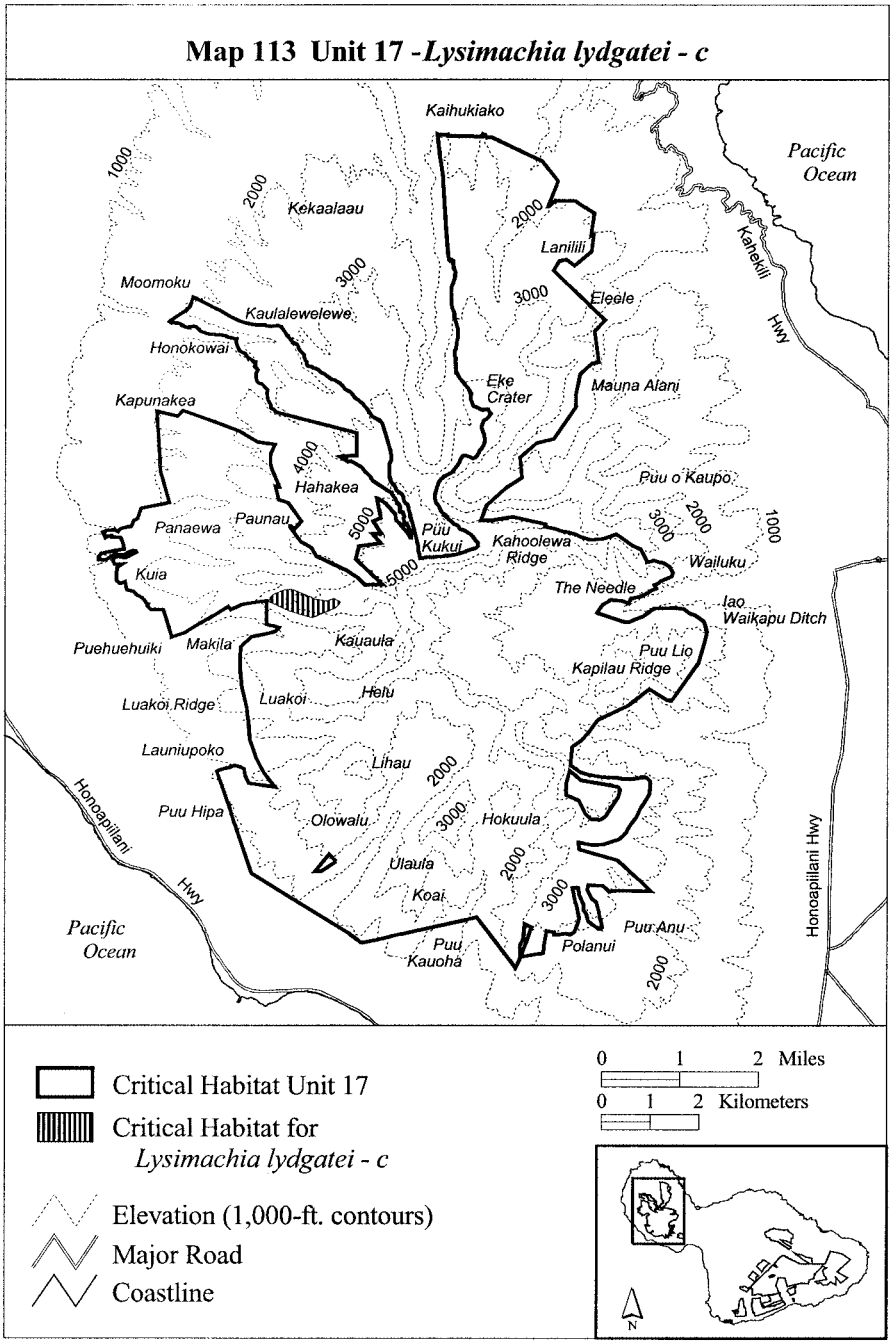
(C) **Note:** Map 112 follows:




(cxiii) Maui 17—*Lysimachia lydgatei*—c (47 ha; 117 ac).

(A) Unit consists of the following 18 boundary points: Start at 748746, 2311133; 748917, 2311048; 749167, 2311011; 749305, 2311059; 749438, 2311006; 749422, 2310952; 749353, 2310873; 749060, 2310745; 748858, 2310670; 748624, 2310729; 748411, 2310793; 748135, 2310920; 747970, 2311000; 747997, 2311080; 748066, 2311154; 748289, 2311240; 748433, 2311255; 748512, 2311234; return to starting point.

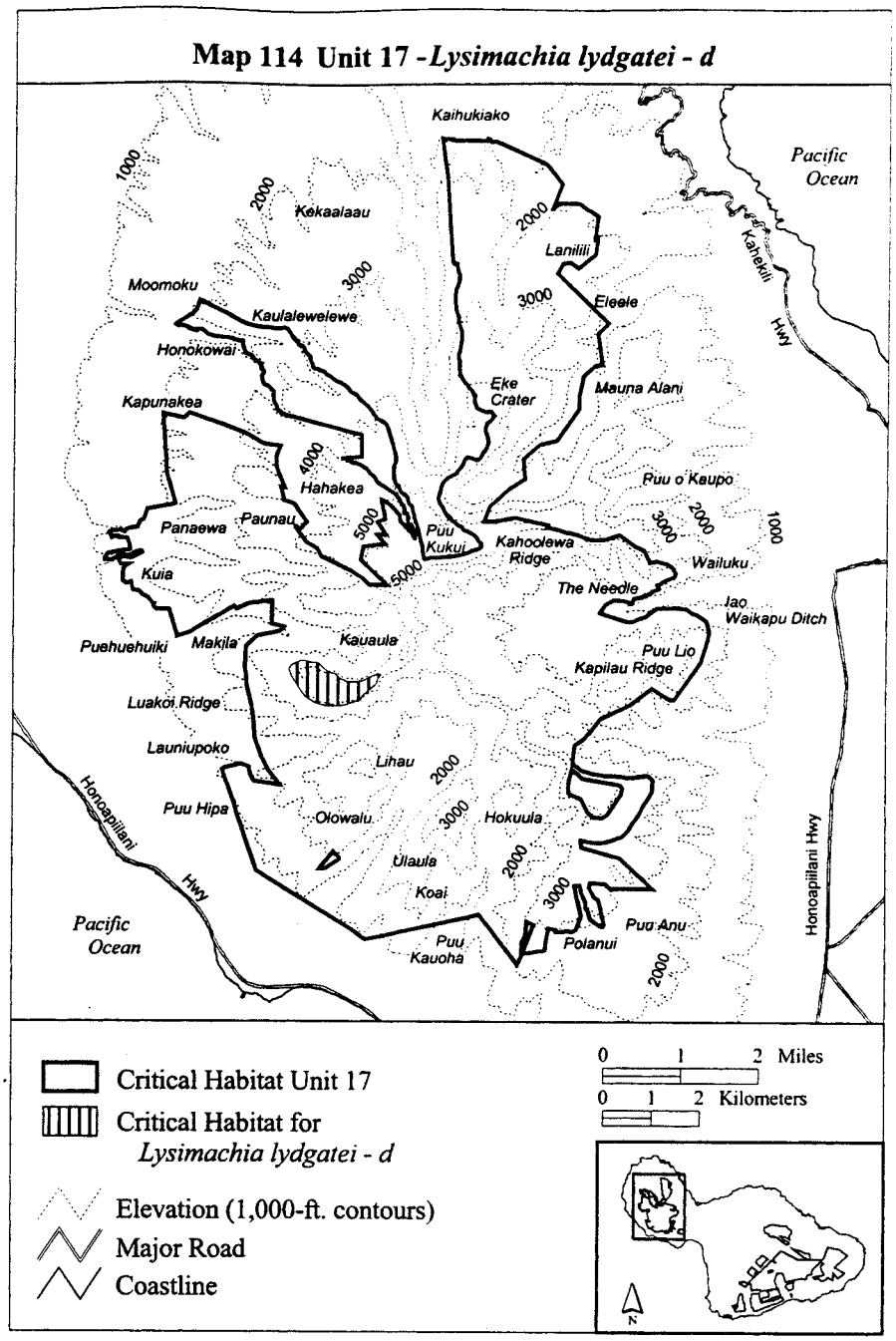
(B) **Note:** Map 113 follows:




(cxiv) Maui 17—*Lysimachia lydgatei*—d (98 ha; 241 ac).

(A) Unit consists of the following 30 boundary points: Start at 750135, 2309496; 750181, 2309483; 750177, 2309446; 750122, 2309373; 750090, 2309281; 749925, 2309130; 749801, 2309038; 749773, 2308951; 749416, 2308836; 749077, 2308814; 748834, 2308882; 748623, 2309020; 748486, 2309217; 748335, 2309450; 748293, 2309574; 748321, 2309638; 748385, 2309698; 748523, 2309757; 748582, 2309771; 748738, 2309734; 748885, 2309721; 748999, 2309606; 749123, 2309519; 749251, 2309487; 749329, 2309405; 749498, 2309322; 749682, 2309322; 749842, 2309350; 749906, 2309400; 750025, 2309450; return to starting point.

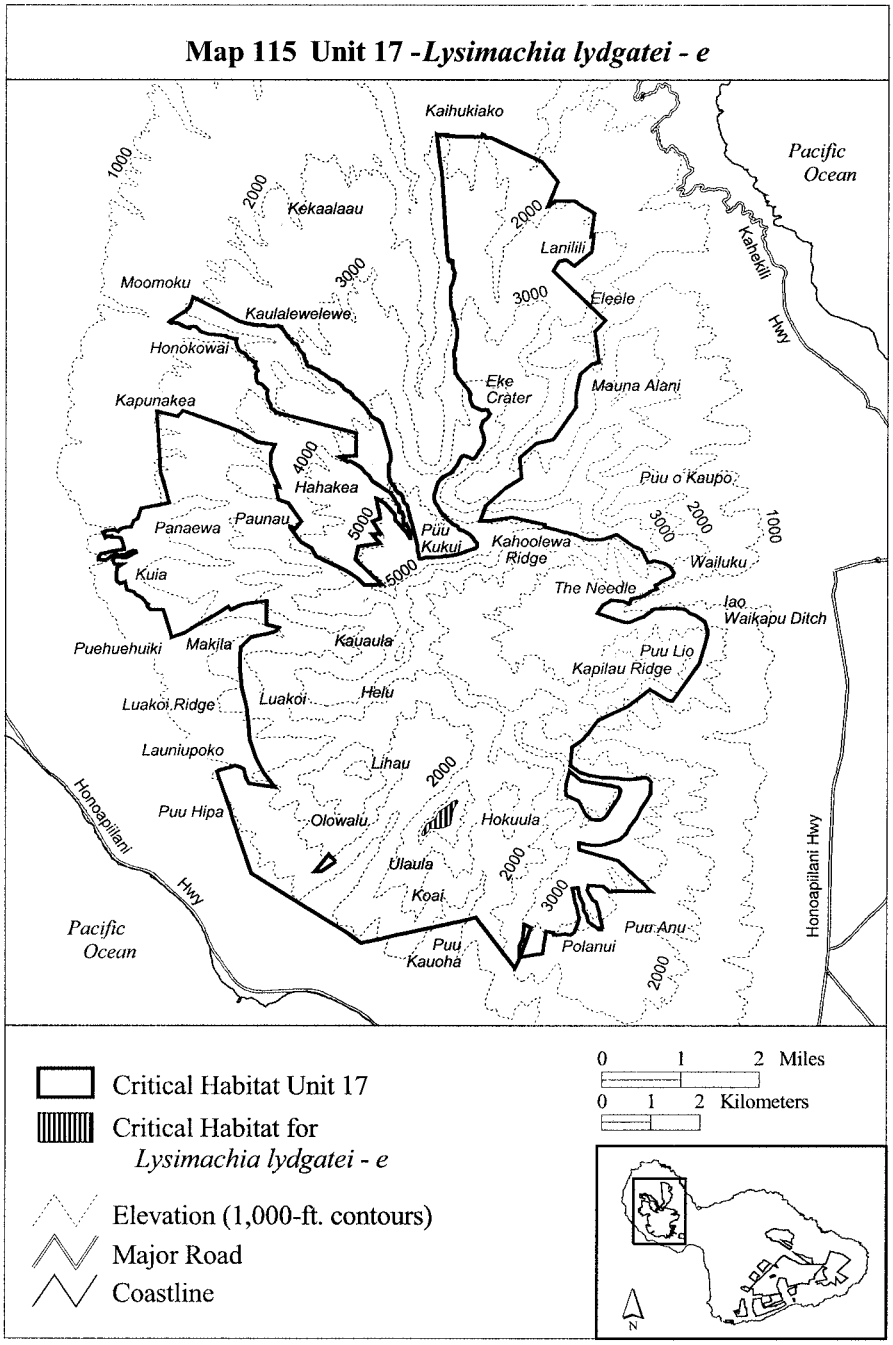
(B) **Note:** Map 114 follows:




(cxv) Maui 17—*Lysimachia lydgatei*—e (18 ha; 44 ac).

(A) Unit consists of the following 22 boundary points: Start at 751408, 2306523; 751429, 2306563; 751478, 2306669; 751724, 2306831; 751767, 2306892; 751846, 2306916; 751871, 2306886; 751843, 2306831; 751785, 2306736; 751755, 2306654; 751746, 2306529; 751718, 2306404; 751575, 2306347; 751374, 2306334; 751307, 2306322; 751264, 2306246; 751164, 2306182; 751133, 2306194; 751136, 2306234; 751188, 2306328; 751240, 2306423; 751359, 2306493; return to starting point.

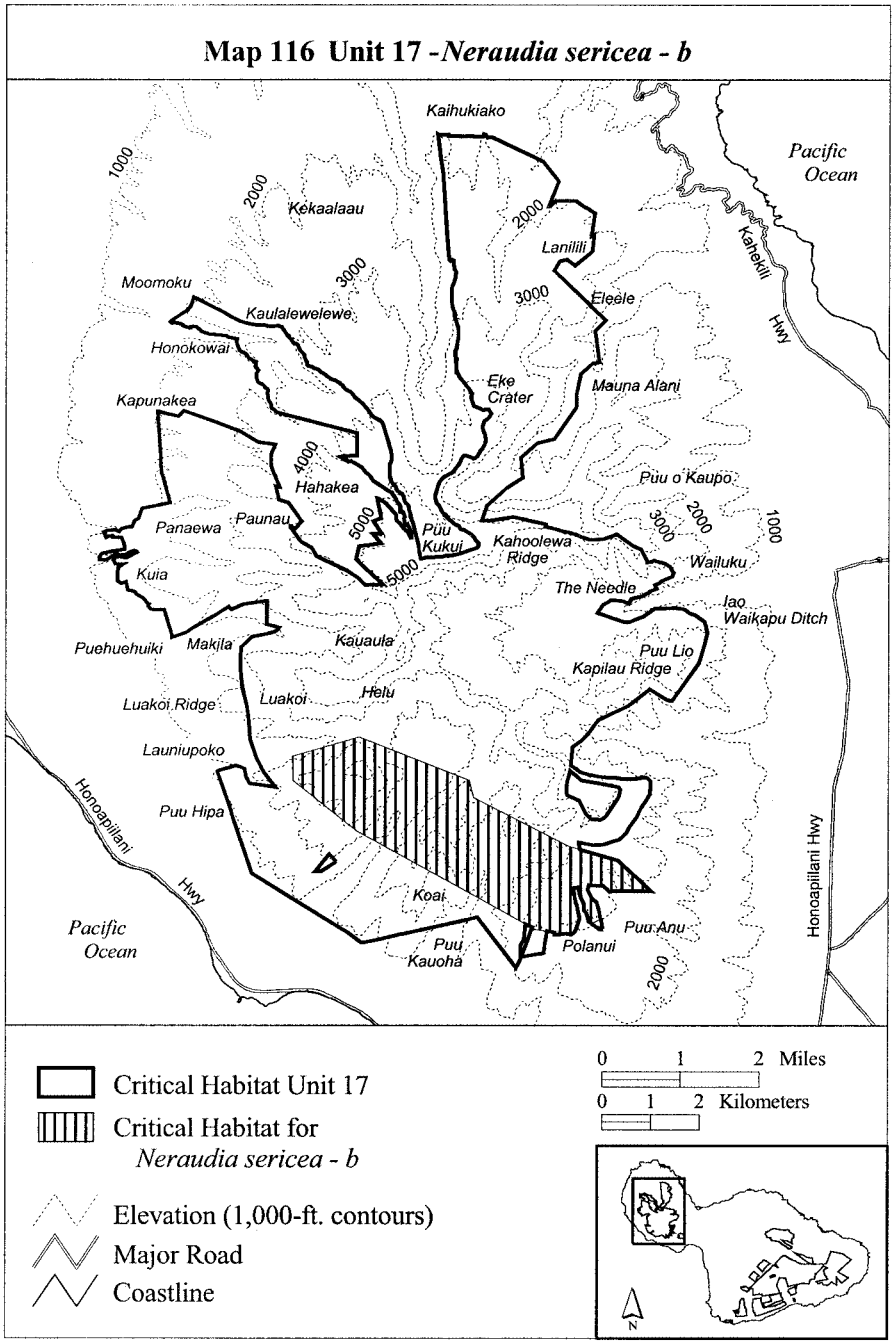
(B) **Note:** Map 115 follows:




(cxvi) Maui 17—*Neraudia sericea*—b (1,189 ha; 2,938 ac).

(A) Unit consists of the following 56 boundary points: Start at 754350, 2305894; 755139, 2305668; 755567, 2305273; 755828, 2305033; 755089, 2305043; 755087, 2305045; 754979, 2305016; 754831, 2305142; 754762, 2305147; 754540, 2305162; 754519, 2305074; 754515, 2305057; 754540, 2305011; 754546, 2305000; 754546, 2305000; 754621, 2304863; 754699, 2304812; 754760, 2304616; 754771, 2304529; 754777, 2304488; 754780, 2304459; 754601, 2304367; 754542, 2304415; 754486, 2304579; 754439, 2304653; 754438, 2304725; 754437, 2304765; 754435, 2304770; 754349, 2304956; 754320, 2305103; 754319, 2305108; 754309, 2305107; 754214, 2305093; 754235, 2304991; 754278, 2304785; 754282, 2304767; 754351, 2304474; 754342, 2304448; 754333, 2304422; 754324, 2304394; 754323, 2304390; 754277, 2304259; 754255, 2304193; 754171, 2304150; 754067, 2304164; 753832, 2304195; 753811, 2304198; 753675, 2304217; 753449, 2304247; 749789, 2306260; 748476, 2307315; 748455, 2307820; 749832, 2308208; 752082, 2307325; 752168, 2306959; 754128, 2305958; return to starting point.

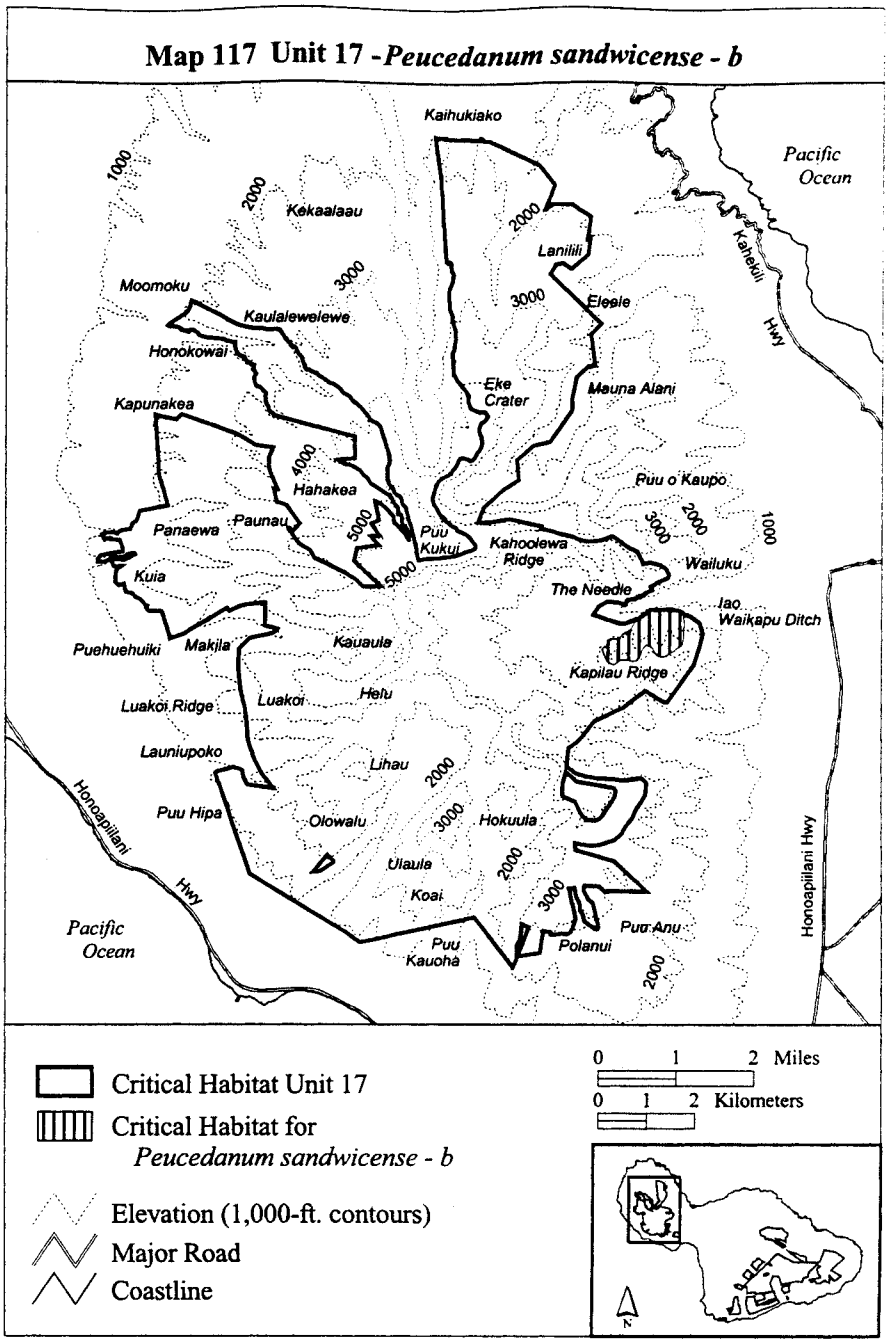
(B) **Note:** Map 116 follows:




(cxvii) Maui 17—*Peucedanum sandwicense*—b (117 ha; 289 ac).

(A) Unit consists of the following 41 boundary points: Start at 755661, 2310703; 755670, 2310709; 755718, 2310743; 755890, 2310863; 755896, 2310864; 756325, 2310873; 756497, 2310849; 756549, 2310816; 756582, 2310768; 756582, 2310767; 756578, 2310701; 756602, 2310559; 756578, 2310444; 756578, 2310273; 756549, 2310135; 756463, 2310087; 756387, 2310011; 756287, 2309973; 756216, 2309911; 756116, 2309892; 756068, 2309906; 755992, 2309963; 755930, 2310082; 755806, 2310140; 755735, 2310078; 755697, 2309982; 755659, 2309873; 755587, 2309811; 755502, 2309811; 755430, 2309835; 755292, 2309835; 755140, 2309730; 755002, 2309797; 754882, 2310059; 754982, 2310125; 755002, 2310244; 755068, 2310268; 755221, 2310259; 755344, 2310382; 755492, 2310463; 755573, 2310625; return to starting point.

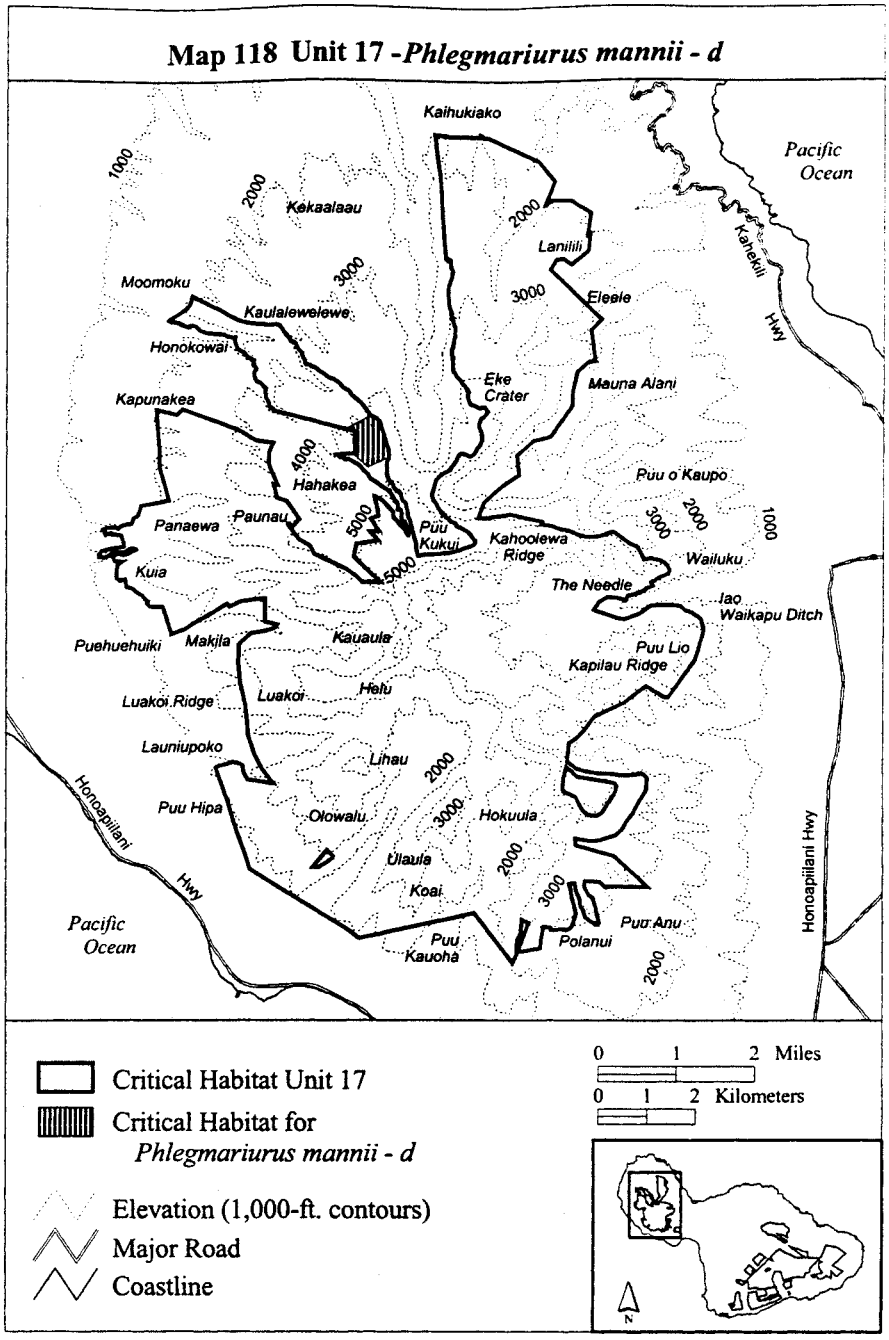
(B) **Note:** Map 117 follows:




(cxviii) Maui 17—*Phlegmariurus mannii*—d (57 ha; 140 ac).

(A) Unit consists of the following 34 boundary points: Start at 749731, 2314023; 749762, 2314024; 749763, 2314024; 749764, 2314024; 749764, 2314025; 749766, 2314245; 749769, 2314498; 749768, 2314500; 749767, 2314500; 749602, 2314542; 750115, 2314813; 750120, 2314809; 750138, 2314798; 750173, 2314786; 750215, 2314763; 750223, 2314758; 750232, 2314754; 750246, 2314737; 750265, 2314720; 750286, 2314703; 750288, 2314702; 750386, 2314362; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313948; 750046, 2313750; return to starting point.

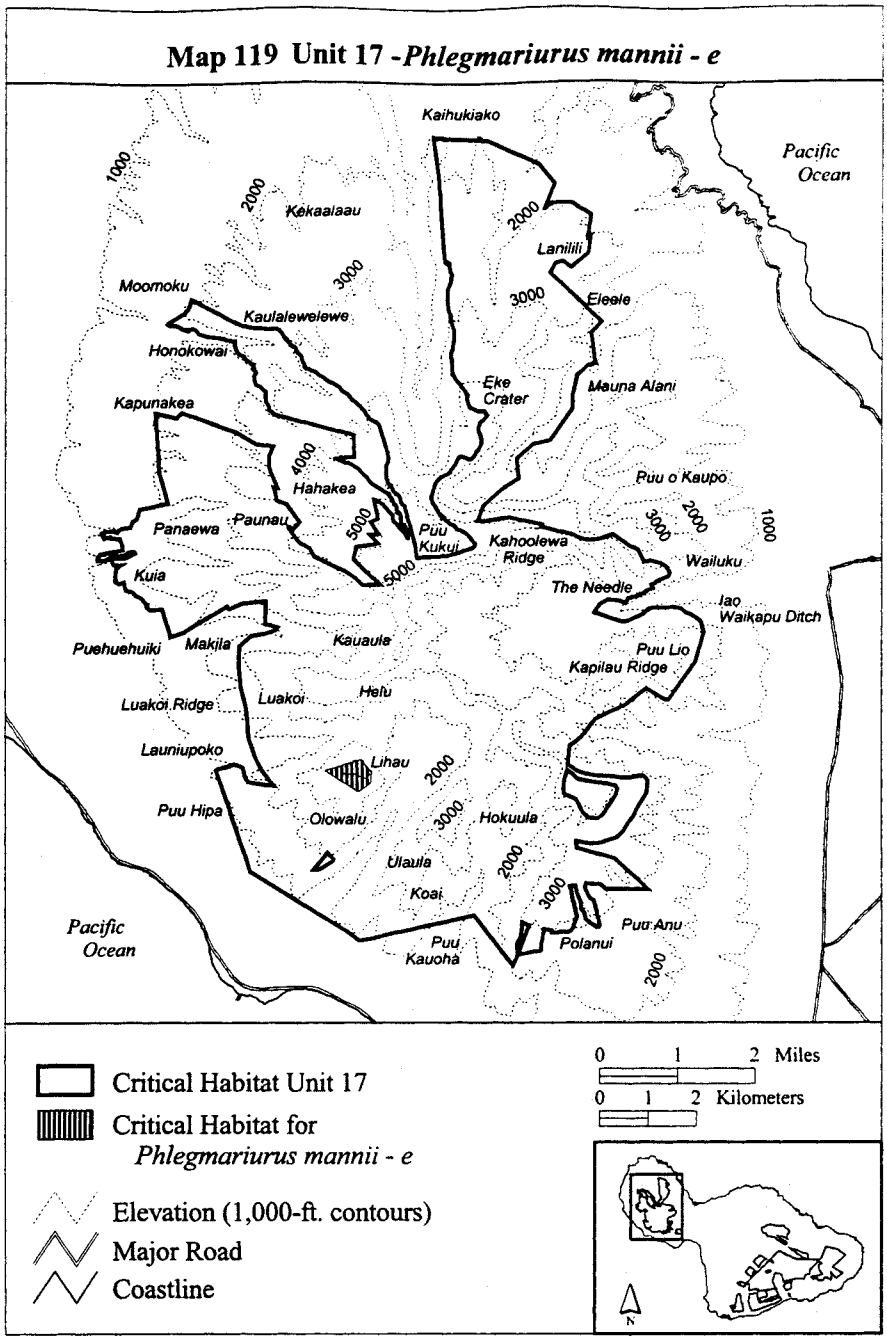
(B) **Note:** Map 118 follows:




(cxix) Maui 17—*Phlegmariurus mannii*—e (35 ha; 87 ac).

(A) Unit consists of the following 5 boundary points: Start at 749857, 2307053; 749164, 2307491; 749922, 2307722; 750135, 2307470; 750105, 2307233; return to starting point.

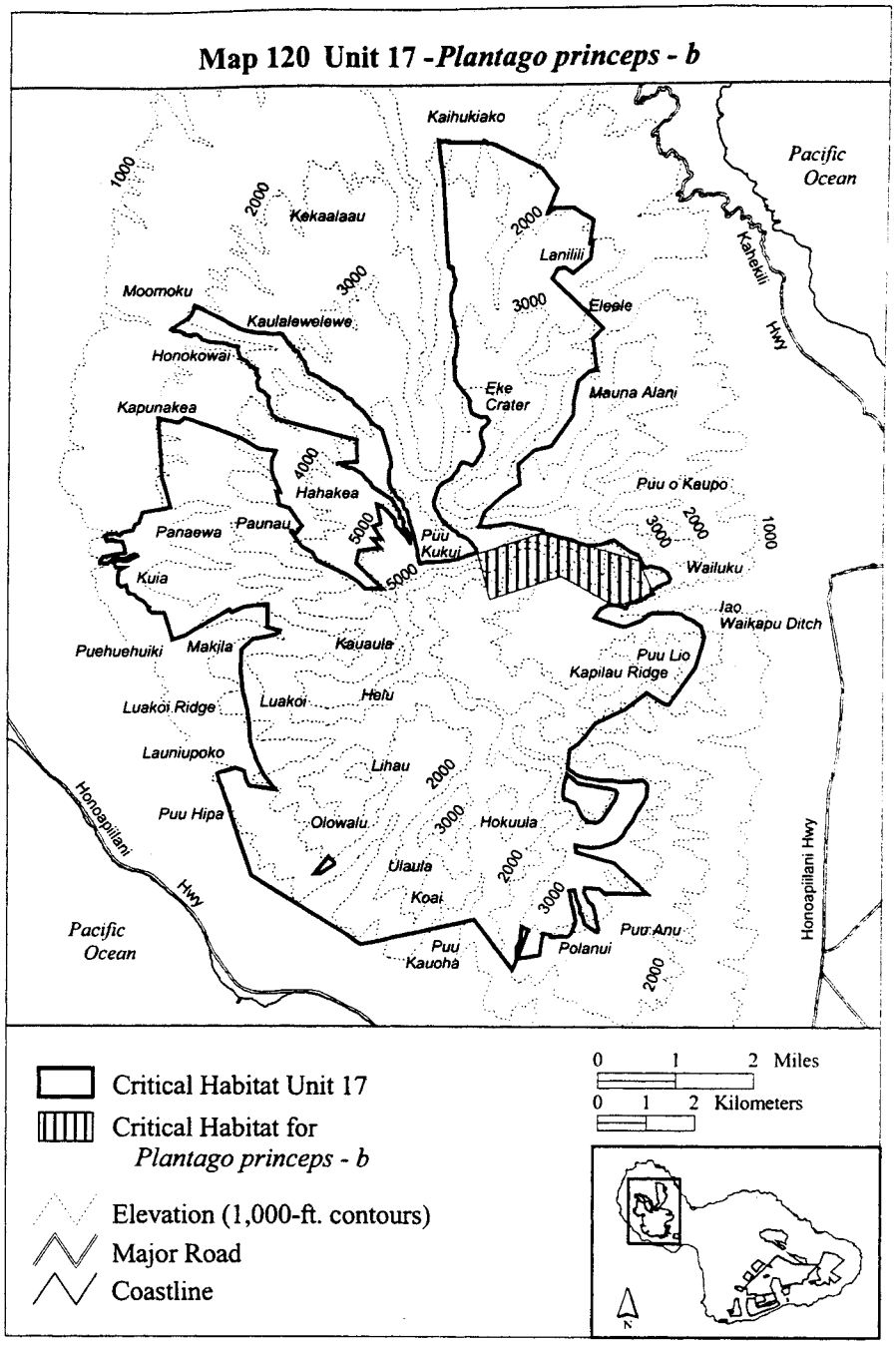
(B) **Note:** Map 119 follows:




(cxx) Maui 17—*Plantago princeps*—b (327 ha; 808 ac).

(A) Unit consists of the following 16 boundary points: Start at 755885, 2311350; 755922, 2311264; 755790, 2311220; 755197, 2311022; 755103, 2311031; 754021, 2311640; 752538, 2311146; 752284, 2312106; 752542, 2312180; 753629, 2312550; 753645, 2312555; 753846, 2312495; 754009, 2312447; 754379, 2312336; 754546, 2312287; 755617, 2311968; return to starting point.

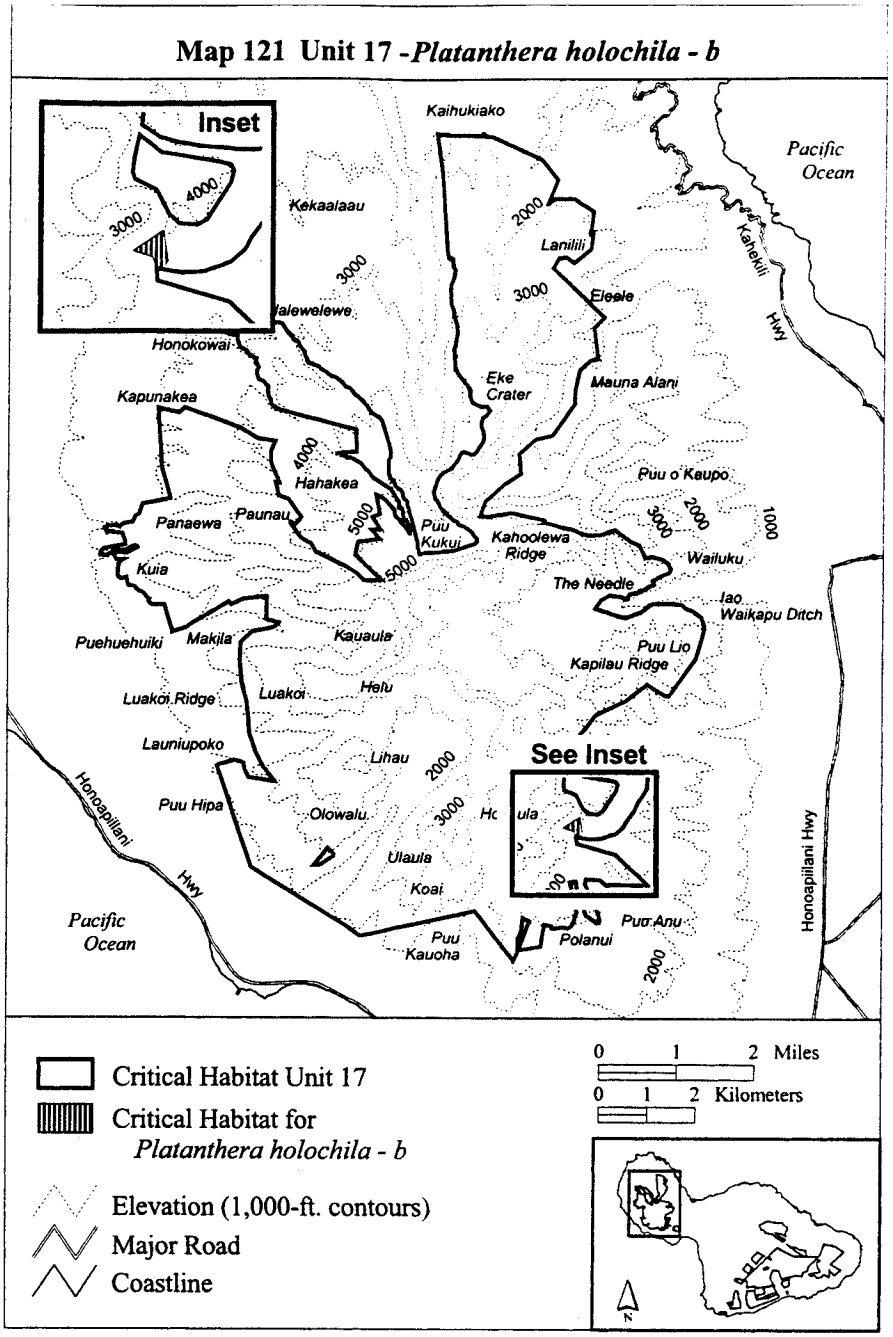
(B) **Note:** Map 120 follows:




(cxxi) Maui 17—*Platanthera holochila*—b (8 ha; 19 ac).

(A) Unit consists of the following 7 boundary points: Start at 754412, 2306019; 754341, 2306032; 754341, 2306031; 754290, 2306152; 754075, 2306222; 754409, 2306447; 754465, 2306113; return to starting point.

(B) **Note:** Map 121 follows:

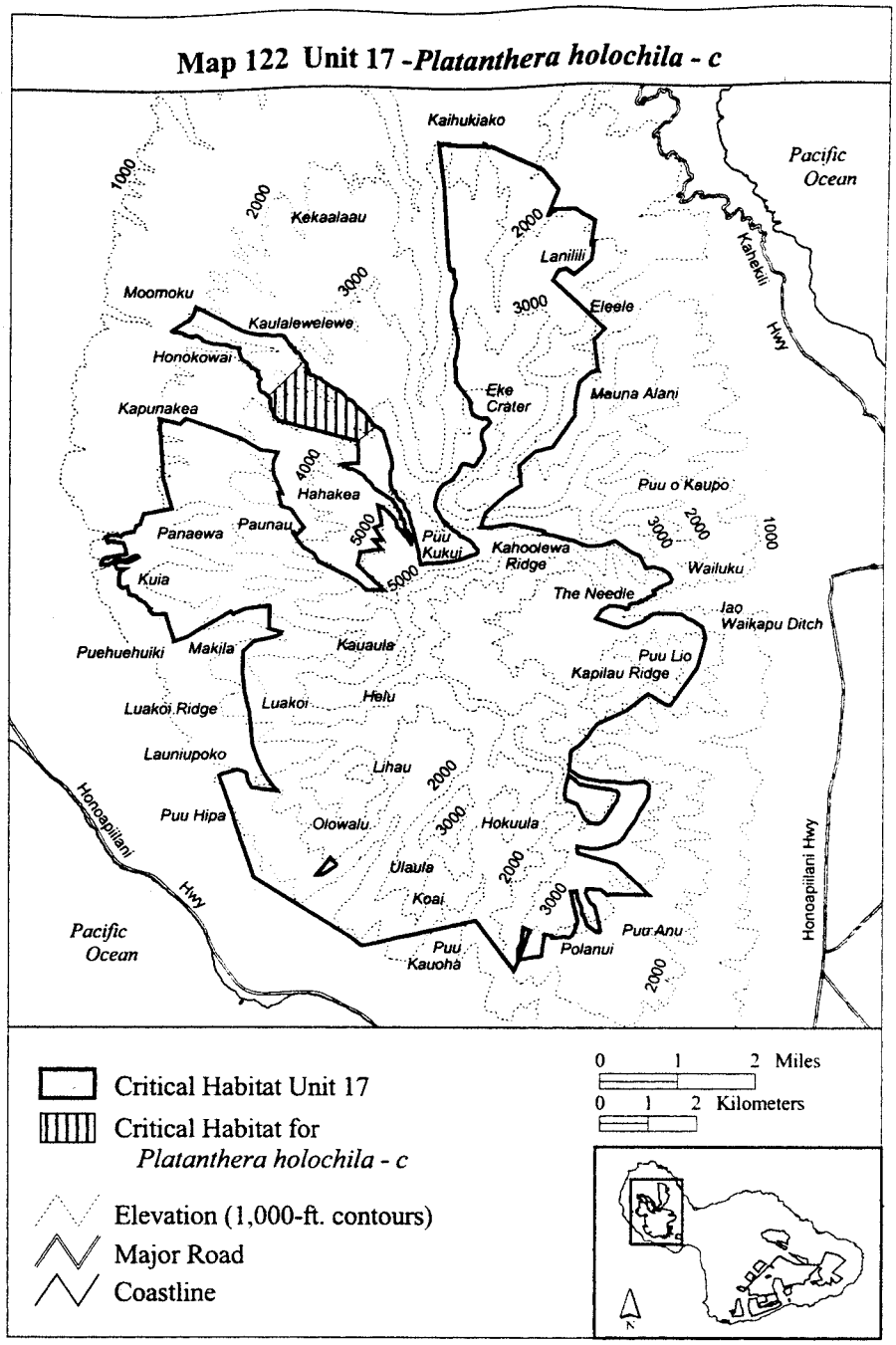



(cxxii) Maui 17—*Platanthera holochila*—c (189 ha; 467 ac).

(A) Unit consists of the following 99 boundary points: Start at 749766, 2314500; 748184, 2314906; 748128, 2314930; 748092, 2314946; 748091, 2314947; 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747885, 2315426; 748574, 2316083; 748639, 2316154; 748649, 2316141; 748680, 2316102; 748682, 2316095; 748687, 2316079; 748691, 2316057; 748698, 2316026; 748698, 2316025; 748717, 2315987; 748731, 2315953; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748796, 2315863; 748806, 2315862; 748826, 2315861; 748849, 2315847; 748876, 2315834; 748913, 2315824; 748949, 2315807; 748960, 2315800; 749000, 2315773; 749021, 2315756; 749067, 2315724; 749090, 2315709; 749140, 2315671; 749173, 2315647; 749188, 2315640; 749205, 2315627; 749223, 2315614; 749244, 2315605; 749315, 2315575; 749336, 2315565; 749353, 2315555; 749385, 2315535; 749404, 2315524; 749421, 2315514; 749470, 2315477; 749479, 2315464; 749486, 2315451; 749500, 2315430; 749524, 2315402; 749550, 2315385; 749571, 2315373; 749617, 2315351; 749628, 2315342; 749652, 2315326; 749666, 2315306; 749677, 2315288; 749682, 2315280; 749701, 2315256; 749720, 2315236; 749736, 2315224; 749781, 2315186; 749797, 2315177; 749814, 2315164; 749833, 2315147; 749874,

2315098; 749888, 2315088; 749934, 2315046; 749960, 2315009; 750020, 2314928; 750057, 2314876; 750072, 2314855; 750097, 2314830; 750120, 2314809; 750138, 2314798; 750139, 2314798; return to starting point.

(B) **Note:** Map 122 follows:

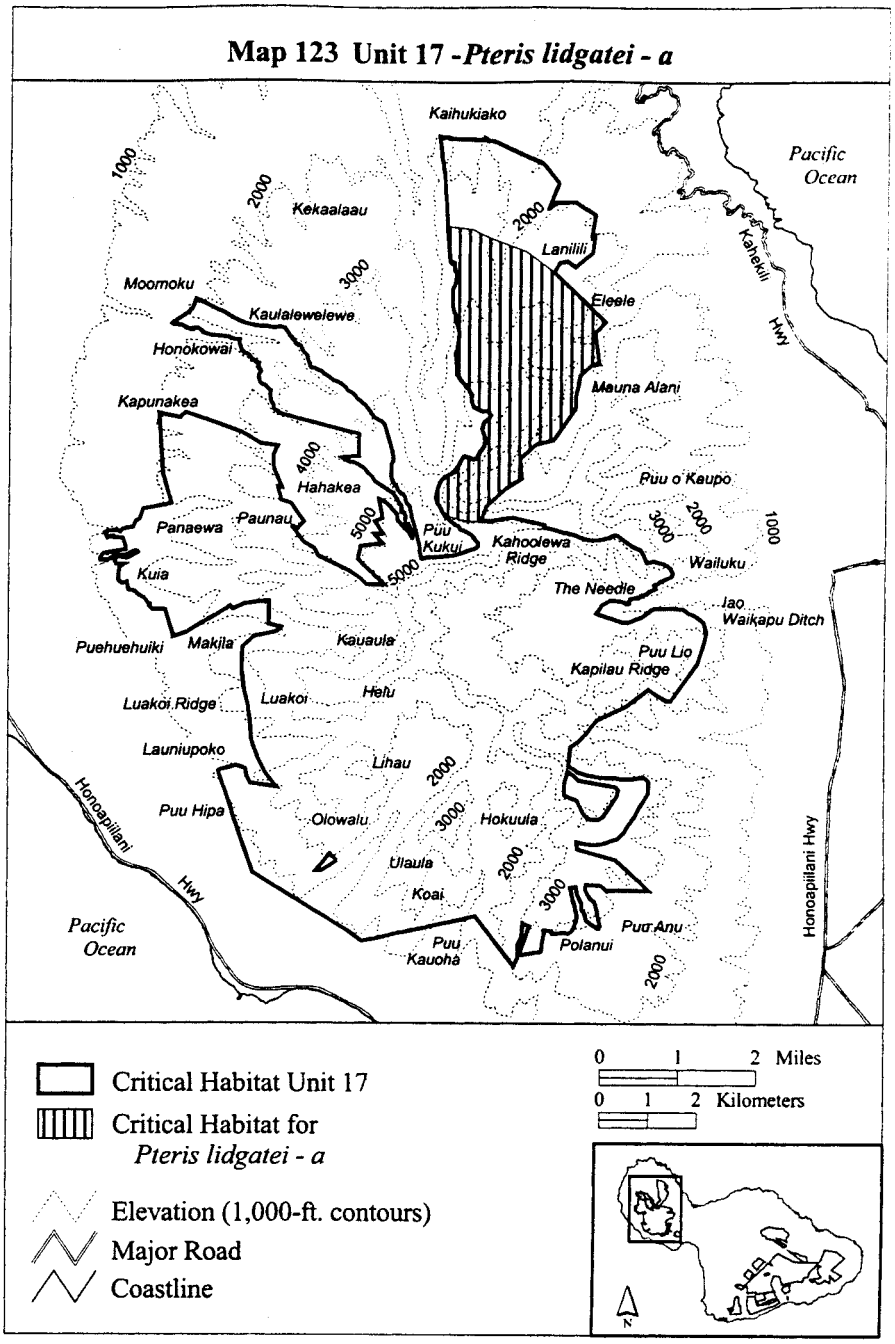



(cxxiii) Maui 17—*Pteris lidgatei*—a (1,168 ha; 2,887 ac).

(A) Unit consists of the following 211 boundary points: Start at 751582, 2312795; 751577, 2312796; 751528, 2312835; 751509, 2312866; 751494, 2312898; 751477, 2312924; 751470, 2312949; 751455, 2312970; 751447, 2312990; 751430, 2313008; 751409, 2313034; 751396, 2313055; 751392, 2313077; 751379, 2313115; 751372, 2313144; 751371, 2313166; 751372, 2313195; 751376, 2313220; 751378, 2313242; 751391, 2313266; 751395, 2313289; 751399, 2313300; 751407, 2313325; 751423, 2313372; 751434, 2313402; 751442, 2313431; 751445, 2313445; 751458, 2313470; 751460, 2313473; 751483, 2313503; 751510, 2313537; 751525, 2313552; 751530, 2313556; 751547, 2313568; 751557, 2313585; 751561, 2313589; 751596, 2313611; 751632, 2313629; 751663, 2313639; 751692, 2313653; 751724, 2313678; 751730, 2313685; 751736, 2313691; 751741, 2313698; 751753, 2313712; 751774, 2313739; 751802, 2313779; 751812, 2313796; 751834, 2313826; 751848, 2313852; 751858, 2313865; 751891, 2313928; 751915,

2313975; 751943, 2314006; 751962, 2314018; 751999, 2314023; 752033, 2314016; 752081, 2313996; 752123, 2313971; 752153, 2313965; 752154, 2313965; 752187, 2313971; 752206, 2313984; 752220, 2314004; 752241, 2314040; 752255, 2314066; 752280, 2314106; 752298, 2314135; 752326, 2314169; 752350, 2314207; 752375, 2314234; 752375, 2314235; 752380, 2314285; 752390, 2314310; 752394, 2314322; 752394, 2314323; 752390, 2314361; 752385, 2314401; 752376, 2314456; 752359, 2314508; 752350, 2314542; 752334, 2314592; 752332, 2314632; 752340, 2314668; 752351, 2314710; 752369, 2314743; 752392, 2314761; 752420, 2314774; 752451, 2314798; 752466, 2314821; 752482, 2314848; 752505, 2314885; 752505, 2314886; 752505, 2314887; 752495, 2314905; 752453, 2314975; 752453, 2314976; 752448, 2314976; 752453, 2314984; 752376, 2314996; 752366, 2314973; 752362, 2314970; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752026, 2315438; 751991, 2315478; 751949, 2315532; 751900, 2315589; 751856, 2315640; 751831, 2315694; 751805, 2315739; 751802, 2315745; 751780, 2316007; 751791, 2316023; 751792, 2316024; 751792, 2316025; 751785, 2316046; 751774, 2316078; 751771, 2316121; 751767, 2316164; 751778, 2316192; 751794, 2316230; 751799, 2316258; 751807, 2316311; 751812, 2316339; 751828, 2316408; 751840, 2316469; 751842, 2316535; 751836, 2316587; 751832, 2316640; 751828, 2316678; 751828, 2316679; 751812, 2316711; 751793, 2316765; 751774, 2316831; 751763, 2316879; 751754, 2316929; 751744, 2317001; 751727, 2317051; 751703, 2317090; 751693, 2317225; 751691, 2317254; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665, 2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751632, 2318131; 751630, 2318160; 751587, 2318788; 752124, 2318723; 752171, 2318701; 752172, 2318700; 752441, 2318572; 753228, 2318261; 753719, 2317901; 753788, 2317835; 754546, 2317117; 754543, 2317112; 754622, 2317045; 754855, 2316824; 754646, 2316585; 754736, 2315958; 754586, 2315928; 754347, 2315718; 754257, 2315300; 754257, 2315031; 753809, 2314373; 753450, 2314284; 753121, 2313985; 753151, 2313566; 752822, 2313357; 752434, 2312998; 752317, 2312676; 752314, 2312669; 752040, 2312664; return to starting point.

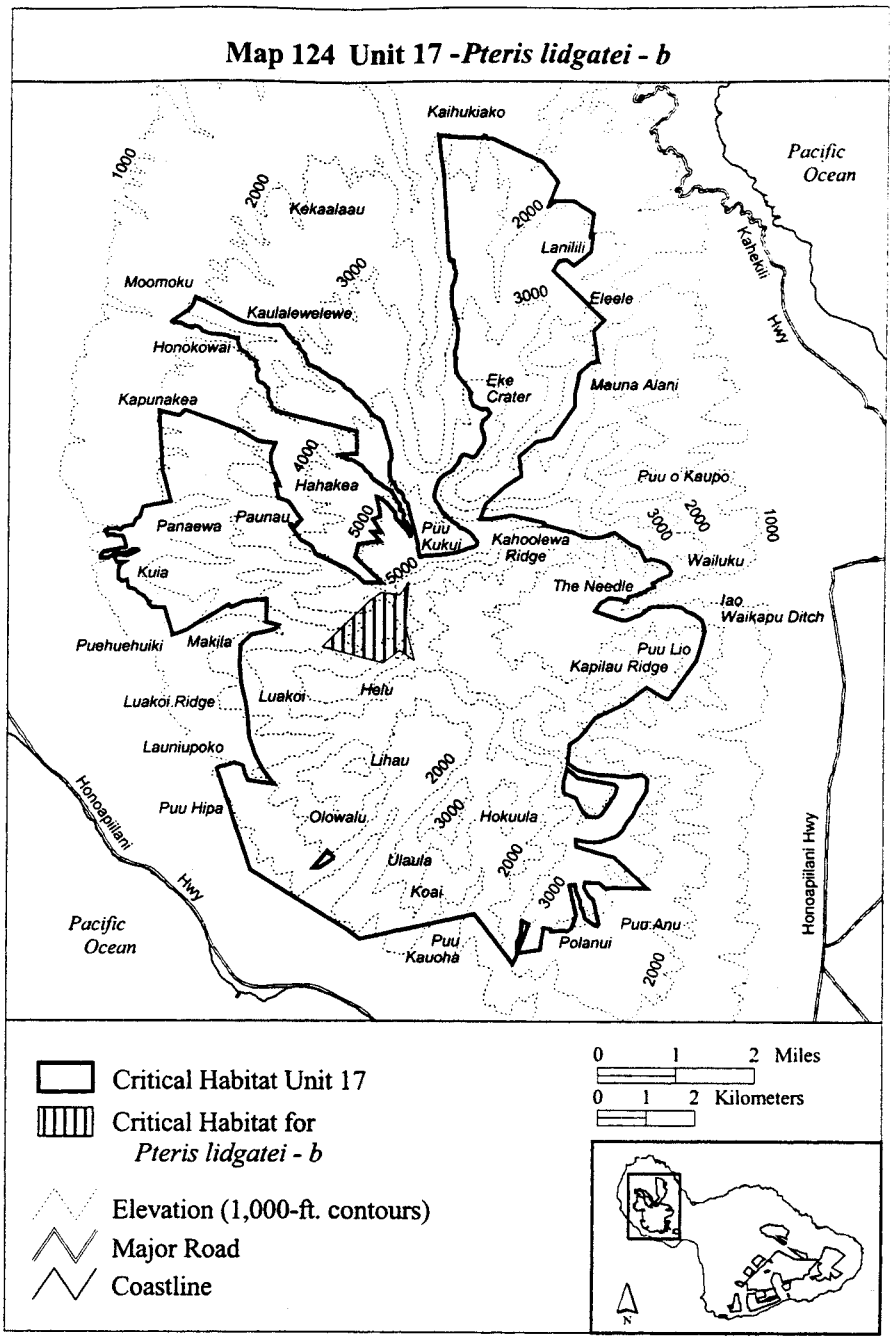
(B) **Note:** Map 123 follows:




(cxxiv) Maui 17—*Pteris lidgatei*—b (164 ha; 404 ac).

(A) Unit consists of the following 9 boundary points: Start at 750072, 2310995; 750282, 2311145; 750670, 2311085; 750850, 2311354; 750790, 2310427; 750969, 2309740; 750670, 2309949; 750341, 2309680; 749086, 2310009; return to starting point.

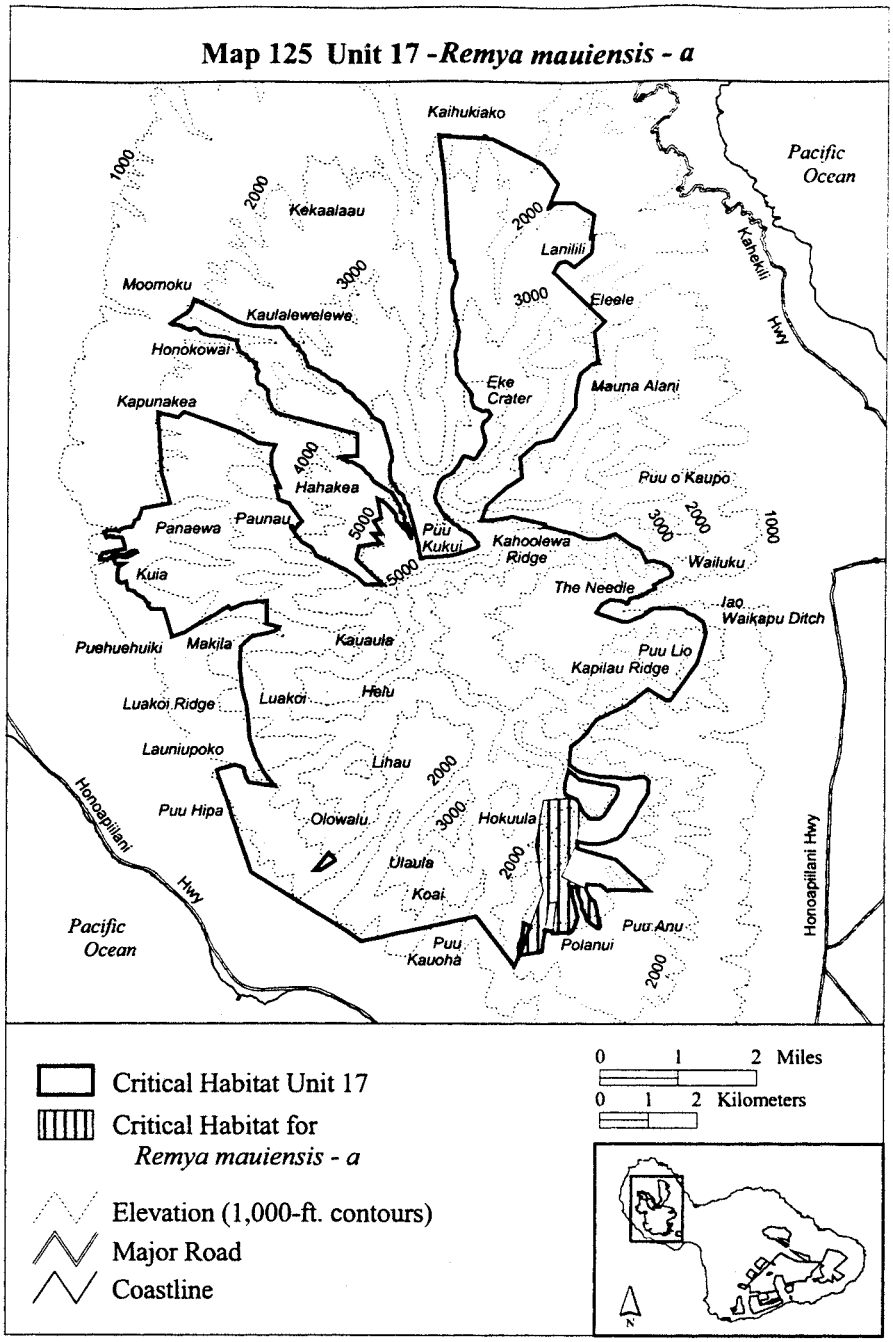
(B) **Note:** Map 124 follows:




(cxxv) Maui 17—*Remya mauiensis*—a (228 ha; 564 ac).

(A) Unit consists of the following 61 boundary points: Start at 754336, 2306037; 754335, 2306032; 754334, 2306014; 754022, 2305314; 754484, 2305080; 754534, 2305022; 754537, 2305016; 754540, 2305011; 754621, 2304863; 754699, 2304812; 754773, 2304280; 754776, 2304259; 754769, 2304263; 754670, 2304324; 754605, 2304364; 754603, 2304366; 754542, 2304415; 754499, 2304541; 754356, 2305091; 754320, 2305103; 754319, 2305108; 754309, 2305107; 754122, 2305169; 754172, 2305069; 754235, 2304991; 754238, 2304988; 754242, 2304971; 754278, 2304785; 754282, 2304767; 754312, 2304638; 754336, 2304537; 754343, 2304451; 754343, 2304450; 754342, 2304448; 754333, 2304422; 754327, 2304403; 754279, 2304263; 754165, 2304205; 754078, 2304169; 753828, 2304146; 753911, 2304797; 753750, 2304769; 753606, 2303761; 753602, 2303760; 753576, 2303756; 753552, 2303751; 753534, 2303749; 753531, 2303748; 753515, 2303745; 753154, 2303686; 753252, 2303966; 753304, 2304113; 753310, 2304130; 753365, 2304285; 753367, 2304292; 753628, 2305002; 753472, 2305975; 753622, 2306887; 754189, 2306927; 754311, 2306887; 754387, 2306765; return to starting point.

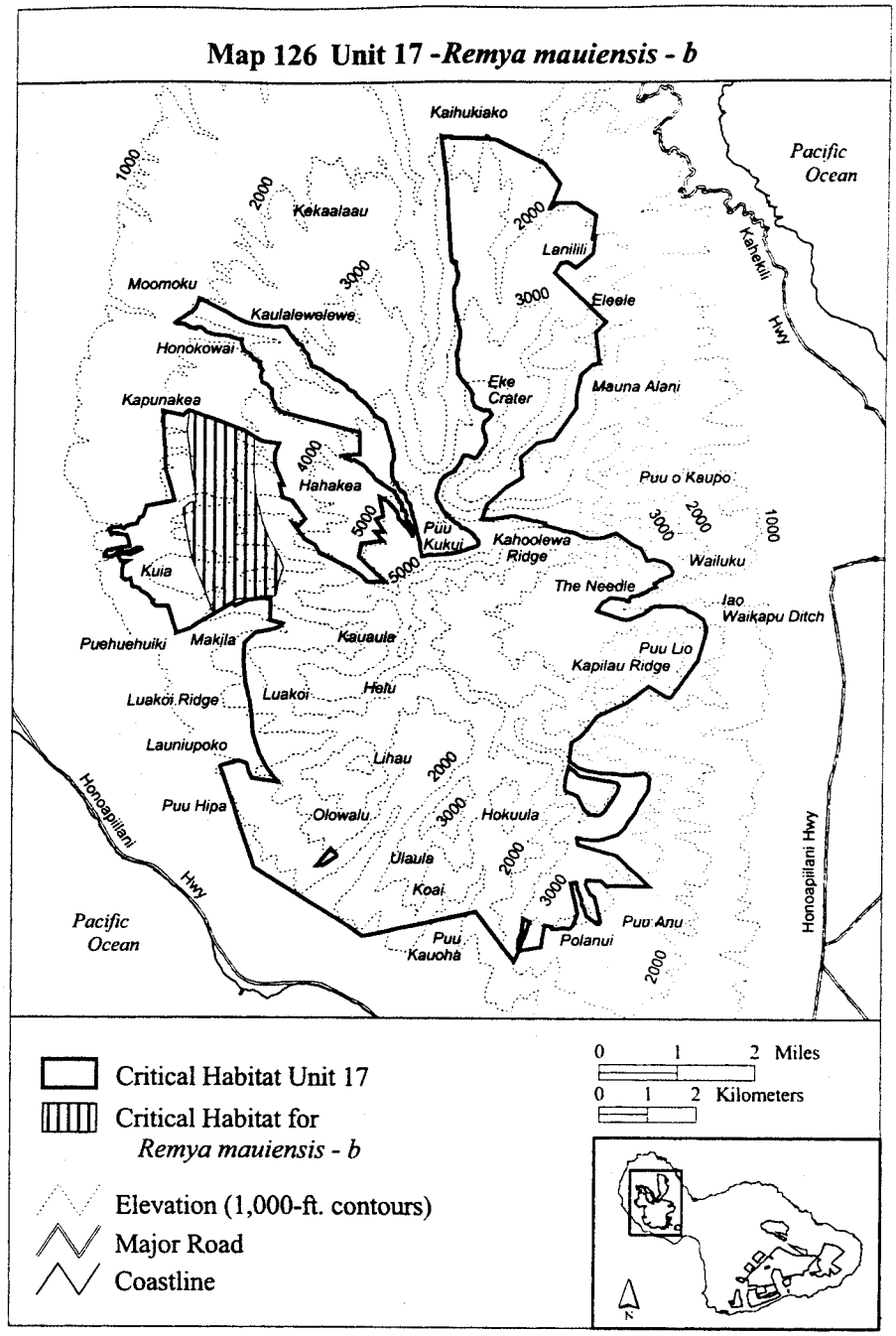
(B) **Note:** Map 125 follows:




(cxxvi) Maui 17—*remya mauiensis*—b (567 ha; 1,401 ac).

(A) Unit consists of the following 30 boundary points: Start at 746995, 2310813; 746762, 2310659; 746754, 2310674; 746719, 2310734; 746452, 2311437; 746303, 2311773; 746170, 2312397; 746101, 2312866; 746244, 2312994; 746324, 2313016; 746372, 2313015; 746273, 2313672; 746174, 2314527; 746227, 2314946; 746887, 2314706; 747359, 2314534; 747564, 2314406; 747564, 2313642; 747609, 2313176; 747674, 2312935; 747689, 2312936; 747743, 2312584; 747871, 2312291; 748089, 2311885; 748185, 2311619; 748123, 2311444; 748084, 2311336; 748036, 2311038; 747487, 2310984; 747263, 2310990; return to starting point.

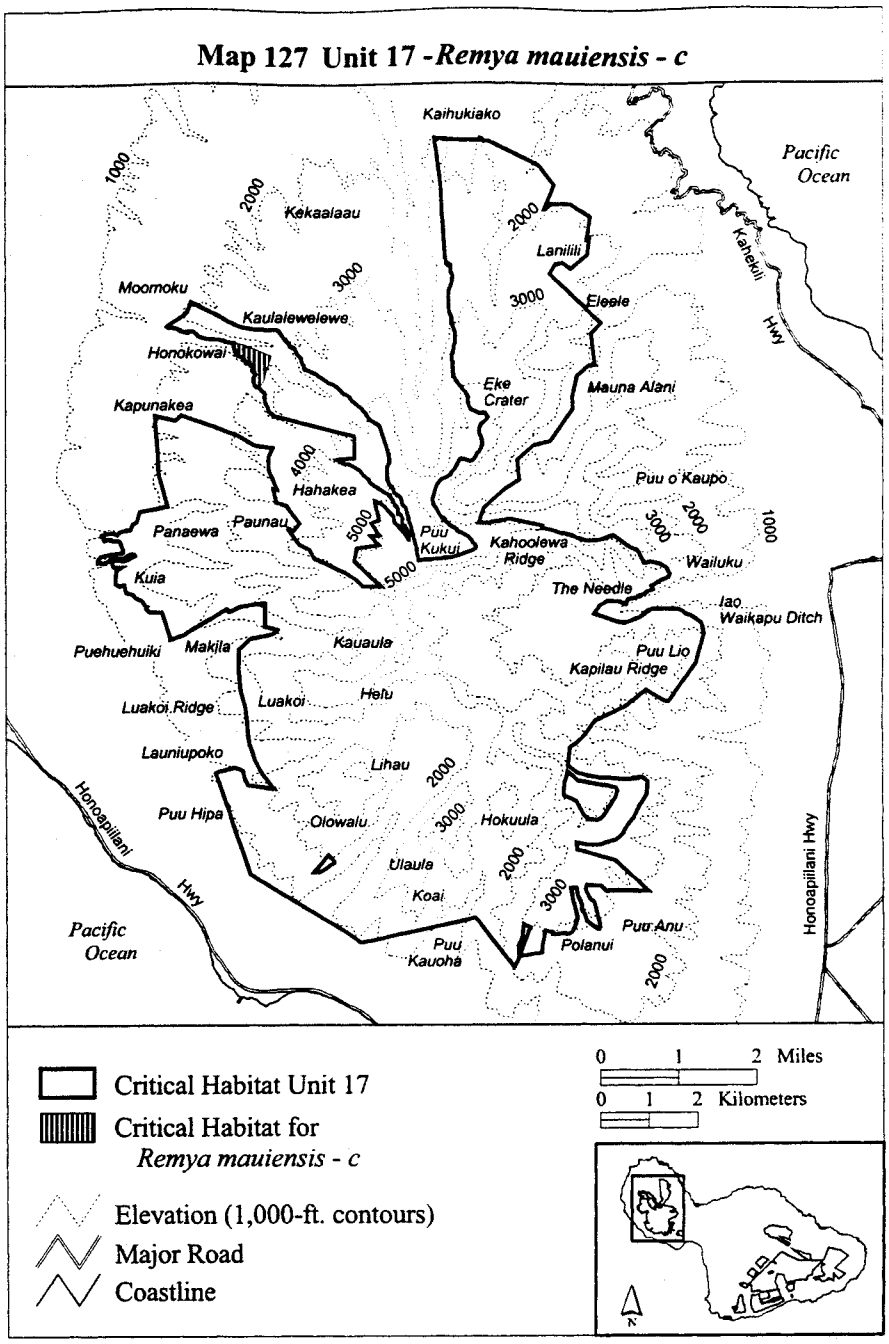
(B) **Note:** Map 126 follows:




(cxxvii) Maui 17—*Remya mauiensis*—c (32 ha; 78 ac).

(A) Unit consists of the following 52 boundary points: Start at 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747295, 2316431; 747296, 2316436; 747510, 2316405; 748060, 2316161; 747945, 2315810; 747915, 2315650; 747824, 2315486; return to starting point.

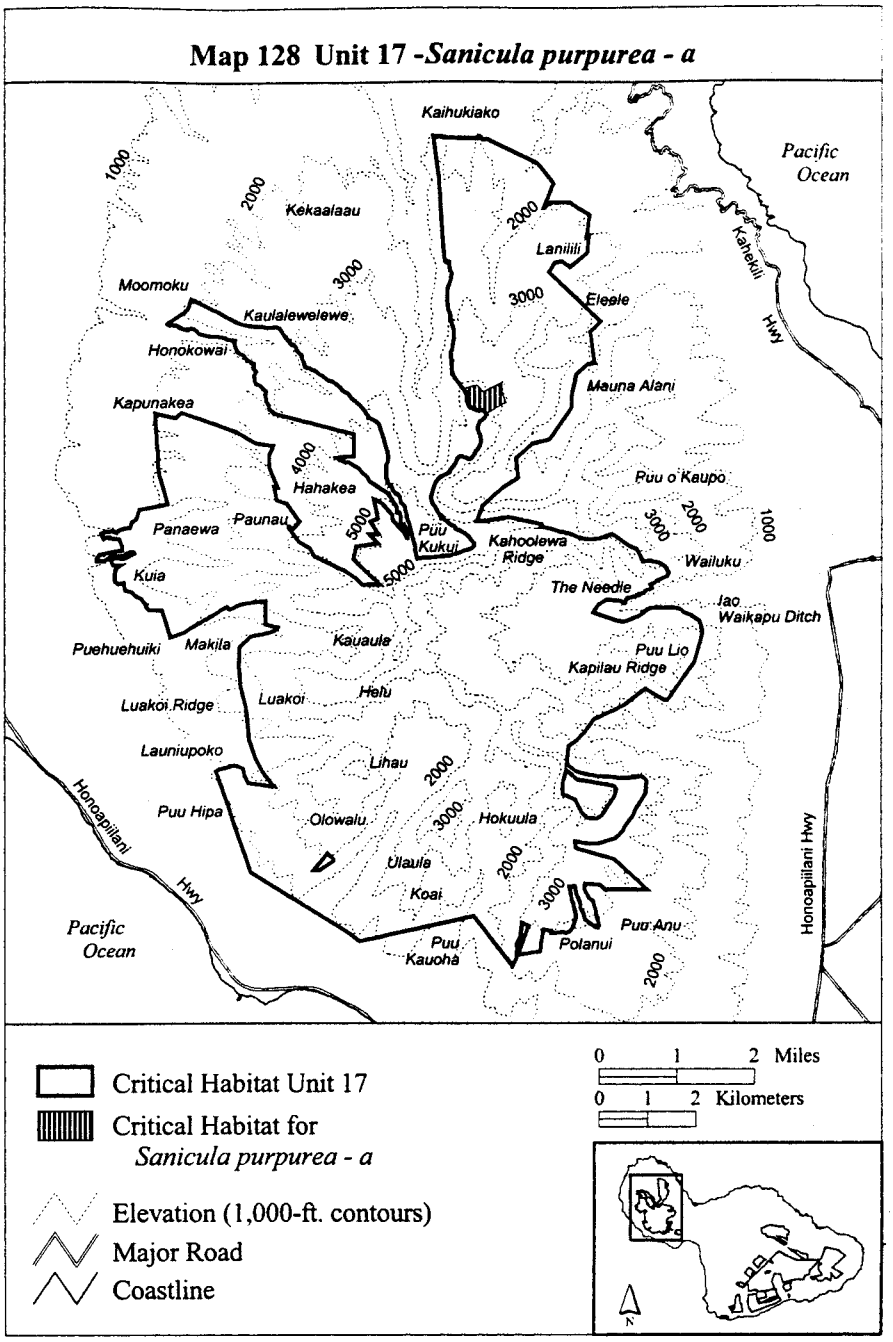
(B) **Note:** Map 127 follows:




(cxxviii) Maui 17—*Sanicula purpurea*—a (34 ha; 84 ac).

(A) Unit consists of the following 26 boundary points: Start at 752495, 2314905; 752453, 2314975; 752453, 2314976; 752416, 2314975; 752381, 2314973; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752043, 2315416; 752194, 2315469; 752315, 2315502; 752449, 2315352; 752817, 2315548; 752838, 2315319; 752900, 2315143; 752499, 2314898; return to starting point.

(B) **Note:** Map 128 follows:

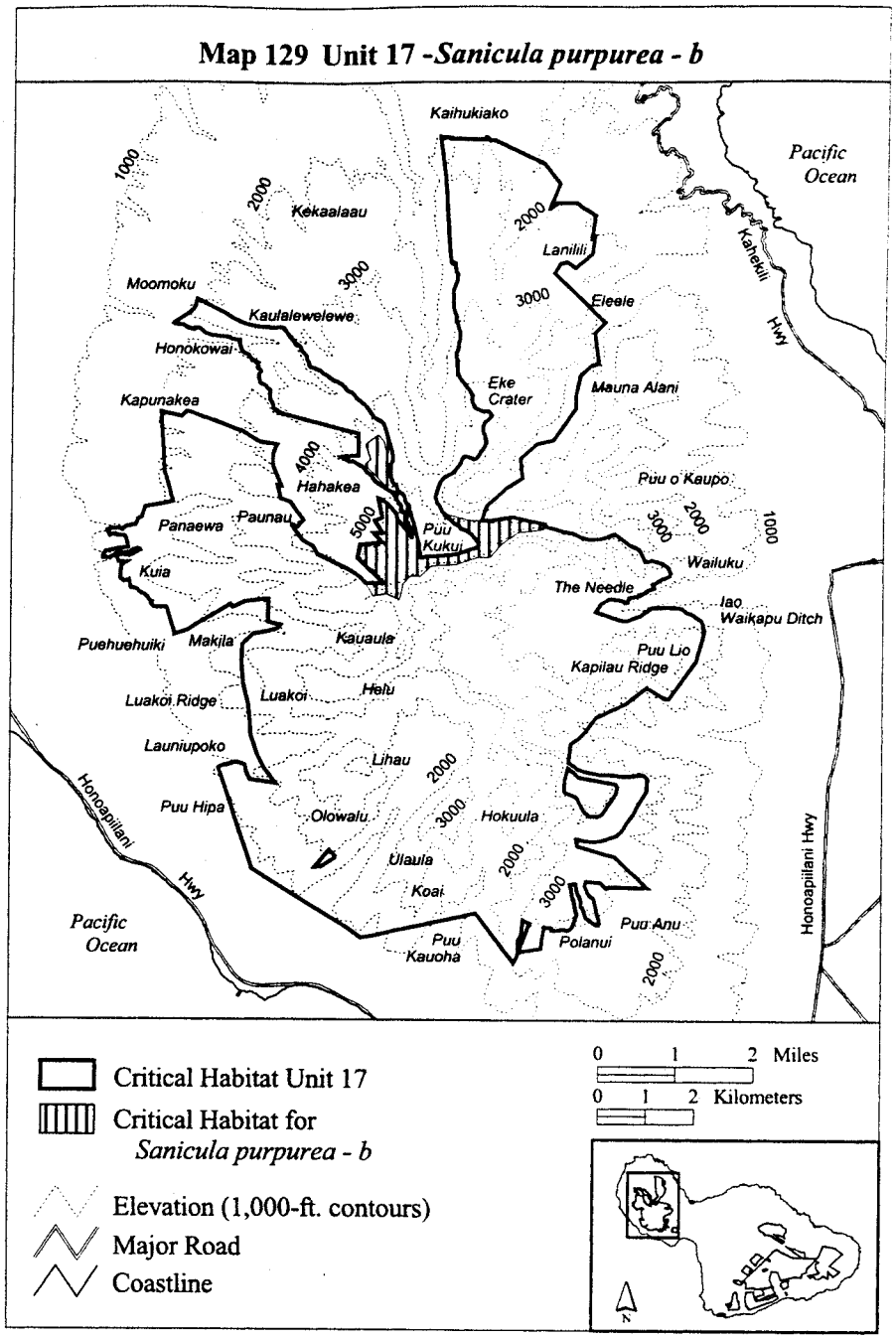



(cxxix) Maui 17—*Sanicula purpurea*—b (306 ha; 756 ac).

(A) Unit consists of the following 270 boundary points: Start at 749939, 2311346; 750305, 2311362; 749759, 2311879; 749818, 2312144; 750261, 2312204; 750099, 2312396; 750276, 2312410; 750113, 2312661; 750261, 2312735; 750185, 2313139; 750220, 2313118; 750265, 2313091; 750306, 2313067; 750358, 2313037; 750373, 2313023; 750566, 2312802; 750568, 2312798; 750565, 2312761; 750564, 2312729; 750574, 2312687; 750574, 2312686; 750581, 2312676; 750586, 2312670; 750636, 2312621; 750675, 2312576; 750701, 2312549; 750729, 2312518; 750733, 2312514; 750763, 2312476; 750804, 2312434; 750835, 2312384; 750877, 2312324; 750877, 2312323; 750878, 2312323; 750879, 2312323; 750880, 2312324; 750889, 2312378; 750889, 2312379; 750885, 2312387; 750887, 2312412; 750887, 2312413; 750876, 2312455; 750851, 2312517; 750819, 2312576; 750799, 2312595; 750799, 2312596; 750798, 2312596; 750757, 2312591; 750749, 2312590; 750747, 2312611; 750734, 2312726; 750739, 2312751; 750739, 2312752; 750730, 2312793; 750712, 2312846; 750711, 2312846; 750711, 2312847; 750691, 2312851; 750690, 2312851; 750687, 2312849; 750671, 2312852; 750654, 2312855; 750651, 2312867; 750650, 2312873; 750649, 2312880; 750650, 2312898; 750652, 2312927; 750658, 2312963; 750658, 2312964; 750636, 2313003; 750632, 2313007; 750567, 2313111; 750565, 2313117; 750562, 2313122; 750571, 2313119; 750482, 2313247; 750468, 2313267; 749907, 2313828; 750025, 2313946; 749907, 2314271; 750187, 2314463; 750305, 2314315; 750379,

2313917; 750339, 2314523; 750386, 2314362; 750414, 2314272; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313946; 750479, 2313933; 750476, 2313919; 750468, 2313903; 750450, 2313871; 750441, 2313851; 750441, 2313850; 750438, 2313827; 750440, 2313794; 750439, 2313772; 750436, 2313747; 750437, 2313723; 750437, 2313700; 750439, 2313671; 750438, 2313647; 750435, 2313610; 750436, 2313597; 750436, 2313596; 750441, 2313585; 750451, 2313562; 750456, 2313545; 750463, 2313528; 750465, 2313510; 750469, 2313497; 750469, 2313496; 750477, 2313484; 750491, 2313465; 750505, 2313443; 750510, 2313432; 750515, 2313420; 750526, 2313409; 750541, 2313398; 750551, 2313389; 750560, 2313367; 750565, 2313356; 750572, 2313334; 750578, 2313319; 750591, 2313304; 750609, 2313283; 750640, 2313257; 750643, 2313255; 750652, 2313247; 750674, 2313233; 750689, 2313219; 750704, 2313203; 750713, 2313180; 750725, 2313151; 750736, 2313118; 750747, 2313077; 750753, 2313062; 750767, 2313040; 750774, 2313031; 750792, 2313015; 750803, 2313003; 750815, 2312997; 750834, 2312921; 750866, 2312797; 750864, 2312784; 750864, 2312768; 750864, 2312767; 750868, 2312756; 750877, 2312736; 750881, 2312727; 750882, 2312717; 750888, 2312691; 750895, 2312668; 750904, 2312647; 750904, 2312646; 750905, 2312646; 751008, 2312240; 751038, 2312126; 751038, 2312124; 751038, 2312088; 751038, 2312083; 751034, 2312059; 751040, 2312045; 751059, 2311963; 751065, 2311938; 751066, 2311935; 751077, 2311889; 751077, 2311888; 751078, 2311887; 751079, 2311887; 751095, 2311890; 751115, 2311894; 751125, 2311897; 751154, 2311907; 751190, 2311915; 751210, 2311916; 751266, 2311917; 751317, 2311916; 751353, 2311910; 751415, 2311923; 751455, 2311926; 751502, 2311927; 751574, 2311945; 751610, 2311953; 751637, 2311945; 751638, 2311945; 751682, 2311949; 751730, 2311960; 751772, 2311971; 751845, 2311984; 751888, 2311992; 751889, 2311992; 751963, 2312014; 752001, 2312036; 752045, 2312060; 752095, 2312064; 752133, 2312081; 752177, 2312098; 752226, 2312119; 752255, 2312146; 752255, 2312147; 752257, 2312154; 752258, 2312161; 752260, 2312173; 752260, 2312174; 752259, 2312178; 752259, 2312186; 752255, 2312201; 752254, 2312203; 752242, 2312224; 752209, 2312264; 752181, 2312294; 752174, 2312305; 752146, 2312343; 752130, 2312360; 752109, 2312384; 752089, 2312404; 752052, 2312430; 752018, 2312454; 751992, 2312468; 751944, 2312486; 751906, 2312492; 751887, 2312501; 751874, 2312514; 751860, 2312545; 751852, 2312558; 751828, 2312576; 751812, 2312583; 751790, 2312588; 751769, 2312599; 751747, 2312616; 751708, 2312656; 751683, 2312672; 751660, 2312697; 751625, 2312730; 751609, 2312742; 751590, 2312761; 751567, 2312785; 751582, 2312795; 751605, 2312809; 752078, 2312676; 752317, 2312676; 752521, 2312676; 752964, 2312750; 753643, 2312602; 753629, 2312550; 753611, 2312482; 753082, 2312425; 752728, 2312174; 752491, 2311908; 752255, 2311908; 751812, 2311746; 751295, 2311716; 751059, 2311495; 750881, 2311509; 750704, 2311347; 750630, 2311007; 750360, 2311126; 750081, 2311078; 749999, 2311246; 749928, 2311346; return to starting point.

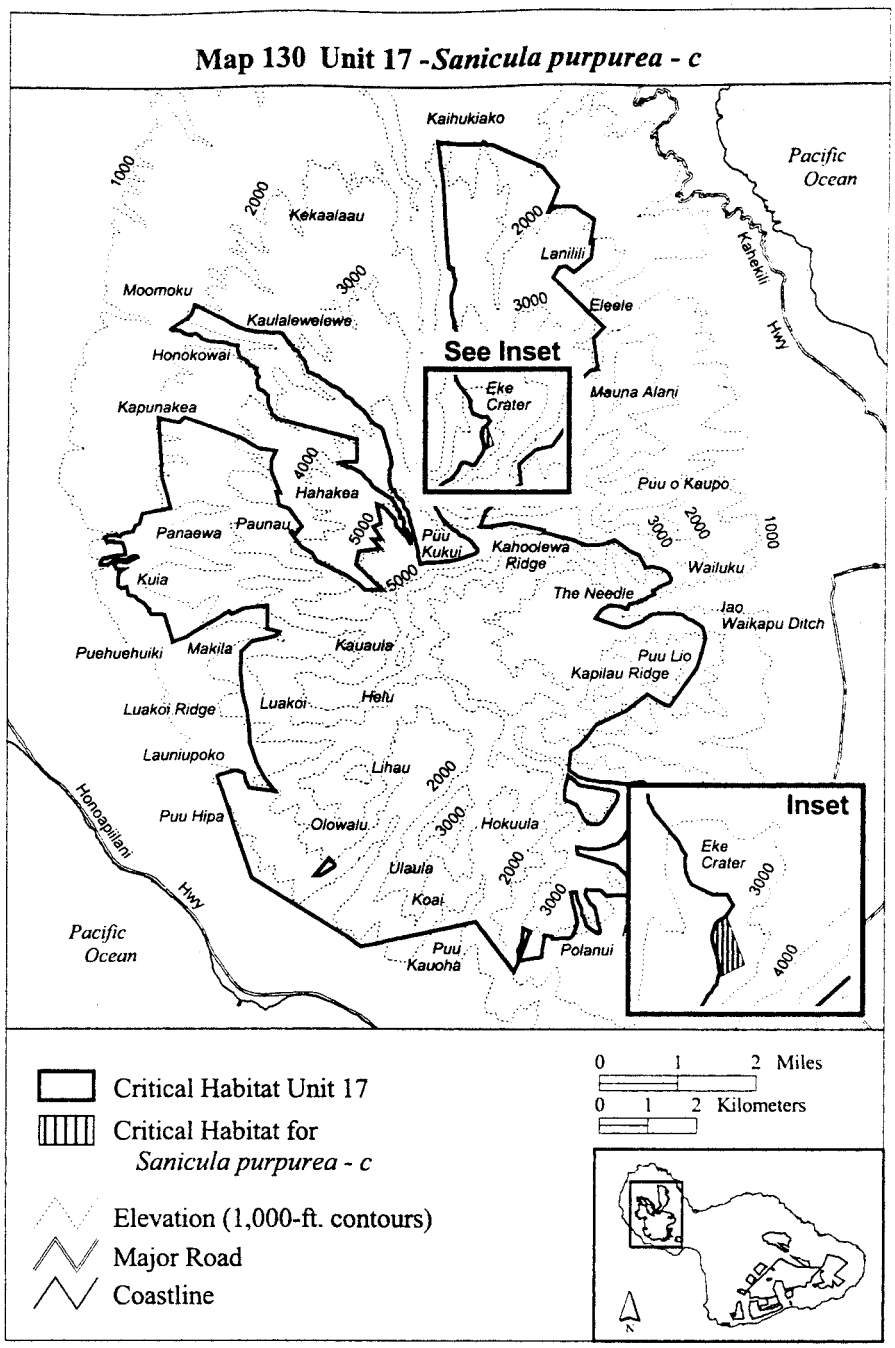
(B) **Note:** Map 129 follows:




(cxxx) Maui 17—*Sanicula purpurea*—c (8 ha; 19 ac).

(A) Unit consists of the following 19 boundary points: Start at 752386, 2314300; 752390, 2314310; 752394, 2314322; 752394, 2314323; 752390, 2314361; 752385, 2314401; 752376, 2314456; 752359, 2314508; 752350, 2314542; 752334, 2314592; 752332, 2314632; 752340, 2314668; 752351, 2314710; 752369, 2314743; 752392, 2314761; 752420, 2314774; 752448, 2314795; 752604, 2314395; 752382, 2314282; return to starting point.

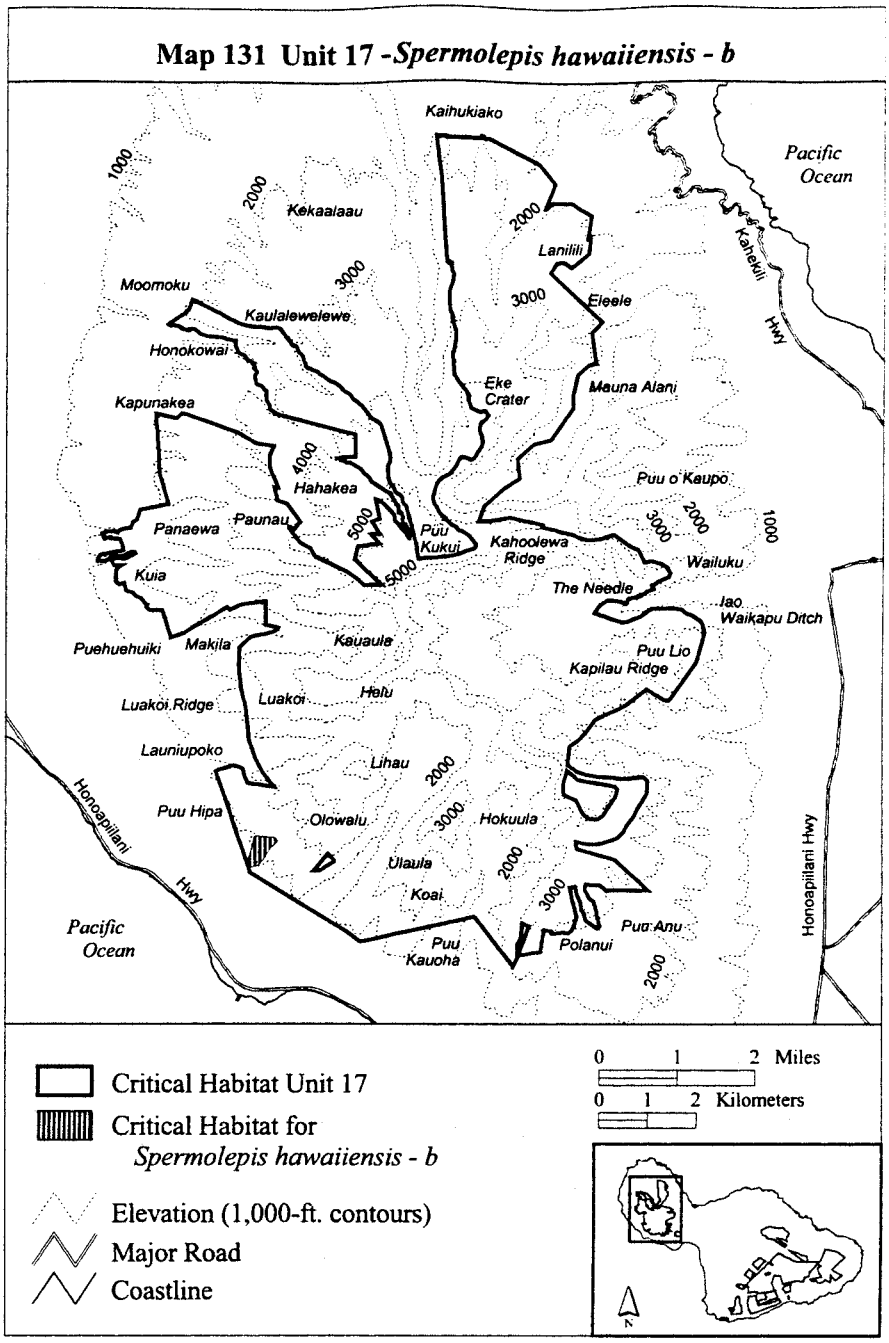
(B) **Note:** Map 130 follows:




(cxxxi) Maui 17—*Spermolepis hawaiiensis*—b (23 ha; 56 ac).

(A) Unit consists of the following 15 boundary points: Start at 747559, 2305612; 747617, 2305791; 747703, 2306156; 747789, 2306167; 747843, 2306153; 747942, 2306144; 748010, 2306130; 748096, 2306137; 748170, 2306086; 748184, 2306061; 748161, 2306016; 748049, 2305919; 747908, 2305689; 747771, 2305547; 747640, 2305517; return to starting point.

(B) **Note:** Map 131 follows:



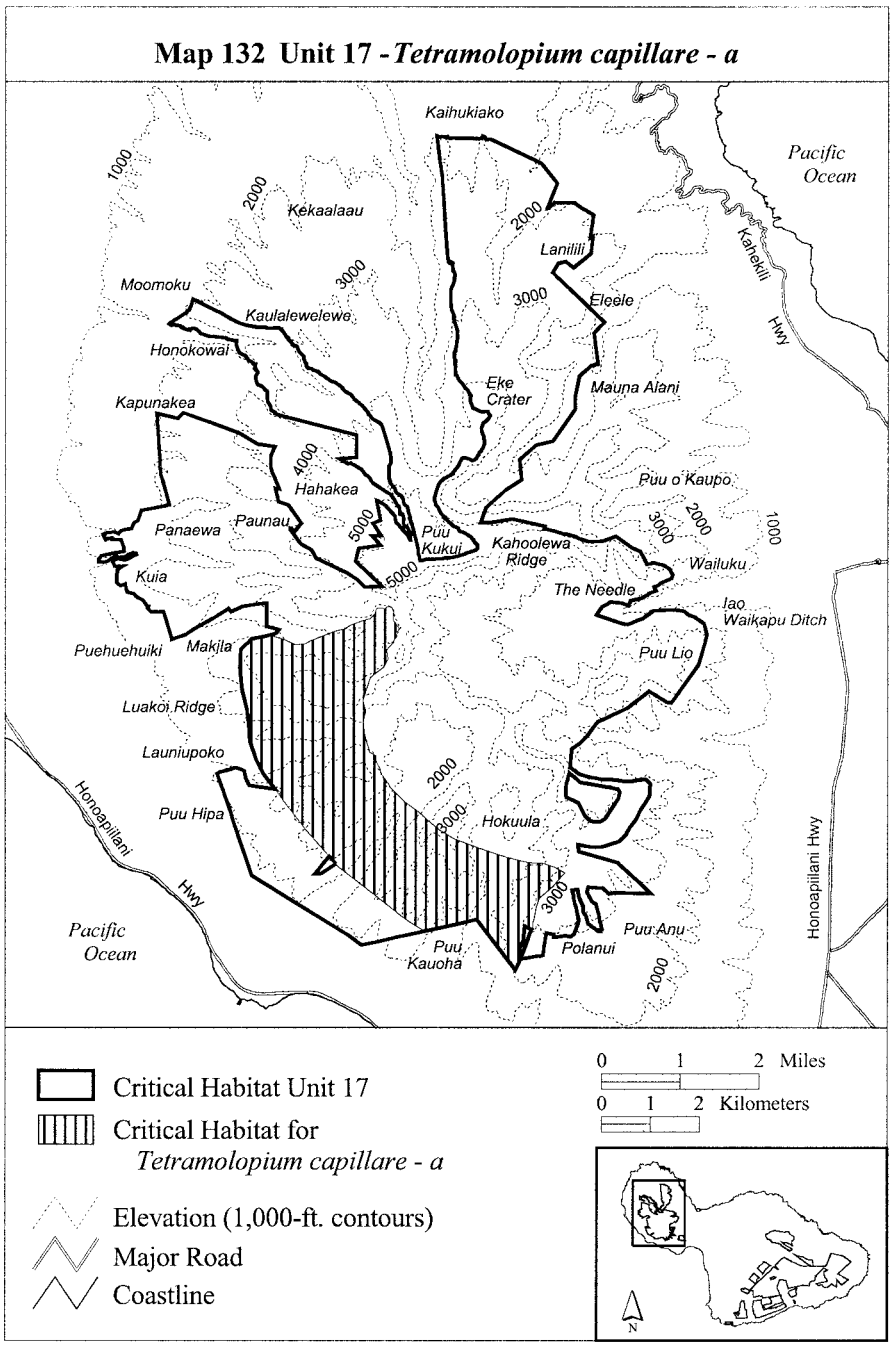

(cxxxii) Maui 17—*Tetramolopium capillare*—a (1,783 ha; 4,405 ac).

(A) Unit consists of the following 106 boundary points: Start at 753165, 2303717; 753304, 2304113; 753310, 2304130; 753365, 2304285; 753367, 2304292; 753234, 2304365; 753213, 2304104; 753136, 2303909; 753136, 2303821; 753136, 2303653; 753134, 2303650; 753042, 2303454; 752244, 2304494; 752075, 2304457; 751171, 2304258; 750787, 2304513; 750132, 2305024; 749428, 2305569; 749226, 2305793; 748731, 2306342; 748269, 2306956; 748096, 2307179; 747868, 2307474; 747703, 2307791; 747578, 2308164; 747558, 2308516; 747523, 2308819; 747420, 2309233; 747378, 2309647; 747392, 2310068; 747618, 2310281; 747935, 2310342; 747979, 2310351; 748255, 2310282; 748531, 2310151; 748738, 2310172; 748844, 2310234; 749327, 2310432; 749542, 2310481; 749646, 2310558; 749937, 2310662; 750058, 2310701; 750146, 2310783; 750157, 2310794; 750168, 2310853; 750181, 2310898; 750231, 2310909; 750364, 2310903; 750415, 2310935; 750473, 2310938; 750521, 2310903; 750537, 2310855; 750542, 2310826; 750524, 2310786; 750524, 2310648; 750566, 2310619; 750648, 2310507; 750656, 2310478; 750627, 2310436; 750582, 2310409; 750574, 2310385; 750590, 2310361; 750601, 2310316; 750582, 2310287; 750555, 2310253; 750534, 2310213; 750502, 2310197; 750509, 2310184; 750399, 2310047; 750432, 2309865; 750350, 2309706; 750179, 2309579; 750058, 2309475; 749910, 2308997; 749965, 2308782; 749916, 2308579; 749932, 2308442; 749954, 2308271; 750042, 2307941; 750166, 2307867; 750187, 2307736; 750256, 2307612; 750284,

2307494; 750442, 2307287; 750465, 2307217; 750753, 2306922; 751036, 2306728; 751439, 2306361; 751774, 2306157; 752327, 2305947; 752871, 2305768; 753260, 2305683; 753470, 2305652; 753563, 2305652; 753626, 2305636; 753874, 2305566; 754007, 2305496; 754053, 2305450; 753820, 2305169; 753540, 2304928; 753462, 2304711; 753427, 2304482; 753399, 2304426; 753396, 2304292; 753299, 2304046; 753237, 2303876; return to starting point.

(B) Excluding the area bounded by the following 11 boundary points (6ha; 15ac): Start at 749362, 2305641; 749057, 2305433; 748930, 2305439; 749226, 2305793; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749362, 2305640; return to starting point.

(C) **Note:** Map 132 follows:

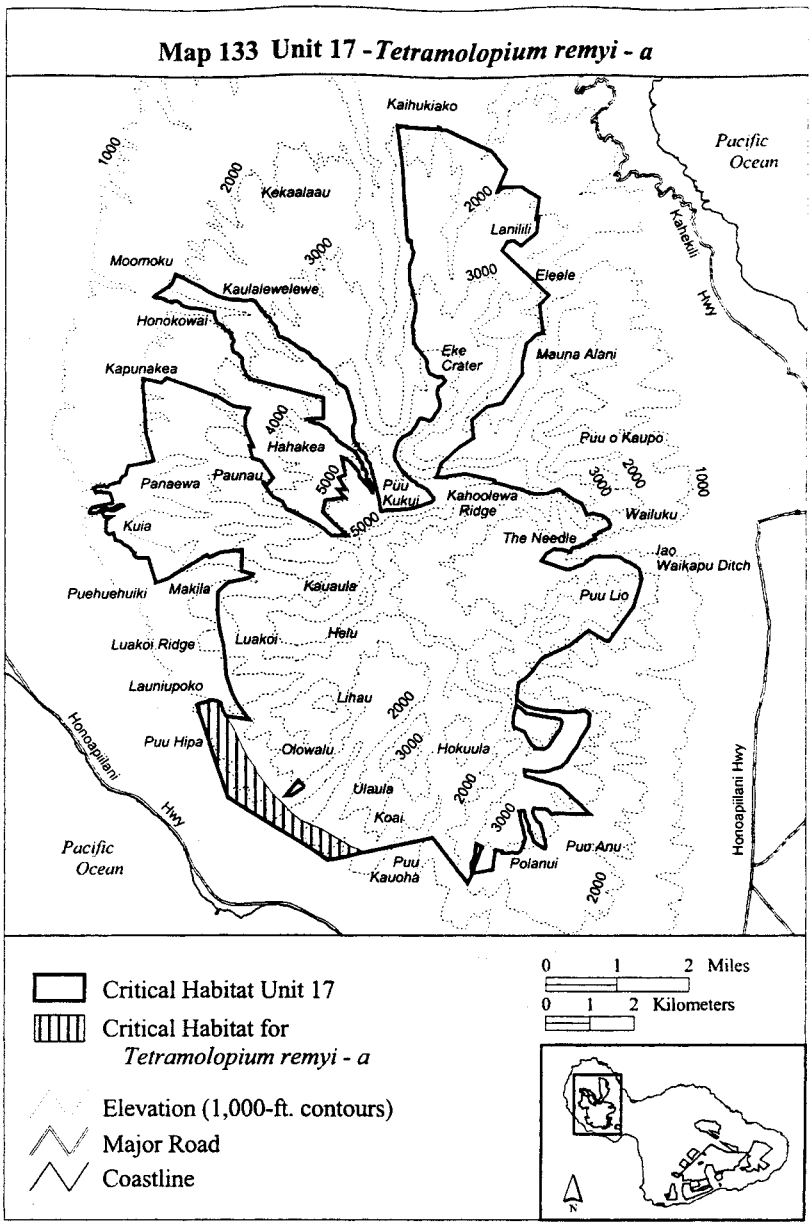



(cxxxiii) Maui 17—*Tetramolopium remyi*—a (288 ha; 711 ac).

(A) Unit consists of the following 34 boundary points: Start at 750702, 2304154; 750687, 2304151; 750686, 2304151; 750680, 2304150; 749916, 2304019; 748359, 2304949; 747628, 2305445; 747343, 2306214; 747283, 2306377; 747263, 2306446; 747206, 2306648; 747191, 2306692; 746912, 2307495; 746967, 2307530; 747135, 2307579; 747275, 2307621; 747405, 2307590; 747464, 2307541; 747496, 2307408; 747571, 2307254; 747576, 2307243; 747664, 2307114; 747769,

2306921; 747937, 2306568; 748094, 2306298; 748227, 2306099; 748294, 2305966; 748613, 2305521; 748914, 2305226; 749056, 2305056; 749264, 2304887; 749718, 2304706; 750413, 2304302; 750566, 2304230; return to starting point.

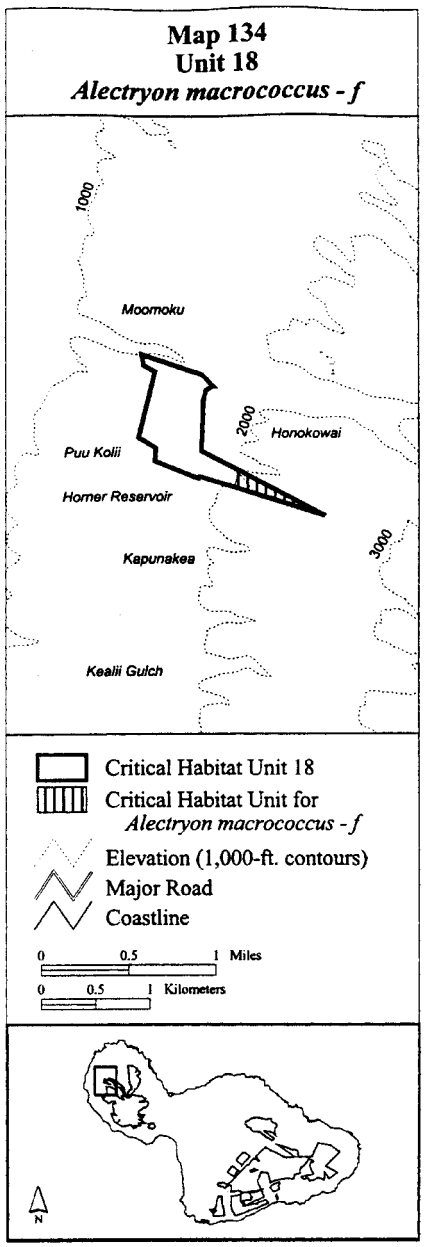
(B) **Note:** Map 133 follows:



(cxxxiv) Maui 18—*Alectryon macrococcus*—f (7 ha; 18 ac).

(A) Unit consists of the following 7 boundary points: Start at 745986, 2315882; 746238, 2315748; 746249, 2315743; 746785, 2315459; 746095, 2315676; 746082, 2315680; 745946, 2315723; return to starting point.

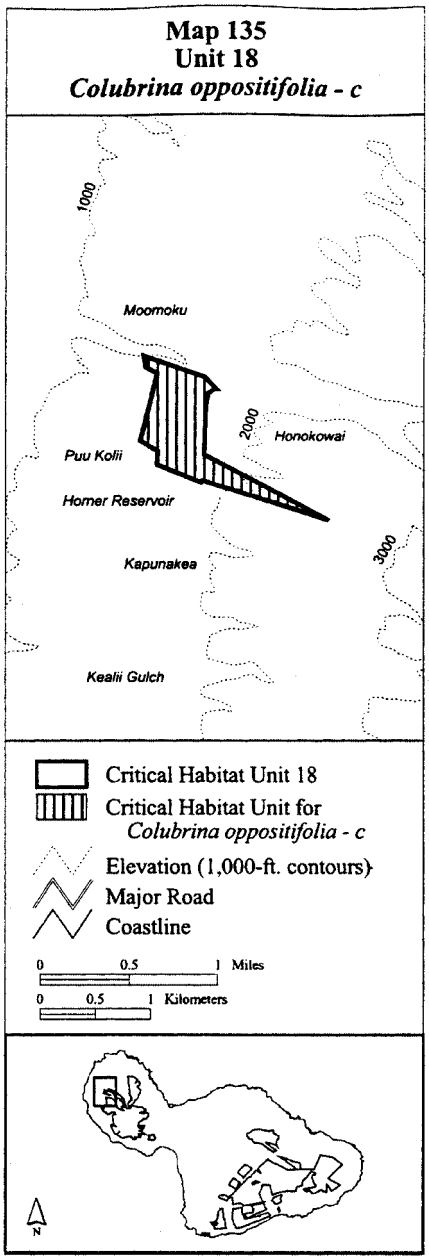
(B) **Note:** Map 134 follows:




(cxxxv) Maui 18—*Colubrina oppositifolia*—c (64 ha; 157 ac).

(A) Unit consists of the following 34 boundary points: Start at 745633, 2315799; 745216, 2315967; 745220, 2316095; 745062, 2316193; 745156, 2316554; 745218, 2316810; 745110, 2316866; 745095, 2316969; 745651, 2316773; 745745, 2316673; 745748, 2316670; 745741, 2316666; 745700, 2316637; 745682, 2316625; 745668, 2316564; 745666, 2316551; 745660, 2316498; 745660, 2316496; 745660, 2316495; 745656, 2316346; 745650, 2316196; 745644, 2316064; 745644, 2316063; 745645, 2316063; 746238, 2315748; 746249, 2315743; 746713, 2315497; 746710, 2315483; 746095, 2315676; 746082, 2315680; 745637, 2315820; 745636, 2315820; 745635, 2315819; 745634, 2315807; return to starting point.

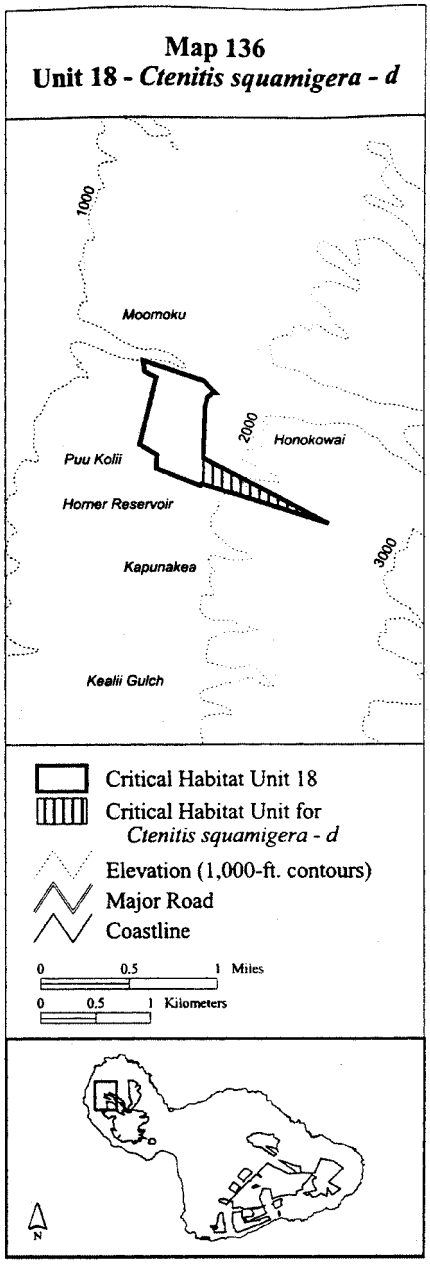
(B) **Note:** Map 135 follows:




(cxxxvi) Maui 18—*Ctenitis squamigera*—d (14 ha; 35 ac).

(A) Unit consists of the following 13 boundary points: Start at 745644, 2316064; 745644, 2316063; 745645, 2316063; 746238, 2315748; 746249, 2315743; 746785, 2315459; 746095, 2315676; 746082, 2315680; 745637, 2315820; 745636, 2315820; 745635, 2315819; 745641, 2316066; 745644, 2316067; return to starting point.

(B) **Note:** Map 136 follows:

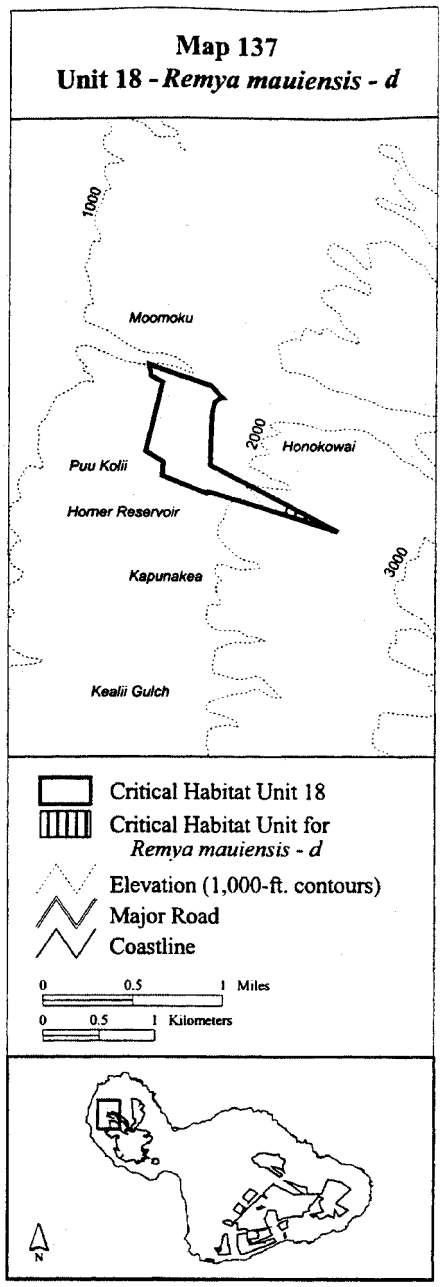



(cxxxvii) Maui 18—*Remya mauiensis*—d (2 ha; 6 ac).

(A) Unit consists of the following 3 boundary points: Start at 746322, 2315704; 746785, 2315459; 746309, 2315609; return to starting point.

(B) **Note:** Map 137 follows:

BILLING CODE 4310–55–C




(cxxxviii) Table of Protected Species Within Each Critical Habitat Unit for Maui

| Unit name | Species occupied | Species unoccupied |
|---|---|---|
| Maui 1—*Centaurium sebaeoides*—a | *Centaurium sebaeoides*. | |
| Maui 1—*Sesbania tomentosa*—a | *Sesbania tomentosa*. | |
| Maui 2—*Brighamia rockii*—a | ..... | *Brighamia rockii*. |
| Maui 2—*Brighamia rockii*—b | ..... | *Brighamia rockii*. |
| Maui 2—*Centaurium sebaeoides*—b | *Centaurium sebaeoides*. | |
| Maui 3—*Brighamia rockii*—c | ..... | *Brighamia rockii*. |
| Maui 4—*Brighamia rockii*—d | ..... | *Brighamia rockii*. |
| Maui 4—*Peucedanum sandwicense*—a | *Peucedanum sandwicense*. | |
| Maui 5—*Brighamia rockii*—e | ..... | *Brighamia rockii*. |
| Maui 6—*Ischaemum byrone*—a | *Ischaemum byrone*. | |
| Maui 6—*Mariscus pennatiformis*—a | *Mariscus pennatiformis*. | |
| Maui 7—*Ischaemum byrone*—b | *Ischaemum byrone*. | |
| Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a | *Cyanea copelandii* ssp. *haleakalaensis*. | |
| Maui 8—*Cyanea glabra*—a | ..... | *Cyanea glabra*. |
| Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a | *Cyanea hamatiflora* ssp. *hamatiflora*.. | |

| Unit name | Species occupied | Species unoccupied |
|---|---|---|
| Maui 8—*Cyanea mceldowneyi*—a | *Cyanea mceldowneyi*. | |
| Maui 8—*Diplazium molokaiense*—a | *Diplazium molokaiense*. | |
| Maui 8—*Geranium multiflorum*—a | ..... | *Geranium multiflorum*. |
| Maui 8—*Melicope balloui*—a | *Melicope balloui*. | |
| Maui 8—*Phlegmariurus mannii*—a | *Phlegmariurus mannii*. | |
| Maui 8—*Phyllostegia mannii*—a | ..... | *Phyllostegia mannii*. |
| Maui 8—*Phyllostegia mollis*—a | ..... | *Phyllostegia mollis*. |
| Maui 8—*Zanthoxylum hawaiiense*—a | *Zanthoxylum hawaiiense*. | |
| Maui 9—*Alectryon macrococcus*—a | ..... | *Alectryon macrococcus*. |
| Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a | *Argyroxiphium sandwicense* ssp. *macrocephalum*. | |
| Maui 9—*Asplenium fragile* var. *insulare*—a | ..... | *Asplenium fragile* var.*insulare*. |
| Maui 9—*Bidens micrantha* ssp. *kalealaha*—a | *Bidens micrantha* ssp. *kalealaha*. | |
| Maui 9—*Bidens micrantha* ssp. *kalealaha*—b | *Bidens micrantha* ssp. *kalealaha*. | |
| Maui 9—*Clermontia lindseyana*—a | *Clermontia lindseyana*. | |
| Maui 9—*Clermontia lindseyana*—b | ..... | *Clermontia lindseyana*. |
| Maui 9—*Clermontia samuelii*—a | *Clermontia samuelii*. | |
| Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b | *Cyanea copelandii* ssp. *haleakalaensis*. | |
| Maui 9—*Cyanea glabra*—b | ..... | *Cyanea glabra*. |
| Maui 9—*Cyanea glabra*—c | ..... | *Cyanea glabra*. |
| Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora—b* | *Cyanea hamatiflora* ssp. *hamatiflora*. | |
| Maui 9—*Diellia erecta*—a | ..... | *Diellia erecta*. |
| Maui 9—*Diellia erecta*—b | ..... | *Diellia erecta*. |
| Maui 9—*Diplazium molokaiense*—b | ..... | *Diplazium molokaiense*. |
| Maui 9—*Flueggea neowawraea*—a | *Flueggea neowawraea*. | |
| Maui 9—*Geranium arboreum*—a | *Geranium arboreum*. | |
| Maui 9—*Geranium multiflorum*—b | *Geranium multiflorum*. | |
| Maui 9—*Geranium multiflorum*—c | ..... | *Geranium multiflorum*. |
| Maui 9—*Lipochaeta kamolensis*—a | *Lipochaeta kamolensis*. | |
| Maui 9—*Melicope balloui*—b | *Melicope balloui*. | |
| Maui 9—*Melicope knudsenii*—a | *Melicope knudsenii*. | |
| Maui 9—*Melicope mucronulata*—a | ..... | *Melicope mucronulata*. |
| Maui 9—*Melicope ovalis*—a | *Melicope ovalis*. | |
| Maui 9—*Neraudia sericea*—a | *Neraudia sericea*. | |
| Maui 9—*Nototrichium humile*—a | ..... | *Nototrichium humile*. |
| Maui 9—*Phlegmariurus mannii*—b | *Phlegmariurus mannii*. | |
| Maui 9—*Phlegmariurus mannii*—c | *Phlegmariurus mannii*. | |
| Maui 9—*Phyllostegia mollis*—b | ..... | *Phyllostegia mollis*. |
| Maui 9—*Plantago princeps*—a | *Plantago princeps*. | |
| Maui 9—*Platanthera holochila*—a | ..... | *Platanthera holochila*. |
| Maui 9—*Schiedea haleakalensis*—a | *Schiedea haleakalensis*. | |
| Maui 9—*Schiedea haleakalensis*—b | *Schiedea haleakalensis*. | |
| Maui 10—*Alectryon macrococcus*—b | ..... | *Alectryon macrococcus*. |
| Maui 11—*Lipochaeta kamolensis*—b | ..... | *Lipochaeta kamolensis*. |
| Maui 12—*Vigna o-wahuensis*—a | *Vigna o-wahuensis*. | |
| Maui 13—*Alectryon macrococcus*—c | ..... | *Alectryon macrococcus*. |
| Maui 13—*Bonamia menziesii*—a | *Bonamia menziesii*. | |
| Maui 13—*Cenchrus agrimonioides*—a | *Cenchrus agrimonioides*. | |
| Maui 13—*Colubrina oppositifolia*—a | ..... | *Colubrina oppositifolia*. |
| Maui 13—*Flueggea neowawraea*—b | ..... | *Flueggea neowawraea*. |
| Maui 13—*Melicope adscendens*—a | *Melicope adscendens*. | |
| Maui 13—*Melicope knudsenii*—b | ..... | *Melicope knudsenii*. |
| Maui 13—*Melicope mucronulata*—b | ..... | *Melicope mucronulata*. |
| Maui 13—*Sesbania tomentosa*—b | *Sesbania tomentosa*. | |
| Maui 13—*Spermolepis hawaiiensis*—a | *Spermolepis hawaiiensis*. | |
| Maui 14—*Geranium arboreum*—b | *Geranium arboreum*. | |
| Maui 15—*Geranium arboreum*—c | *Geranium arboreum*. | |
| Maui 16—*Hibiscus brackenridgei*—a | *Hibiscus brackenridgei*. | |
| Maui 17—*Alectryon macrococcus*—d | ..... | *Alectryon macrococcus*. |
| Maui 17—*Alectryon macrococcus*—e | *Alectryon macrococcus*. | |
| Maui 17—*Cenchrus agrimonioides*—b | ..... | *Cenchrus agrimonioides*. |
| Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a | ..... | *Clermontia oblongifolia* ssp. *mauiensis*. |
| Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b | ..... | *Clermontia oblongifolia* ssp. *mauiensis*. |
| Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c | *Clermontia oblongifolia* ssp. *mauiensis*. | |
| Maui 17—*Colubrina oppositifolia*—b | ..... | *Colubrina oppositifolia*. |
| Maui 17—*Ctenitis squamigera*—a | *Ctenitis squamigera*. | |
| Maui 17—*Ctenitis squamigera*—b | *Ctenitis squamigera*. | |
| Maui 17—*Ctenitis squamigera*—c | *Ctenitis squamigera*. | |
| Maui 17—*Cyanea glabra*—d | ..... | *Cyanea glabra*. |

| Unit name | Species occupied | Species unoccupied |
|---|---|---|
| Maui 17—*Cyanea glabra*—e | ..... | *Cyanea glabra*. |
| Maui 17—*Cyanea glabra*—f | ..... | *Cyanea glabra*. |
| Maui 17—*Cyanea glabra*—g | *Cyanea glabra*. | |
| Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a | *Cyanea grimesiana* ssp. *grimesiana*. | |
| Maui 17—*Cyanea lobata*—a | *Cyanea lobata*. | |
| Maui 17—*Cyanea lobata*—b | ..... | *Cyanea lobata*. |
| Maui 17—*Cyanea lobata*—c | ..... | *Cyanea lobata*. |
| Maui 17—*Cyrtandra munroi*—a | ..... | *Cyrtandra munroi*. |
| Maui 17—*Cyrtandra munroi*—b | *Cyrtandra munroi*. | |
| Maui 17—*Cyrtandra munroi*—c | ..... | *Cyrtandra munroi*. |
| Maui 17—*Diellia erecta*—c | ..... | *Diellia erecta*. |
| Maui 17—*Diellia erecta*—d | *Diellia erecta*. | |
| Maui 17—*Diellia erecta*—e | *Diellia erecta*. | |
| Maui 17—*Diellia erecta*—f | *Diellia erecta*. | |
| Maui 17—*Diplazium molokaiense*—c | ..... | *Diplazium molokaiense*. |
| Maui 17—*Dubautia plantaginea* ssp. *humilis*—a | ..... | *Dubautia plantaginea* ssp. *humilis*. |
| Maui 17—*Dubautia plantaginea* ssp. *humilis*—b | ..... | *Dubautia plantaginea* ssp. *humilis*. |
| Maui 17—*Dubautia plantaginea* ssp. *humilis*—c | *Dubautia plantaginea* ssp. *humilis*. | |
| Maui 17—*Gouania vitifolia*—a | ..... | *Gouania vitifolia*. |
| Maui 17—*Hedyotis coriacea*—a | *Hedyotis coriacea*. | |
| Maui 17—*Hedyotis coriacea*—b | ..... | *Hedyotis coriacea*. |
| Maui 17—*Hedyotis mannii*—a | *Hedyotis mannii*. | |
| Maui 17—*Hesperomannia arbuscula*—a | ..... | *Hesperomannia arbuscula*. |
| Maui 17—*Hesperomannia arbuscula*—b | *Hesperomannia arbuscula*. | |
| Maui 17—*Hibiscus brackenridgei*—b | *Hibiscus brackenridgei*. | |
| Maui 17—*Isodendrion pyrifolium*—a | ..... | *Isodendrion pyrifolium*. |
| Maui 17—*Lysimachia lydgatei*—a | *Lysimachia lydgatei*. | |
| Maui 17—*Lysimachia lydgatei*—b | ..... | *Lysimachia lydgatei*. |
| Maui 17—*Lysimachia lydgatei*—c | ..... | *Lysimachia lydgatei*. |
| Maui 17—*Lysimachia lydgatei*—d | *Lysimachia lydgatei*. | |
| Maui 17—*Lysimachia lydgatei*—e | *Lysimachia lydgatei*. | |
| Maui 17—*Neraudia sericea*—b | *Neraudia sericea*. | |
| Maui 17—*Peucedanum sandwicense*—b | ..... | *Peucedanum sandwicense*. |
| Maui 17—*Phlegmariurus mannii*—d | *Phlegmariurus mannii*. | |
| Maui 17—*Phlegmariurus mannii*—e | *Phlegmariurus mannii*. | |
| Maui 17—*Plantago princeps*—b | *Plantago princeps*. | |
| Maui 17—*Platanthera holochila*—b | *Platanthera holochila*. | |
| Maui 17—*Platanthera holochila*—c | ..... | *Platanthera holochila*. |
| Maui 17—*Pteris lidgatei*—a | *Pteris lidgatei*. | |
| Maui 17—*Pteris lidgatei*—b | *Pteris lidgatei*. | |
| Maui 17—*Remya mauiensis*—a | *Remya mauiensis*. | |
| Maui 17—*Remya mauiensis*—b | *Remya mauiensis*. | |
| Maui 17—*Remya mauiensis*—c | ..... | *Remya mauiensis*. |
| Maui 17—*Sanicula purpurea*—a | ..... | *Sanicula purpurea*. |
| Maui 17—*Sanicula purpurea*—b | *Sanicula purpurea*. | |
| Maui 17—*Sanicula purpurea*—c | *Sanicula purpurea*. | |
| Maui 17—*Spermolepis hawaiiensis*—b | *Spermolepis hawaiiensis*. | |
| Maui 17—*Tetramolopium capillare*—a | *Tetramolopium capillare*. | |
| Maui 17—*Tetramolopium remyi*—a | ..... | *Tetramolopium remyi*. |
| Maui 18—*Alectryon macrococcus*—f | ..... | *Alectryon macrococcus*. |
| Maui 18—*Colubrina oppositifolia*—c | *Colubrina oppositifolia*. | |
| Maui 18—*Ctenitis squamigera*—d | ..... | *Ctenitis squamigera*. |
| Maui 18—*Remya mauiensis*—d | ..... | *Remya mauiensis*. |

(cxxxix) Critical habitat unit descriptions and maps, and a description of primary constituent elements, for Family Rhamnaceae: *Gouania hillebrandi* on the island of Maui is provided in 50 CFR 17.96(a).

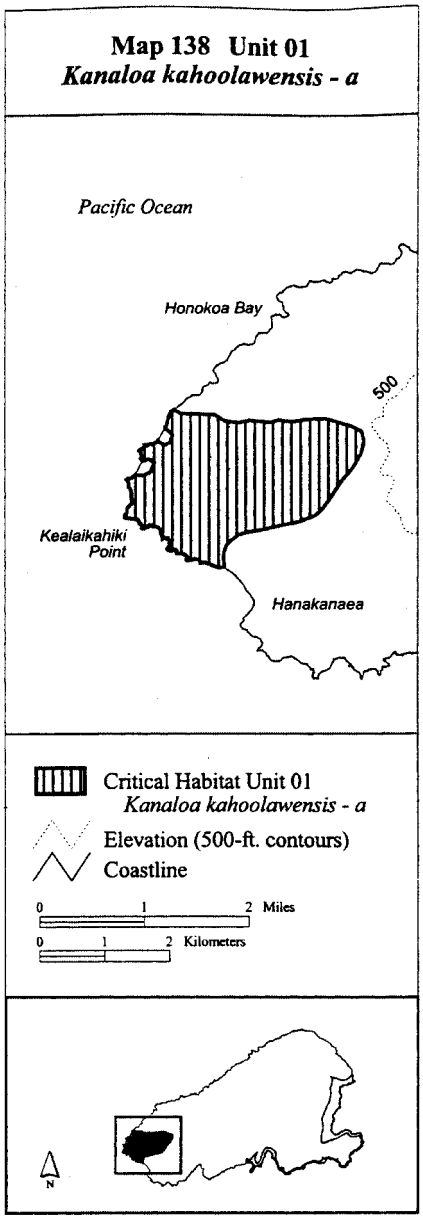
(2) *Kahoolawe.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(i) Kahoolawe 1—*Kanaloa kahoolawensis*—a (62 ha; 1,388 ac).

(A) Unit consists of the following 53 boundary points and the intermediate coastline: 741288, 2270367; 739913, 2271787; 739924, 2271802; 740037, 2271790; 740156, 2271842; 740226, 2271995; 740142, 2272051; 740036, 2272014; 740031, 2272022; 740031, 2272025; 740030, 2272030; 740266, 2272329; 740273, 2272338; 740375, 2272265; 740467, 2272316; 740500, 2272422; 740407, 2272520; 740392, 2272537; 740396, 2272546; 740401, 2272558; 740521, 2272815; 740529, 2272822; 740631, 2272765; 741148, 2272741; 741302, 2272644; 741524, 2272620; 741689, 2272648; 742016, 2272620; 742142, 2272660; 742340, 2272628; 742578, 2272668; 742844, 2272680; 743224, 2272571; 743406, 2272470; 743438, 2272325; 743389, 2272115; 743244, 2271885; 743103, 2271711; 742901, 2271404; 742784, 2271259; 742687, 2271170; 742453, 2271077; 742344, 2271053; 742190, 2271025; 741883, 2270952; 741673, 2270912; 741508, 2270875; 741415, 2270795; 741326, 2270714; 741290, 2270597; 741282, 2270508; 741286, 2270423; 741288, 2270367; return to starting point.

(B) **Note:** Map 138 follows :

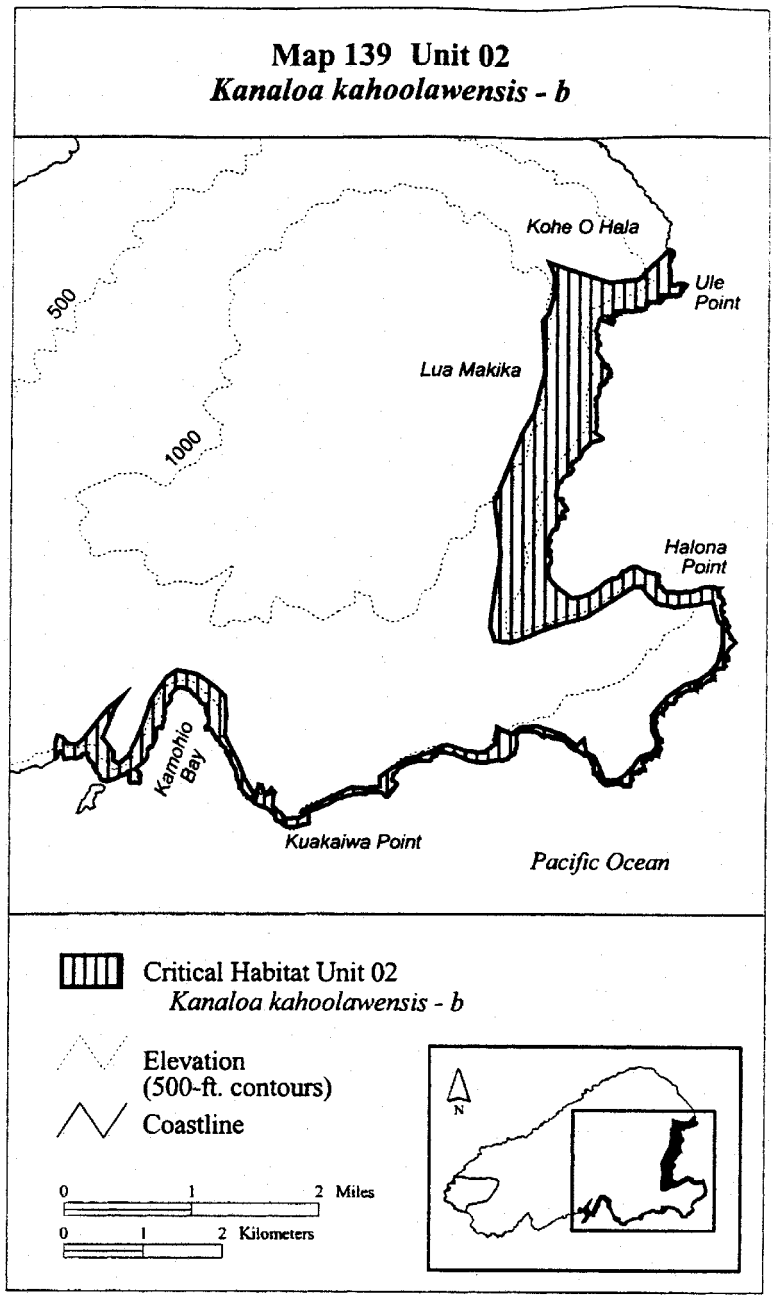
BILLING CODE 4310–55–P




(ii) Kahoolawe 2—*Kanaloa kahoolawensis*—b (613 ha; 1,516 ac).

(A) Unit consists of the following 131 boundary points and the intermediate coastline: 756526, 2276870; 756534, 2276893; 748810, 2270407; 748804, 2270414; 748801, 2270602; 748829, 2270694; 748896, 2270675; 748956, 2270592; 749080, 2270581; 749149, 2270650; 749452, 2271037; 749659, 2271200; 749547, 2271037; 749432, 2270760; 749397, 2270670; 749534, 2270492; 749529, 2270389; 749599, 2270339; 749724, 2270439; 749837, 2270680; 749914, 2270865; 749962, 2271002; 750002, 2271142; 750187, 2271420; 750335, 2271525; 750605, 2271469; 750812, 2271310; 750943, 2271192; 750958, 2270952; 750945, 2270692; 751093, 2270402; 751195, 2270154; 751278, 2270019; 751272, 2270015; 751343, 2269909; 751373, 2270074; 751419, 2270068; 751438, 2269987; 751483, 2269952; 751538, 2270023; 751576, 2269978; 751565, 2269934; 751553, 2269794; 751670, 2269694; 751700, 2269639; 751893, 2269652; 751933, 2269679; 751928, 2269742; 752308, 2269927; 752533, 2270032; 752756, 2270029; 752909, 2270054; 752896, 2270169; 753054, 2270282; 753219, 2270392; 753537, 2270482; 753667, 2270557; 753667, 2270551; 753757, 2270587; 754009, 2270497; 754207, 2270480; 754355, 2270585; 754382, 2270807; 754562, 2270710; 754677, 2270807; 754877, 2270822; 755212, 2270710; 755390, 2270580; 755480, 2270660; 755510, 2270495; 755605, 2270439; 755680, 2270285; 755747, 2270135; 755897, 2270132; 755995, 2270202; 756108, 2270312; 756168, 2270405; 756226, 2270450; 756341, 2270495; 756393, 2270550; 756401, 2270645; 756338, 2270782; 756333, 2270950; 756408, 2271057; 756523, 2271185; 756716, 2271328; 756763, 2271353; 756916, 2271408; 757056, 2271503; 757164, 2271635; 757209, 2271808; 757224, 2271970; 757214, 2271970; 757214, 2272116; 757154, 2272171; 757116, 2272326; 757101, 2272408; 756891, 2272366; 756608, 2272333; 756386, 2272378; 756271, 2272488; 756198, 2272593; 756078, 2272571; 755795, 2272388; 755508, 2272205; 755210, 2272115; 754942, 2272025; 754947, 2272036; 754785, 2271960; 754550, 2271868; 754339, 2271898; 754289, 2272068; 754297, 2272223; 754327, 2272463; 754339, 2272518; 754412, 2273006; 754327, 2273668; 754665, 2274523; 754833, 2274812; 754954, 2275312; 754948, 2275650; 754918, 2275963; 755008, 2276059; 755062, 2276282; 755068, 2276565; 755008, 2276710; 755767, 2276457; 756140, 2276495; 756363, 2276718; 756518, 2276871; 756526, 2276870; return to starting point.

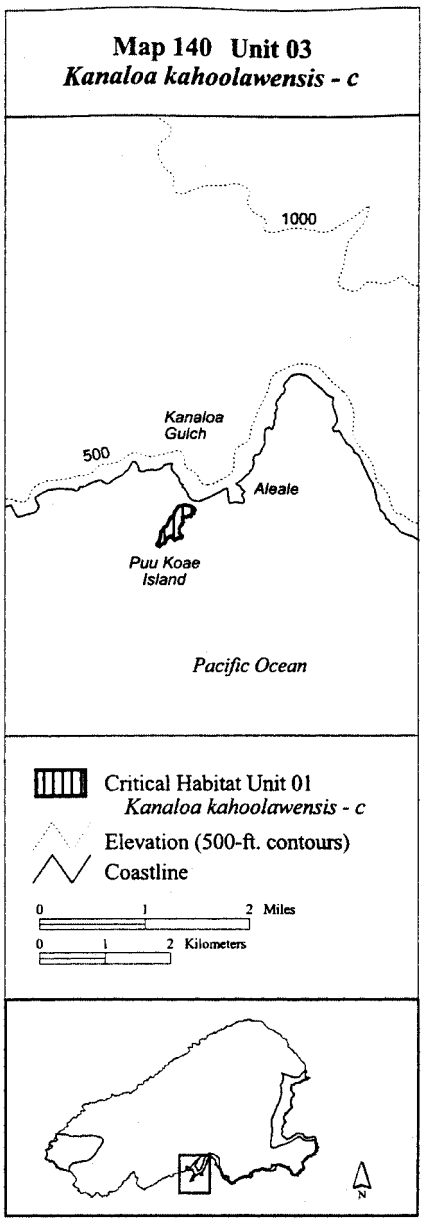
(B) **Note:** Map 139 follows:




(iii) Kahoolawe 3—*Kanaloa kahoolawensis*—c (5 ha; 12 ac).

(A) Unit consists of the entire offshore island located at approximately: 749231, 2269900.

(B) **Note:** Map 140 follows:

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(iv) Table of Protected Species Within Each Critical Habitat Unit for Kahoolawe

| Unit name | Species occupied | Species unoccupied |
|---|---|---|
| Kahoolawe 1—*Kanaloa kahoolawensis*—a | ..... | *Kanaloa kahoolawensis.* |
| Kahoolawe 2—*Kanaloa kahoolawensis*—b | *Kanaloa kahoolawensis.* | |
| Kahoolawe 3—*Kanaloa kahoolawensis*—c | ..... | *Kanaloa kahoolawensis.* |

(f) *Plants on Maui and Kahoolawe; Constituent elements.*

(1) *Flowering Plants.*

**Family Amaranthaceae: *Nototrichium humile* (kului)**

Maui 9—*Nototrichium humile*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Nototrichium humile* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Old cinder cones in dry shrubland containing one or more of the following associated native species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* or *Nototrichium sandwicense;* and

(ii) Elevations between 338 and 734 m (1,110 and 2,407 ft).

**Family Apiaceae: *Peucedanum sandwicense* (makou)**

Maui 4—*Peucedanum sandwicense*—a and Maui 17—*Peucedanum sandwicense*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Peucedanum sandwicense* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities and containing one or more of the following associated native species: *Artemisia australis, Bidens* spp., *Carex* spp., *Chamaesyce* spp., *Diospyros sandwicensis, Eragrostis* spp., *Hedyotis littoralis, Lysimachia mauritiana, Metrosideros polymorpha, Pandanus tectorius, Peperomia* spp., *Scaevola taccada,* or *Schiedea globosa;* and

(ii) Elevations between 0 and 1,132 m (0 and 3,714 ft).

**Family Apiaceae: *Sanicula purpurea* (NCN)**

Maui 17—*Sanicula purpurea*—a, Maui 17—*Sanicula purpurea*—b, and Maui 17—*Sanicula purpurea*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open *Metrosideros polymorpha* mixed montane bogs and containing one or more of the following associated native plant taxa: *Argyroxiphium caliginis, Argyroxiphium grayanum, Gahnia beecheyi, Geranium hillebrandii, Lagenifera maviensis, Leptecophylla tameiameiae, Lycopodium* sp., *Machaerina* sp., *Myrsine vaccinioides, Oreobolus furcatus, Plantago pachyphylla,* or *Viola maviensis;* and

(ii) Elevations between 1,195 and 1,761 m (3,921 and 5,778 ft).

**Family Apiaceae: *Spermolepis hawaiiensis* (NCN)**

Maui 13—*Spermolepis hawaiiensis*—a, and Maui 17—*Spermolepis hawaiiensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shady spots in *Dodonaea viscosa* lowland dry shrubland and containing one or more of the following associated native species: *Diospyros* sp., *Eragrostis variabilis, Erythrina sandwicensis, Gouania hillebrandii, Heteropogon contortus, Melanthera lavarum, Myoporum sandwicense, Pleomele* sp., *Santalum ellipticum, Sida fallax,* or *Wikstroemia* sp.; and

(ii) Elevations between 221 and 742 m (725 and 2,434 ft).

**Family Asteraceae: *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina)**

Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones, or *Deschampsia* grasslands; or a mean annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in); or substrate with almost no soil development and subject to frequent formation of ice at night and extreme heating during cloudless days; or alpine dry shrubland; and the presence of one or more of the following associated native plant species: *Agrostis sandwicensis, Deschampsia nubigena, Dubautia menziesii, Leptecophylla tameiameiae, Silene struthioloides, Tetramolopium humile,* or *Trisetum glomeratum;* and

(ii) Elevations between 1,508 and 3,053 m (4,947 and 10,016 ft).

**Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)**

Maui 9—*Bidens micrantha* ssp. *kalealaha*—a and Maui 9—*Bidens micrantha* ssp. kalealaha—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Blocky lava flows with little or no soil development, or deep pit craters, or sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest; montane shrubland; *Sophora chrysophylla* forest or cliff face, and the presence of one or more of the following associated native plant species: *Coprosma montana, Dodonaea viscosa, Dubautia menziesii, Dubautia platyphylla, Leptecophylla tameiameiae, Santalum haleakalae,* or *Vaccinium reticulatum;* and

(ii) Elevations between 1,317 and 2,565 m (4,321 and 8,414 ft).

**Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (naenae)**

Maui 17—*Dubautia plantaginea* ssp. *humilis*—a, Maui 17—*Dubautia plantaginea* ssp. *humilis*—b, and Maui 17—*Dubautia plantaginea* ssp. *humilis*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Bidens* sp., *Carex* sp., *Eragrostis variabilis, Hedyotis formosa, Lysimachia remyi, Metrosideros polymorpha, Pipturus albidus, Plantago princeps,* or *Pritchardia* sp.; and

(ii) Elevations between 291 and 1,593 m (955 and 5,226 ft).

**Family Asteraceae: *Hesperomannia arbuscula* (NCN)**

Maui 17—*Hesperomannia arbuscula*—a and Maui 17—*Hesperomannia arbuscula*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bidens* sp., *Cheirodendron* sp., *Clermontia* sp., *Cyanea* sp., *Psychotria* sp., or *Tetraplasandra* sp.; and

(ii) Elevations between 412 and 1,422 m (1,352 and 4,665 ft).

**Family Asteraceae: *Lipochaeta kamolensis* (nehe)**

Maui 9—*Lipochaeta kamolensis*—a and Maui 11—*Lipochaeta kamolensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Lipochaeta kamolensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulches or gentle slopes outside gulches in dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Ipomoea indica*, or *Plumbago zeylanica*; and

(ii) Elevations between 40 and 602 m (132 and 1,974 ft).

**Family Asteraceae: *Remya mauiensis* (NCN)**

Maui 17—*Remya mauiensis*—a, Maui 17—*Remya mauiensis*—b, Maui 17—*Remya mauiensis*—c, and Maui 18—*Remya mauiensis*—d, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Remya mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Alyxia oliviformis, Diospyros sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Leptecophylla tameiameiae, Lysimachia remyi, Melicope* sp., *Microlepia strigosa, Myrsine lessertiana, Nestegis sandwicensis, Pleomele auwahiensis, Psychotria mariniana, Wikstroemia* sp., or *Xylosma hawaiiense;* and

(ii) Elevations between 435 and 1,228 m (1,427 and 4,029 ft).

**Family Asteraceae: *Tetramolopium capillare* (pamakani)**

Maui 17—*Tetramolopium capillare*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky substrates in *Heteropogon contortus* lowland dry forest or in *Metrosideros polymorpha-Leptecophylla tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Dodonaea viscosa* or *Myoporum sandwicense;* and

(ii) Elevations between 155 and 1,432 m (509 and 4,698 ft).

**Family Asteraceae: *Tetramolopium remyi* (NCN)**

Maui 17—*Tetramolopium remyi*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Tetramolopium remyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry, exposed ridges or flats in lowland dry shrubland and containing one or more of the following associated native plant species: *Bidens mauiensis, Bidens menziesii, Dodonaea viscosa, Eragrostis atropioides, Heteropogon contortus, Lipochaeta heterophylla,* or *Waltheria indica;* and

(ii) Elevations between 85 and 550 m (279 and 1,804 ft).

**Family Campanulaceae: *Brighamia rockii* (pua ala)**

Maui 2—*Brighamia rockii*—a, Maui 2—*Brighamia rockii*—b, Maui 3—*Brighamia rockii*—c, Maui 4—*Brighamia rockii*—d, and Maui 5—*Brighamia rockii*—e, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Brighamia rockii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands and containing one or more of the following associated plant species: *Diospyros sandwicensis, Osteomeles anthyllidifolia, Psydrax odorata,* or *Scaevola taccada;* and

(ii) Elevations between 0 and 146 m (0 and 479 ft).

**Family Campanulaceae: *Clermontia lindseyana* (haha)**

Maui 9—*Clermontia lindseyana*—a and Maui 9—*Clermontia lindseyana*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Coprosma* sp., *Cyrtandra* spp., *Ilex anomala, Myrsine* sp., or native fern species; and

(ii) Elevations between 1,147 and 1,868 m (3,762 and 6,129 ft).

**Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha eai)**

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a, Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b, and Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides and tops of ridges in *Metrosideros polymorpha*-dominated montane wet forest and containing one or more of the following associated native plant species: *Cheirodendron* sp., *Clermontia* sp., *Coprosma* sp., *Dicranopteris linearis, Hedyotis* sp., *Ilex anomala, Melicope* sp., or *Myrsine* sp.; and

(ii) Elevations between 539 and 1,738 m (1,768 and 5,702 ft).

**Family Campanulaceae: *Clermontia samuelii* (oha wai)**

Maui 9—*Clermontia samuelii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Clermontia samuelii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* forest or wet *M. polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus, Broussaisia arguta, Carex alligata, Cibotium* spp., *Clermontia arborescens* ssp. *waihiae, Clermontia* sp., *Diplazium sandwichianum, Dubautia* sp., *Hedyotis hillebrandii, Hedyotis terminalis, Hedyotis* sp., *Melicope clusiifolia, Melicope* spp., *Peperomia obovatilimba, Psychotria mariniana, Rubus hawaiiensis, Tetraplasandra oahuensis,* or *Vaccinium* spp.; and

(ii) Elevations between 724 and 2,244 m (2,375 and 7,362 ft).

**Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (haha)**

Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a and Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Stream banks or wet scree slopes or forest understory in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp.,

*Hedyotis acuminata, Perrottetia sandwicensis,* or *Psychotria hawaiiensis;* and

(ii) Elevations between 616 and 1,411 m (2,021 and 4,630 ft).

**Family Campanulaceae: *Cyanea glabra* (haha)**

Maui 8—*Cyanea glabra*—a, Maui 9—*Cyanea glabra*—b, Maui 9—*Cyanea glabra*—c, Maui 17—*Cyanea glabra*—d, Maui 17—*Cyanea glabra*—e, Maui 17—*Cyanea glabra*—f, and Maui 17—*Cyanea glabra*—g, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea glabra* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Boehmeria grandis, Cheirodendron trigynum, Christella cyatheoides, Cibotium* sp., *Clermontia kakeana, Coprosma* sp., *Cyanea elliptica, Diplazium* sp., *Dodonaea viscosa, Dubautia plantaginea, Perrottetia sandwicensis, Pipturus albidus, Psychotria* sp., *Sadleria* sp., *Touchardia latifolia,* or *Xylosma hawaiiense* or; and

(ii) Elevations between 413 and 1,569 m (1,355 and 5,149 ft).

**Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)**

Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., or *Xylosma* sp.; and

(ii) Elevations between 312 and 1,617 m (1,024 and 5,305 ft).

**Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (haha)**

Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a and Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane wet forest dominated by *Metrosideros polymorpha,* with a Cibotium sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Athyrium microphyllum, Broussaisia arguta, Cheirodendron trigynum, Cyanea aculeatiflora, Cyanea kunthiana, Dicranopteris linearis, Diplazium sandwichianum, Melicope* sp., *Myrsine* sp., or *Vaccinium* sp.; and

(ii) Elevations between 767 and 1,553 m (2,515 and 5,095 ft).

**Family Campanulaceae: *Cyanea lobata* (haha)**

Maui 17—*Cyanea lobata*—a, Maui 17—*Cyanea lobata*—b, and Maui 17—*Cyanea lobata*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea lobata* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep stream banks in deep shade in wet forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Athyrium* sp., *Clermontia kakeana, Cyrtandra* spp., *Freycinetia arborea, Metrosideros polymorpha, Morinda trimera, Peperomia* sp., *Pipturus albidus, Pleomele* sp., *Psychotria* sp., *Touchardia latifolia,* or *Xylosma* sp.; and

(ii) Elevations between 260 and 1,530 m (853 and 5,020 ft).

**Family Campanulaceae: *Cyanea mceldowneyi* (haha)**

Maui 8—*Cyanea mceldowneyi*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Cyanea mceldowneyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* and containing one or more of the following associated native plant species: *Broussaisia arguta, Cheirodendron trigynum, Cibotium* sp., *Clermontia arborescens, Cyrtandra* sp., *Dicranopteris linearis, Diplazium sandwichianum, Hedyotis* sp., or *Melicope clusiifolia;* and

(ii) Elevations between 837 and 1,348 m (2,745 and 4,423 ft).

**Family Caryophyllaceae: *Schiedea haleakalensis* (NCN)**

Maui 9—*Schiedea haleakalensis*—a and Maui 9—*Schiedea haleakalensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schiedea haleakalensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands; or grasslands with cinder, or weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures; and containing one or more of the following associated native plant species: *Artemisia mauiensis, Bidens micrantha, Dubautia menziesii, Leptecophylla tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana;* and

(ii) Elevations between 1,678 and 2,434 m (5,505 and 7,986 ft).

**Family Convolvulaceae: *Bonamia menziesii* (NCN)**

Maui 13—*Bonamia menziesii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Bonamia menziesii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Aa lava in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Acacia koaia, Achyranthes splendens, Alphitonia ponderosa, Alyxia oliviformis, Diospyros sandwicensis, Dodonaea viscosa, Lipochaeta rockii, Myoporum sandwicense, Nestegis sandwicensis, Nothocestrum latifolium, Nototrichium* sp., *Osteomeles anthyllidifolia, Pleomele auwahiensis, Pouteria sandwicensis, Reynoldsia sandwicensis, Santalum ellipticum, Sicyos* sp., *Sida fallax,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 221 and 836 m (725 and 2,743 ft).

**Family Cyperaceae: *Mariscus pennatiformis* (NCN)**

Maui 6—*Mariscus pennatiformis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this

unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* coastal wet forests and containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis* spp., *Ipomoea* sp., *Lysimachia mauritiana,* or *Sadleria pallida;* and

(ii) Elevations between 0 and 134 m (0 and 440 ft).

**Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)**

Maui 9—*Flueggea neowawraea*—a and Maui 13—*Flueggea neowawraea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Flueggea neowawraea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma pulvinatum, Bobea timonioides, Charpentiera* sp., *Diospyros* sp., *Diplazium sandwichianum, Myrsine lanaiensis, Nesoluma polynesicum, Nestegis sandwicensis, Pleomele auwahiensis, Pleomele* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis,* or *Tetraplasandra* sp.; and

(ii) Elevations between 633 and 971 m (2,078 and 3,186 ft).

**Family Fabaceae: *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa)**

Kahoolawe 1— *Kanaloa kahoolawensis*—a, Kahoolawe 2—*Kanaloa kahoolawensis*—b, and Kahoolawe 3—*Kanaloa kahoolawensis*—c, identified in the legal descriptions in paragraph (e)(2) of this section, constitute critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky talus slopes in mixed coastal shrubland and containing one or more of the following associated native plants: *Bidens mauiensis, Capparis sandwichiana, Melanthera lavarum, Portulaca molokiniensis, Senna gaudichaudii,* or *Sida fallax;* and

(ii) Elevations between 0 and 305 m (0 and 1,000 ft).

**Family Fabaceae: *Sesbania tomentosa* (ohai)**

Maui 1—*Sesbania tomentosa*—a and Maui 13—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands and containing one or more of the following associated native plant species: *Bidens* sp., *Diospyros sandwicensis, Dodonaea viscosa, Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera integrifolia,* or *Sida fallax;* and

(ii) Elevations between 0 and 542 m (0 and 1,778 ft).

**Family Fabaceae: *Vigna o-wahuensis* (NCN)**

Maui 12—*Vigna o-wahuensis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Chamaesyce* sp., or *Dodonaea viscosa;* and

(ii) Elevations between 0 and 50 m (0 and 164 ft).

**Family Gentianaceae: *Centaurium sebaeoides* (awiwi)**

Maui 1—*Centaurium sebaeoides*—a and Maui 2—*Centaurium sebaeoides*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Centaurium sebaeoides* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Volcanic or clay soils or cliffs, in windward coastal areas, containing one or more of the following associated native plant species: *Bidens mauiensis, Lycium sandwicense, Melanthera integrifolia, Panicum torridum, Lysimachia mauritiana, Scaevola taccada,* or *Schiedea globosa;* and

(ii) Elevations between 0 and 129 m (0 and 423 ft).

**Family Geraniaceae: *Geranium arboreum* (nohoanu)**

Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, and Maui 15—*Geranium arboreum*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Dodonaea viscosa, Dryopteris wallichiana, Leptecophylla tameiameiae, Rubus hawaiiensis,* or *Vaccinium reticulatum;* and

(ii) Elevations between 1,472 and 2,184 m (4,830 and 7,164 ft).

**Family Geraniaceae: *Geranium multiflorum* (nohoanu)**

Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, and Maui 9—*Geranium multiflorum*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium multiflorum* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands and containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Hedyotis* sp., *Leptecophylla tameiameiae Metrosideros polymorpha, Rubus hawaiiensis, Sadleria cyatheoides,* or *Vaccinium* sp.; and

(ii) Elevations between 1,538 and 2,710 m (5,045 and 8,890 ft).

**Family Gesneriaceae: *Cyrtandra munroi* (haiwale)**

Maui 17—*Cyrtandra munroi*—a, Maui 17—*Cyrtandra munroi*—b, and Maui 17—*Cyrtandra munroi*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra munroi* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bobea* sp., *Clermontia* sp., *Coprosma* sp., *Cyrtandra* spp., *Diospyros* sp., *Freycinetia arborea, Hedyotis acuminata, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Sicyos* sp., *Strongylodon ruber, Xylosma* sp., or *Zanthoxylum kauense;* and

(ii) Elevations between 468 and 1,108 m (1,535 and 3,635 ft).

**Family Lamiaceae: *Phyllostegia mannii* (NCN)**

Maui 8—*Phyllostegia mannii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Phyllostegia mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Cheirodendron trigynum, Dicranopteris linearis, Diplazium sandwichianum, Melicope* spp., or *Myrsine lessertiana;* and

(ii) Elevations between 1,069 and 1,348 m (3,506 and 4,421 ft).

**Family Lamiaceae: *Phyllostegia mollis* (NCN)**

Maui 8—*Phyllostegia mollis*—a and Maui 9—*Phyllostegia mollis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia mollis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Cheirodendron trigynum, Diplazium sandwichianum, Melicope* spp., or *Myrsine lessertiana;* and

(ii) Elevations between 1,164 and 1,878 m (3,818 and 6,161 ft).

**Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)**

Maui 16—*Hibiscus brackenridgei*—a and Maui 17—*Hibiscus brackenridgei*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Achyranthes* sp., *Chamaesyce celastroides* var. *lorifolia, Chenopodium* sp., *Diospyros* sp., *Dodonaea viscosa, Melanthera lavarum, Myoporum sandwicense, Nototrichium* sp., annual *Panicum* spp., *Psydrax odorata, Schiedea salicaria,* or *Sida fallax;* and

(ii) Elevations between 85 and 771 m (279 and 2,530 ft).

**Family Orchidaceae: *Platanthera holochila* (NCN)**

Maui 9—*Platanthera holochila*—a, Maui 17—*Platanthera holochila*—b, and Maui 17—*Platanthera holochila*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Platanthera holochila* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp., *Clermontia* sp., *Coprosma ernodeoides, Deschampsia nubigena, Dubautia scabra, Gahnia gahniiformis, Leptecophylla tameiameiae, Luzula hawaiiensis, Lycopodiella cernua, Oreobolus furcatus, Polypodium pellucidum, Sadleria* sp., *Scaevola chamissoniana, Sisyrinchium acre, Vaccinium reticulatum,* or *Wikstroemia* sp.; and

(ii) Elevations between 669 and 2,314 m (2,195 and 7,592 ft).

**Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)**

Maui 9—*Plantago princeps*—a and Maui 17—*Plantago princeps*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Plantago princeps* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M. polymorpha* montane wet shrubland and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Cyanea* spp., *Dryopteris* sp., *Dubautia menziesii, Dubautia plantaginea* ssp. *humilis, Eragrostis variabilis, Hedyotis formosa, Leptecophylla tameiameiae, Melicope ovalis, Perrottetia sandwicensis, Pipturus albidus,* or *Touchardia latifolia;* and

(ii) Elevations between 281 and 2,460 m (922 and 8,070 ft).

**Family Poaceae: *Cenchrus agrimonioides* (kamanomano (= sandbur, agrimony))**

Maui 13—*Cenchrus agrimonioides*—a, and Maui 17—*Cenchrus agrimonioides*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cenchrus agrimonioides* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry forest or *Pleomele* sp.-*Diospyros* sp. forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Dodonaea viscosa, Osteomeles anthyllidifolia,* or *Santalum ellipticum;* and

(ii) Elevations between 528 and 1,091 m (1,732 and 3,579 ft).

**Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)**

Maui 6—*Ischaemum byrone*—a and Maui 7—*Ischaemum byrone*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ischaemum byrone* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland and containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa,* or *Scaevola taccada;* and

(ii) Elevations between 0 and 132 m (0 and 432 ft).

**Family Primulaceae: *Lysimachia lydgatei* (NCN)**

Maui 17—*Lysimachia lydgatei*—a, Maui 17—*Lysimachia lydgatei*—b, Maui 17—*Lysimachia lydgatei*—c, Maui 17—*Lysimachia lydgatei*—d, and Maui 17—*Lysimachia lydgatei*—e, identified in the

legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Lysimachia lydgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* spp. montane forest and containing one or more of the following associated native plant species: *Astelia* sp., *Broussaisia arguta, Coprosma* spp., *Dodonaea viscosa, Eurya sandwicensis, Ilex anomala, Leptecophylla tameiameiae, Lycopodium* spp., *Ochrosia* spp., *Vaccinium spp.,* or mat ferns such as *Dicranopteris* spp.; and

(ii) Elevations between 829 and 1,432 m (2,720 and 4,698 ft).

**Family Rhamnaceae: *Colubrina oppositifolia* (kauila)**

Maui 13—*Colubrina oppositifolia*—a, Maui 17—*Colubrina oppositifolia*—b, and Maui 18—*Colubrina oppositifolia*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Colubrina oppositifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Bidens micrantha* spp. *micrantha, Canavalia* spp., *Dodonaea viscosa, Freycinetia arborea, Metrosideros polymorpha, Microlepia strigosa, Pleomele auwahiensis, Psydrax odorata, Reynoldsia sandwicensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 193 and 844 m (633 and 2,769 ft).

**Family Rhamnaceae: *Gouania vitifolia* (NCN)**

Maui 17—*Gouania vitifolia*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Gouania vitifolia* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides of ridges and gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Bidens* sp., *Carex meyenii, Chamaesyce* spp., *Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis* sp., *Hibiscus* spp., *Melicope* sp., *Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Urera glabra;* and

(ii) Elevations between 357 and 1,167 m (1,171 and 3,829 ft).

**Family Rubiaceae: *Hedyotis coriacea* (kioele)**

Maui 17—*Hedyotis coriacea*—a and Maui 17—*Hedyotis coriacea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hedyotis coriacea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands and containing one or more of the following associated native plant species: *Bidens menziesii, Gouania hillebrandii, Melanthera lavarum, Myoporum sandwicense, Schiedea menziesii,* or *Sida fallax;* and

(ii) Elevations between 159 and 754 m (522 and 2,474 ft).

**Family Rubiaceae: *Hedyotis mannii* (pilo)**

Maui 17—*Hedyotis mannii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Hedyotis mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and containing one or more of the following associated native plant species: *Boehmeria grandis, Carex meyenii, Cyrtandra grayi, Cyrtandra hawaiensis, Cyrtandra platyphylla, Cyanea* sp., *Hedyotis acuminata, Isachne distichophylla, Machaerina* sp., *Phyllostegia* sp., *Pipturus albidus, Psychotria* sp., *Touchardia latifolia,* or *Urera glabra;* and

(ii) Elevation between 340 and 1,593 m (1,115 and 5,226 ft).

**Family Rutaceae: *Melicope adscendens* (alani)**

Maui 13—*Melicope adscendens*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Chamaesyce celastroides* var. *lorifolia, Leptecophylla tameiameiae, Osteomeles anthyllidifolia, Pouteria sandwicensis, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 761 and 1,209 m (2,497 and 3,967 ft).

**Family Rutaceae: *Melicope balloui* (alani)**

Maui 8—*Melicope balloui*—a and Maui 9—*Melicope balloui*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope balloui* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic to wet forest containing one or more of the following associated native plant species: *Acacia koa, Cibotium chamissoi, Cibotium glaucum, Diplazium sandwichianum, Melicope clusiifolia, Metrosideros polymorpha,* or *Sadleria pallida;* and

(ii) Elevations between 781 and 1,544 m (2,561 and 5,267 ft).

**Family Rutaceae: *Melicope knudsenii* (alani)**

Maui 9—*Melicope knudsenii*—a and Maui 13—*Melicope knudsenii*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope knudsenii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Dodonaea viscosa, Osteomeles anthyllidifolia, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 648 and 1,231 m (2,125 and 4,039 ft).

**Family Rutaceae: *Melicope mucronulata* (alani)**

Maui 9—*Melicope mucronulata*—a and Maui 13—*Melicope mucronulata*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope mucronulata* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle south-facing slopes in lowland dry to mesic forest and containing one or more of the following associated species: *Antidesma pulvinatum, Dodonaea viscosa, Melicope hawaiensis, Nestegis sandwicensis, Pleomele auwahiensis, Pouteria sandwicensis,* or *Streblus pendulinus;* and

(ii) Elevations between 625 and 1,232 m (2,050 and 4,042 ft).

**Family Rutaceae: *Melicope ovalis* (alani)**

Maui 9—*Melicope ovalis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Melicope ovalis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams and containing one or more of the following associated species: *Broussaisia arguta, Cheirodendron trigynum, Dicranopteris linearis, Dubautia plantaginea, Hedyotis hillebrandii, Labordia hedyosmifolia, Machaerina angustifolia, Perrottetia sandwicensis,* or *Wikstroemia oahuensis;* and

(ii) Elevations between 753 and 1,537 m (2,469 and 5,042 ft).

**Family Rutaceae: *Zanthoxylum hawaiiense* (ae)**

Maui 8—*Zanthoxylum hawaiiense*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forest or Acacia koa-Pleomele auwahiensis forest or montane dry forest and containing one or more of the following associated native species: *Alectryon macrococcus, Alphitonia ponderosa, Charpentiera* sp., *Diospyros sandwicensis, Dodonaea viscosa, Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Osteomeles anthyllidifolia, Pisonia* sp., *Santalum ellipticum, Sophora chrysophylla, Streblus pendulinus,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 869 and 1,298 m (2,852 and 4,260 ft).

**Family Sapindaceae: *Alectryon macrococcus* (mahoe)**

Maui 9—*Alectryon macrococcus*—a, Maui 10—*Alectryon macrococcus*—b, Maui 13—*Alectryon macrococcus*—c, Maui 17—*Alectryon macrococcus*—d, Maui 17—*Alectryon macrococcus*—e, and Maui 18—*Alectryon macrococcus*—f, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic to wetter mesic and upper dryland forest and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma platyphylla, Antidesma pulvinatum, Bobea sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pittosporum confertiflorum, Pittosporum glabrum, Pouteria sandwicensis, Santalum ellipticum, Streblus pendulinus, Xylosma hawaiiensis,* or *Xylosma* sp.; and

(ii) Elevations between 333 and 1,191 m (1,092 and 3,909 ft).

**Family Urticaceae: *Neraudia sericea* (NCN)**

Maui 9—*Neraudia sericea*—a and Maui 17—*Neraudia sericea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Neraudia sericea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest and containing one or more of the following associated native plant species: *Bobea* sp., *Coprosma* sp., *Cyrtandra oxybapha, Cyrtandra* spp., *Diospyros* sp., *Hedyotis* sp., *Sida fallax,* or *Urera glabra;* and

(ii) Elevations between 198 and 1,658 m (650 and 5,439 ft).

**Family Violaceae: *Isodendrion pyrifolium* (aupaka)**

Maui 17—*Isodendrion pyrifolium*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry shrubland containing one or more of the following associated native plant taxa: *Capparis sandwichiana, Dodonaea viscosa, Myoporum sandwicense,* or *Psydrax odorata;* and

(ii) Elevations between 85 and 534 m (279 and 1,752 ft).

(2) *Ferns and Allies.*

**Family Adiantaceae: *Pteris lidgatei* (NCN)**

Maui 17—*Pteris lidgatei*—a and Maui 17—*Pteris lidgatei*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and containing one or more of the following native plant species: *Christella cyatheoides, Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa,* or *Sphenomeris chinensis;* and

(ii) Elevations between 213 and 1,593 m (699 and 5,226 ft).

**Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)**

Maui 9—*Asplenium fragile* var. *insulare*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Asplenium fragile* var. *insulare* on Maui. Within this unit, the primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streamside hollows and grottos in gulches in mesic to dry subalpine shrubland dominated by *Leptecophylla tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha* and containing one or more of the following native plant species: *Dryopteris wallichiana, Grammitis hookeri,* or *Pteris cretica;* and

(ii) Elevations between 1,964 and 2,407 m (6,445 and 7,896 ft).

**Family Aspleniaceae: *Ctenitis squamigera* (pauoa)**

Maui 17—*Ctenitis squamigera*—a, Maui 17—*Ctenitis squamigera*—b, Maui 17—*Ctenitis squamigera*—c, and Maui 18—*Ctenitis squamigera*—d, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units, the primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis, Antidesma* sp., *Bobea* sp., *Canavalia* sp., *Coprosma* sp., *Dicranopteris linearis, Doodia* sp., *Dryopteris* sp., *Freycinetia arborea, Hedyotis terminalis, Hibiscus kokio* ssp. *kokio, Myrsine* sp., *Peperomia* sp., *Pittosporum* sp., *Pleomele* sp., *Pritchardia* sp., *Psychotria* sp., *Remya mauiensis, Sadleria* sp., *Schiedea pubescens* var. *pubescens,* or *Xylosma* sp.; and

(ii) Elevations between 275 and 1,421 m (902 and 4,662 ft).

**Family Aspleniaceae: *Diellia erecta* (NCN)**

Maui 9—*Diellia erecta*—a, Maui 9—*Diellia erecta*—b, Maui 17—*Diellia erecta*—c, Maui 17—*Diellia erecta*—d, Maui 17—*Diellia erecta*—e, and Maui 17—*Diellia erecta*—f, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low- to mid-elevation mesic forest and containing one or more of the following associated native plant species: *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Leptecophylla tameiameiae, Melicope* sp., *Myrsine* sp., *Osteomeles anthyllidifolia,* or *Psychotria* sp.; and

(ii) Elevations between 338 and 1,695 m (1,109 and 5,561 ft).

**Family Aspleniaceae: *Diplazium molokaiense* (NCN)**

Maui 8—*Diplazium molokaiense*—a, Maui 9—*Diplazium molokaiense*—b, and Maui 17—*Diplazium molokaiense*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Diplazium molokaiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Water courses, often in proximity to waterfalls, in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and

(ii) Elevations between 273 and 1,885 m (896 and 6,186 ft).

**Family Lycopodiaceae: *Phlegmariurus mannii* (wawaeiole)**

Maui 8—*Phlegmariurus mannii*—a, Maui 9—*Phlegmariurus mannii*—b, Maui 9—*Phlegmariurus mannii*—c, Maui 17—*Phlegmariurus mannii*—d, and Maui 17—*Phlegmariurus mannii*—e, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane M*etrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant species: *Astelia menziesii, Athyrium* sp., *Cheirodendron trigynum, Coprosma* sp., *Cyanea* sp., *Cyrtandra* sp., *Ilex anomala, Leptecophylla tameiameiae, Machaerina* sp., *Myrsine* sp., *Sadleria* sp., *Thelypteris* sp., or *Vaccinium* sp.; and

(ii) Elevations from 952 and 1,688 m (3,122 and 5,539 ft).

* * * * *

Dated: April 18, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–10107 Filed 5–13–03; 8:45 am]

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May 14, 2003

# Part III

# Department of Commerce

## Economic Development Administration

## National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

## DEPARTMENT OF COMMERCE

### Economic Development Administration

**[Docket No. 991215339–3104–06]**

**RIN: 0610–ZA14**

### National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

**AGENCY:** Economic Development Administration (EDA), Department of Commerce (DOC).

**ACTION:** Request for Grant Proposals (RFP) Upon Availability of Funds.

**SUMMARY:** The role of government is to create the conditions in which jobs are created, and in which people can find work. EDA is soliciting proposals to develop and disseminate, on a monthly basis, information on the reuse of former military bases for practitioners engaged in base redevelopment and economic development.

**DATES:** Prospective applicants are advised that proposals for funding under this program will be accepted through June 13, 2003, at either of the addresses provided below. Proposals received after 4 p.m. EDT, on June 13, 2003, will not be considered for funding.

By June 30, 2003, EDA will notify proposers whether they will be given further funding consideration. The successful proponent will be invited to submit an Application for Federal Assistance, OMB Control Number 0610–0094. The project will be funded as soon as possible, but no later than September 30, 2003.

**ADDRESSES:**

1. Proposals may be e-mailed to *jmcnamee@eda.doc.gov*, or

2. Proposals may be hand-delivered to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, or

3. Proposals may be mailed to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Proponents are encouraged to submit proposals by email. Proponents are advised that, due to mail security measures, receipt of U.S.P.S. mail may be delayed for up to two weeks. EDA will not accept proposals submitted by FAX.

**FOR FURTHER INFORMATION CONTACT:** John J. McNamee, (202) 482–4085; email: *jmcnamee@eda.doc.gov.*

**SUPPLEMENTARY INFORMATION:** In a previous notice published on April 9, 2003 (68 FR 17520), EDA stated that it would publish separate announcements for its National Technical Assistance, Training, Research, and Evaluation program. Pursuant to that notice, EDA publishes program requirements and solicits applications for this program.

### I. Funding Availability

Funds appropriated under Pub. L. 107–248 to the Department of Defense will be transferred to EDA under authority of 42 U.S.C. 3214(c) for this project. In FY 2002, EDA funded a one year information dissemination project on the reuse of military bases with a $35,000 award. This project differs significantly in that the initial performance period is for two years and it involves substantial in-depth analysis of aspects of base redevelopment. As a result, EDA anticipates this project will cost more.

The award will be in the form of a cooperative agreement. In funding cooperative agreements, a common example of substantial involvement is collaboration between EDA program staff and the recipient of this information dissemination award to establish an editorial board to comment on stories and to suggest and select themes for future feature stories.

### II. Authority

The authority for the program listed above is the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), and as further amended by Pub. L. 105–393.

### III. Eligibility

Eligible recipients of EDA financial assistance are defined at 13 CFR 300.2 and eligible applicants are specified at 13 CFR 301.1. An ''area'' is an eligible recipient and is defined at 13 CFR 301.2. One category of the areas eligible for financial assistance are those areas meeting the ''special needs'' criteria. The special needs criteria are published in Part XV of the **Federal Register** notice of April 9, 2003 (68 FR 17524).

### IV. Proposal Format

Each proposal submitted must include:

1. A description of how the proposer(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length);

2. A proposed budget and accompanying explanation;

3. Resumes/qualifications of key staff (not to exceed two pages per individual, with an additional two pages allowed for a single summary description of all organizations/consultants named in the proposal); and

4. A proposed schedule for completion of the project.

### V. Evaluation and Selection Process

To apply for an award under this request, an eligible recipient must submit a proposal to EDA during the specified timeframe, at one of the addresses specified above. Proposals that do not meet all items required or that exceed the page limitations of Section IV of this RFP, will be considered nonresponsive, and will not be considered. Proposals that meet all the requirements will be evaluated by a review panel comprised of at least three members all of whom will be full-time federal employees. The panel first evaluates the proposals using the general evaluation criteria set forth in 13 CFR 304.1 and 304.2 as further defined by the supplemental evaluation criteria set forth in Part VI of the **Federal Register** notice published on April 9, 2003 (68 FR 17521). Proposals that meet these threshold criteria will then be evaluated by the panel using the following three criteria of approximate equal weight:

(1) The quality of a proposal's response to the Scope of Work and other requirements described in Section VI below;

(2) The ability of the prospective applicant to successfully carry out the proposed activities. This will include an evaluation of the qualifications of the proposed staff, the use and cost of travel, how applicant expertise will be supplemented through the use of contractors or consultants, how the potential applicant plans to work cooperatively with economic development organizations, how the target audience will be identified and reached, and both the quality of the potential applicant's suggestions for feature story topics and the methodology that will be used to identify future topics; and

(3) Cost to the federal government.

The Assistant Secretary for Economic Development is the Selecting Official. He may not make any selection, or he may substitute one of the lower rated proposals, if he determines that it better meets the overall objectives of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), and as further amended by Pub. L. 105–393.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094).

## VI. Areas of Special Interest

EDA is inviting proposals for National Technical Assistance, Training, Research, and Evaluation as described below.

*Program: National Technical Assistance—(Pub. L. 89–136, as Amended by Pub. L. 105–393, 42 U.S.C. 3147)*

(Catalog of Federal Domestic Assistance: 11.303 Economic Development Technical Assistance)

*Background:* As part of its ongoing mission to assist communities in reusing former military bases, EDA supports the dissemination of information to economic development practitioners engaged in base reuse. The intent of disseminating this information is to broadly convey how reuse works successfully, to increase the knowledge of practitioners, and to attract innovative practitioners into the field of redeveloping former military bases.

*Scope of Work:*

The successful applicant will:

(1) Develop and disseminate, on alternate months,

(a) Three to five ''news'' stories reporting on activities at former military bases. The 300–1,000 word news stories will answer, for example, why particular end-users chose a particular base, rather than just announcing that they did; and

(b) ''Feature'' stories on major base-reuse topics. The 2,000–5,000 word (with a few appropriate charts or diagrams) feature stories will show how practitioners engaged in base redevelopment solved specific challenges in reusing the former military bases that closed in the 1990s. They will not be ''policy studies'' that address the strengths or weaknesses of federal base closure programs and legislation. Rather, feature stories will analyze in-depth one particular aspect of base redevelopment at one to three former bases; for example, how did redevelopers structure environmental service cooperative agreements to facilitate redevelopment, and reduce the cost of site preparation and regulatory burden. Issues with news and feature stories will alternate each month, six each per year.

(2) Disseminate news and feature stories widely, using existing electronic networks for economic development practitioners engaged in the reuse of both military bases and non-military facilities.

(3) Establish with the grantor a 3–5 member editorial board to comment on stories and to suggest and select themes for future feature stories. Topics for initial feature stories on base redevelopment will include: how to blend grant, municipal debt, asset sales, and private equity to finance infrastructure; how environmental service cooperative agreements can become a redevelopment tool; when planning and zoning alone are sufficient to direct redevelopment. Other topics may be proposed in the application, but must then be adopted by the editorial board.

*Timing:* The initial award and funding periods will be for two years from the date of approval. However, those periods may be amended to cover an additional two-year period resulting in four-year award and funding periods, subject to funding availability, satisfactory performance under the initial award, and at the sole discretion of EDA.

*Additional Requirement:* The proposed information dissemination should not be primarily for the benefit of the grantee or the grantee's members, or a localized geographic area.

## VII. Other Information and Requirements

EDA regulations at 13 CFR Chapter III are available on the EDA Web site at *http://www.doc.gov/eda.* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation and can be found on EDA's Web site *http://www.doc.gov/eda.*

A. Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, EDA may reduce or waive the required 50% matching share of the total project costs, provided the applicant demonstrates: (1) The project is not feasible without a reduction or waiver and the project merits a reduction or waiver, or (2) the requirements of 13 CFR 301.4(b) are satisfied.

B. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094. The EDA application (ED–900A), which incorporates the SF–424, are the forms in the EDA application kit, approved under the aforementioned OMB control number.

C. If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

D. EDA is committed to a policy of non-discrimination in the administration of all its programs.

E. EDA will notify unsuccessful proposers in writing and unsuccessful proposals will be maintained for not more than three years from the date of receipt.

F. This Notice has been determined to be ''not significant'' for purposes of Executive Order 12866.

G. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

H. The rulemaking requirements of 5 U.S.C. 553 are not applicable to this notice relating to public property, loans, grants, benefits or contracts (5 U.S.C. 5553(a)(2)). Because notice and comment are not required under 5 U.S.C. 553, or any other law for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601) are not applicable. Thus, a Regulatory Flexibility Analysis is not required and has not been prepared for this rule.

Dated: May 6, 2003.

**David A. Sampson,**

*Assistant Secretary for Economic Development.*

[FR Doc. 03–11953 Filed 5–13–03; 8:45 am]

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Federal Register

Wednesday,
May 14, 2003

# Part IV

# Department of Education

## Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation; Research—Disability Rehabilitation Research Projects (DRRP) Program; Inviting Applications for Fiscal Year (FY) 2003; Notice

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.133A–6]**

## Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2003

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

*Purpose of the Program:* The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended. For FY 2003 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

In order to provide applicants with a 60-day application period and to ensure that this grant is awarded before the end of FY 2003, NIDRR is inviting applications based on the proposed priority. NIDRR will publish the final priority as soon as possible after the comment period closes on May 16, 2003.

Depending upon the comments that NIDRR receives, the final priority may include revisions to the proposed priority. It is generally the policy of the Department of Education not to solicit applications before the publication of a final priority. However, in this case, it is essential to solicit applications on the basis of the proposed priority in order to allow applicants sufficient time to prepare applications of appropriate quality to be funded. Applicants are advised to begin to develop their applications based on the proposed priority. If changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications.

The notice of proposed priority for collaborative research for Traumatic Brain Injury Model Systems (TBIMS) requires the applicants to collaborate with the current TBIMS grantees. The National Rehabilitation Information Center has the contact information for the TBIMS grantees at *http://www.naric.com/search/pd/notice*. NIDRR's current TBIMS grantees are: University of Alabama at Birmingham TBIMS; Northern California TBIMS of Care at Santa Clara Valley Medical Center (SCVMC); Rocky Mountain Regional Brain Injury System (RMRBIS) at Craig Hospital; Spaulding/Partners TBIMS at Harvard Medical School; Southeastern Michigan TBI System (SEMTBIS) at Wayne State University; Mayo Clinic TBIMS; TBIMS of Mississippi (TBIMSM) at Methodist Rehabilitation Center; JFK-Johnson Rehabilitation Institute TBIMS; New York TBIMS (NYTBIMS) at Mount Sinai School of Medicine; Carolinas TBI Rehabilitation and Research System (CTBIRRS) at Charlotte Mecklenburg Hospital Authority; Ohio Regional TBIMS at Ohio State University; Moss TBIMS at Albert Einstein Healthcare Network; University of Pittsburgh Brain Injury Model System (UPBI); North Texas TBIMS (NT–TBIMS) at University of Texas Southwestern Medical Center; TBIMS at Virginia Commonwealth University; and University of Washington TBIMS.

*Eligible Applicants:* Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

*Applications Available:* May 14, 2003.

*Deadline for Transmittal of Applications:* July 14, 2003.

*Estimated Number of Awards:* 2–3.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Award Amount*: $600,000.

**Note:** We will reject without consideration or evaluation any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

*Page Limit*: The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (*i.e.*, Part III that addresses selection criteria that will be used by reviewers in evaluating individual proposals) of no more 75 numbered, double-spaced (no more than 3 lines per vertical inch) 8.5″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scanable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

*Project Period*: Up to 60 months.

*Applicable Regulations*: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) the program regulations 34 CFR part 350.

### Priority

*Collaborative Research Projects in Traumatic Brain Injury*

This competition focuses on a project designed to meet the priority in the notice of proposed priority for this program, published in the **Federal Register** on April 16, 2003 (68 FR 18601).

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105 (c)(3) we consider only applications that meet this priority.

### Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Responsiveness to an absolute or competitive priority* (5 points).

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority. (5 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the art. (10 points)

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of

the current literature, demonstrating knowledge of the state-of-the art; (5 points)

(B) Each research hypothesis is theoretically sound and based on current knowledge; (6 points)

(C) Each sample population is appropriate and of sufficient size; (7 points)

(D) The data collection and measurement techniques are appropriate and likely to be effective; (7 points) and

(E) The data analysis methods are appropriate. (5 points)

(c) *Design of dissemination activities* (6 points).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format. (2 points)

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population. (2 points)

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities. (2 points)

(d) *Plan of operation* (10 points).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (4 points)

(3) In addition, the Secretary also considers whether there is a clearly delineated plan for research management, with focus on quality controls for data collection, management of research protocols, and provisions for oversight at collaborating sites. (6 points)

(e) *Collaboration* (10 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project. (5 points)

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant. (5 points)

(f) *Adequacy and reasonableness of the budget* (5 points).

(1) The Secretary considers the adequacy and the reasonableness of the budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities. (3 points)

(ii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner. (2 points)

(g) *Plan of Evaluation* (8 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; (4 points) and

(ii) Are objective, and quantifiable or qualitative, as appropriate. (4 points)

(h) *Project Staff* (6 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project. (2 points)

(a) *Adequacy and accessibility of resources* (10 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The quality of an applicant's past performance in carrying out a grant. (2 points)

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research. (6 points)

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project. (2 points)

*Pre-Application Meeting*: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on May 28, 2003 either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, room 3065, 330 C Street, SW., Washington, DC between 10 a.m. and 12 noon. NIDRR staff will also be available from 1:30 p.m. to 4 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3412, 330 C Street, SW., Washington, DC 20202. Telephone (202) 205–5880 or via Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–4475.

*Assistance to Individuals With Disabilities at the Public Meetings*

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

## Application Procedures

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications*

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects (DRRP) Program—CFDA #84.133A is one of the programs included in the pilot project. If you are an applicant under the DRRP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the DRRP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the DRRP at: *http://e-grants.ed.gov*.

*Parity Guidelines Between Paper and Electronic Applications:* In FY 2003, the U.S. Department of Education is continuing to expand the pilot project that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-Application, allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-Application visit the following address: *http://e-grants.ed.gov*.

## Parity Instructions

Users of e-application, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-Application, the Department plans to expand the number of discretionary programs using the electronic peer review (e-Reader) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-Reports) system.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8.5″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

## Additional Application Procedures

*Appendices:* Do not attach any appendices if all of your appendices are not in electronic format. Type in the appendices section: ''Appendices are being sent separately.'' and note the date that they are hand delivered or mailed. Put the PR/award number and the word ''Appendices'' in the upper right hand corner of each page of the appendices.

Send the entire package of appendices to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6)—Appendices, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must clearly label the outside of the envelope with the PR/Award Number and the word ''Appendices.'' You must submit all hard copy appendices according to the **Instructions for Transmitting Applications** found elsewhere in this notice.

**Instructions for Transmitting Applications**

If you want to apply for a grant in paper and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, applicants are encouraged to submit an original and seven copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) If You Submit Your Application Electronically: You must submit your grant application through the Internet using the software provided on the e-Grants Website (*http://www.e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6 a.m. until 12 midnight (Washington, DC time) Monday–Friday and 6 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC time).

**Notes**

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

**Application Forms and Instructions**

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- PART I: Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions.
- PART II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- PART III: Application Narrative.
- PART IV: Additional Materials.
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note**: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

- Disclosure of Lobbying Activities (Standard Form LLL, if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).
- Survey on Ensuring Equal Opportunity for Applicants

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document**

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at

1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

**Program authority:** 29 U.S.C. 762(g) and 764(a).

Dated: May 9, 2003.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

## Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 11/20/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

### Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants applying in paper copy format are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

### Frequent Questions

*1. Can I Get an Extension of the Due Date?*

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

*2. What Should Be Included in the Application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

*3. What Format Should Be Used for the Application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

*4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

*5. What Is the Allowable Indirect Cost Rate?*

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15 percent. An applicant for Advanced Rehabilitation Research Training project is limited to a training grant indirect rate of 8 percent. An applicant for a RERC, DRRP, or Field Initiated project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

*6. Can Profitmaking Businesses Apply for Grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

*7. Can Individuals Apply for Grants?*

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

*8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

*9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

*10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than following September 30.

*11. Can I Call NIDRR to Find Out if My Application Is Being Funded?*

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

**12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?**

No. Funding in subsequent years is subject to availability of funds and project performance.

*13. Will All Approved Applications Be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

# Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

## Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]
4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) [ ]

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

## Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | 0.00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

## Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

## Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

### PROTECTION OF HUMAN SUBJECTS IN RESEARCH

#### I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

## II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

### A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

### B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

**U.S. DEPARTMENT OF EDUCATION**

**BUDGET INFORMATION**

**NON-CONSTRUCTION PROGRAMS**

OMB Control Number: 1890-0004

Expiration Date: 10/31/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

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| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ∋∋4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ∋∋1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ∋794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. ∋∋ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ∋∋ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. ∋∋ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. ∋ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. ∋∋1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ∋∋276a to 276a-7), the Copeland Act (40 U.S.C. ∋276c and 18 U.S.C. ∋∋874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ∋∋ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ∋∋1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. ∋∋7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ∋∋1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. ∋470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ∋∋469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. ∋∋2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ∋∋4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide

notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≅ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

## Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

| | | |
|---|---|---|
| **1. Type of Federal Action:**<br>a. contract<br>____ b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | **2. Status of Federal Action:**<br>a. bid/offer/application<br>_____ b. initial award<br>c. post-award | **3. Report Type:**<br>a. initial filing<br>_____ b. material change<br><br>**For material change only:**<br>Year _____ quarter _____<br>Date of last report_____ |
| **4. Name and Address of Reporting Entity:**<br>____ Prime _____ Subawardee<br>Tier_____, if Known:<br><br>**Congressional District, if known:** | **5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime:<br><br>**Congressional District, if known:** | |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ | |
| **8. Federal Action Number,** *if known:* | **9. Award Amount,** *if known:*<br><br>**$** | |
| **10. a. Name and Address of Lobbying Registrant**<br>*(if individual, last name, first name, MI):* | **b. Individuals Performing Services** *(including address if different from No. 10a)*<br>*(last name, first name, MI):* | |
| **11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.** | **Signature:** _____<br><br>**Print Name:**_____<br><br>**Title:**_____<br><br>**Telephone No.:** _____ **Date:** _____ | |
| **Federal Use Only** | **Authorized for Local Reproduction**<br>**Standard Form - LLL (Rev. 7-97)** | |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

# SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

***Do not enter information below unless instructed to do so.***

OMB No. 1890-0014 Exp. 1/31/2006

**Purpose:** This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

**Instructions for Submitting Survey**

**If submitting hard copy**, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

**If submitting electronically**, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local )?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

## Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–11981 Filed 5–13–03; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
May 14, 2003

## Part V

# The President

**Proclamation 7675—Peace Officers Memorial Day and Police Week, 2003**

**Proclamation 7676—National Defense Transportation Day and National Transportation Week, 2003**

**Proclamation 7677—National Safe Boating Week, 2003**

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7675 of May 9, 2003**

## Peace Officers Memorial Day and Police Week, 2003

**By the President of the United States of America**

**A Proclamation**

Every day across the country, from our largest cities to our quietest crossroads, peace officers stand watch over our citizens, selflessly risking their lives to protect individuals, families, neighborhoods, and property against crime. This week, we salute these men and women for their courage, commitment, and service, and we honor those who have fallen in the line of duty. We also reaffirm our commitment to supporting law enforcement by bringing our communities together to fight crime.

Peace officers fulfill a great calling in upholding the rule of law in our society. Law enforcement officers choose their profession and take their oaths knowing that theirs is a dangerous job. They accept these risks, answering the call of duty and demonstrating a willingness to serve that reflects the best of America.

As they work to protect our communities, peace officers often place themselves in harm's way. Some make the ultimate sacrifice in defense of others. During Police Week, and particularly on Peace Officers Memorial Day, we pay tribute to the 148 law enforcement officers who gave their lives in the line of duty last year. Those who have fallen are remembered in our hearts and in the memory of our country. Through their service and sacrifice, they have earned our Nation's respect and gratitude.

As we honor these fallen heroes, we should also resolve to support all law enforcement officers by becoming active in the fight against crime. Strong communities and neighborhoods help deter crime. By coming together as neighbors, and by looking out for each other, Americans can assist law enforcement in preventing crime in our communities and also help secure our homeland from the threat of terrorism. In the new world we face since September 11, one of our best defenses is a vigilant public working with law enforcement to help protect our land.

I created the USA Freedom Corps to foster a culture of service, citizenship, and responsibility in America, and to provide opportunities for Americans to get involved in helping their communities. A key component of Freedom Corps is the Citizen Corps, which helps coordinate volunteer activities that make our communities safer, stronger, and better prepared for emergencies. Since the Citizens Corps was launched last year, more than 500 Citizen Corps Councils have been established, bringing together first responders, local government officials, and volunteer service organizations.

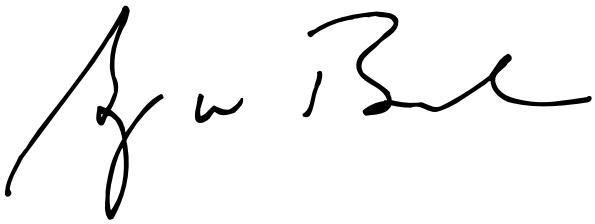
Volunteers are also working with police departments through more than 430 Volunteers in Police Service programs in our Nation. Additionally, the number of registered Neighborhood Watch groups continues to grow. To build on these successes, we should continue to strengthen partnerships between citizens and local law enforcement and work to engage more volunteers in public safety and emergency preparedness. By joining together to fight crime, we honor the memory and uphold the legacy of all those who gave their lives to preserve our safety and security.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May

15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week,'' and, by Public Law 103–322, as amended, (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2003, as Peace Officers Memorial Day and May 11 through May 17, 2003, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12196
Filed 5–13–03; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7676 of May 9, 2003**

## National Defense Transportation Day and National Transportation Week, 2003

**By the President of the United States of America**

**A Proclamation**

America's transportation system takes us where we need to go, keeps our economy moving, and strengthens our Nation's security. On National Defense Transportation Day and during National Transportation Week, we celebrate how modern transportation has transformed the world and recognize the men and women who have contributed to its progress. We also renew our commitment to increasing transportation safety and to keeping our transportation system on the leading edge of technology.

Our 21st century transportation system safely and securely transports our citizens and delivers a wide range of goods throughout the country and the world. In times of war, our transportation system also moves troops and carries defense cargo efficiently. Preserving and enhancing our transportation resources makes that infrastructure safer, facilitates growth in business and industry, creates jobs, secures our Nation, and improves the quality of life of our citizens.

To sustain these advantages, we must continue to invest in our Nation's transportation systems. From enhancing existing highways, waterways, railway lines, pipelines, and airports, to developing fuel-efficient and reduced-emissions vehicles, we must work towards improving safety, protecting the environment, and furthering our national defense. As part of these efforts, my Administration has announced a hydrogen fuel initiative to reverse America's growing dependence on foreign oil by developing the technology to produce commercially viable, hydrogen fuel cells, which will help power cars and trucks with no emissions of air pollution or greenhouse gases. This new national commitment could make it possible for the first car driven by a child born today to be powered by hydrogen, and be pollution-free.

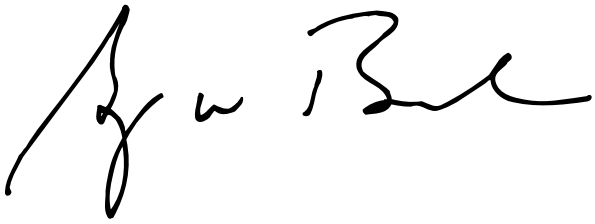
Through the newly created Department of Homeland Security, my Administration is working towards strengthening protections throughout our national transportation system. Designed to increase protections for America's citizens while maintaining the free flow of goods and people across our borders, our comprehensive national plan includes selective maritime restrictions, increased airport security, and improved railroad infrastructure security. We are also enforcing temporary flight restrictions and flying Combat Air Patrols over critical sites, increasing surveillance of hazardous material shipments within our country, and taking measures to keep hazardous materials away from places where large numbers of people gather. We are determined to defend the American homeland, and we will do all in our power to make sure our skies, rails, pipelines, waterways, and roads are safe from terror.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being, and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May of each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as

amended (36 U.S.C. 133), declared that the week during which that Friday falls be designated as ''National Transportation Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 16, 2003, as National Defense Transportation Day and May 11 through May 17, 2003, as National Transportation Week. I encourage all Americans to learn more about how our modern transportation system enhances our economy and contributes to our freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12197
Filed 5–13–03; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7677 of May 9, 2003**

## National Safe Boating Week, 2003

**By the President of the United States of America**

**A Proclamation**

As summer approaches, Americans are looking forward to enjoying our Nation's rivers, lakes, and oceans. National statistics show that recreational boating is safer today than ever before, with the number of boating fatalities declining even as the number of boats increases. However, lives continue to be lost needlessly, and we must remain committed to boating safety. During National Safe Boating Week, we are reminded that practicing simple steps can make recreational boating safer and more enjoyable.

This year's theme, ''Boat Smart. Boat Safe. Wear It!'' highlights the importance and ease of wearing life jackets. Drowning remains the number one cause of recreational boating fatalities. According to the United States Coast Guard, nearly 80 percent of those who died in boating accidents in 2001 were not wearing life jackets. In many of these cases, life jackets were available on board, but were useless to the passengers in the boats because the speed and suddenness of the accident prevented them from having time to put on their life jackets. The chances of surviving a serious boating accident increase dramatically by wearing a life jacket. Modern life jackets are smaller, lighter, and more flexible, making them easier and more comfortable to wear.

The National Safe Boating Council, the National Association of State Boating Law Administrators, and the U.S. Coast Guard are working with other campaign partners to encourage safe boating practices through the 2003 North American Safe Boating Campaign. In addition to wearing life jackets, the campaign encourages boaters to enroll in a boating safety class, to ensure that boats are properly maintained and checked for safety, to follow regulations and guidelines relating to homeland security issues, and not to consume alcohol when operating a boat. More information about staying safe on the water is available by visiting the U.S. Coast Guard's Office of Boating Safety website at www.uscgboating.org. By improving our skills and increasing our knowledge of recreational boating safety, we can reduce the loss of life, the injuries, and the property damage that occur on our waterways.

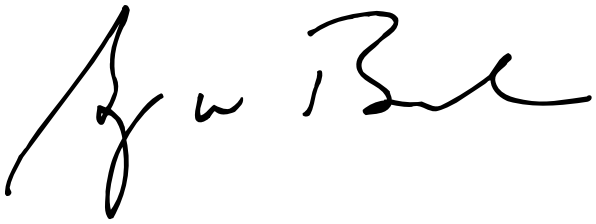
Safe boating also contributes to homeland security and frees the time of public safety officers to focus on enforcement issues. The same Coast Guard members, marine patrol, police, and fire officers who respond to recreational boating accidents are also responsible for protecting the security of our ports and waterways. By avoiding boating accidents, Americans can help these officials devote more time and effort to safeguarding our homeland.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 17 through May 23, 2003, as National Safe Boating Week. I encourage the Governors of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the officials of other areas subject to the jurisdiction of the United States, to join in observing

this occasion. I also urge boaters to learn about proper boating practices, including the wearing of life jackets, and to take advantage of boating safety programs throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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