

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI—Continued

Species	Federal status	Proposed rule		Final rule		Proposed designation or non-designation of critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Spermolepis hawaiiensis</i> .	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> .	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Tetramolopium remyi</i>	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
<i>Vigna o-wahuensis</i> ...	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00 ..	65 FR 79192, 65 FR 83158
<i>Viola lanaiensis</i>	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
<i>Zanthoxylum hawaiiense</i> .	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940

Key: E= Endangered.

At the time each plant was listed, we found that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahlia* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*) and not prudent for the other 34 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent findings for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2F. 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 34 of the 37 species reported from Lanai. 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 non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations 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 *Hedyotis schlechtendahlia* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these three taxa, along with seven others, by the time we completed designations for the other 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, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species with the first 100 plants from the group of 245 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