

historical range that contain the primary constituent elements.

(12) *Comment:* One commenter was concerned about the designation of units containing “a badly degraded habitat.” The reviewer criticizes designation of such areas because it is not economically efficient to control threats such as feral ungulates, weeds, and fire. Such designation will create a regulatory burden and restrict future management options for landowners and the State. Another suggested that some species may be endangered because they exist in marginal habitat and that designating more marginal habitat will not improve a species’ chance of survival.

*Our Response:* We agree that it is in a species’ best interest to designate critical habitat in the least degraded areas containing primary constituent elements within historical range. However, in order to reach our recovery goal of 8 to 10 populations for a species within historical range it was sometimes necessary to include “degraded” areas when other less degraded areas were not available for the species.

(13a) *Comment:* One peer reviewer stated that it is unlikely that enough land has been identified for the long-term conservation of multiple populations; however, given the need to compromise, the proposed units are reasonable. Peer reviewers stated that the areas seem suitable in size and are ecologically appropriate, provided: (1) They are protected from their primary threats, (2) excluded lands are properly managed and of large enough size to be ecologically sustainable, (3) proposed units E1–3 are consolidated into a single unit and proposed unit D is retained as an entire unit, or the Service can explain why fragmentation and edge-effects are not threats to the species and why there is adequate mid-elevation habitat available in other areas for target species. (13b) *Comment:* Critical habitat for *Hibiscus brackenridgei*, *Tetramolopium remyi*, and *Sesbania tomentosa* should be larger due to their formerly extensive range. (13c)

*Comment:* One peer reviewer stated that removal of significant portions of any of the critical habitat units in the proposed rule is likely to prevent the recovery of, or lead to the extinction of, listed species.

*Our Response:* We did not include additional lands in proposed critical habitat because, at the time of the proposal and revised proposal, we concluded that those lands were not essential for the conservation of the 37 Lanai plant species, based on available information concerning status of the species in specific areas and level of

habitat degradation. In this final rule, several units and parts of units proposed as critical habitat have been excluded because they are not essential for the conservation of the species or because there are alternatives to a critical habitat designation. We determined them to be non-essential due to their lacking primary constituent elements, or having primary constituent elements but there are other places for these species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserve, or on a refuge. A sufficient number (as defined in our recovery plans) of other, more appropriate areas are being designated or proposed as critical habitat within historical range on other islands. In other cases, the Service decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. See the descriptions of exclusion of critical habitat under Exclusions Under Section 4(b)(2), below.

(14) *Comment:* One peer reviewer noted that one of the keys to a plant’s survival is having the appropriate microclimate, which is created by other plant species in a large enough aggregation to alter the environment. Because of the strong, harsh winds on Lanai, it is essential that critical habitat units, such as proposed units A, B, and C, are large enough to provide habitat for a complete plant community that can provide shelter from the winds.

*Our Response:* We agree and have sought to designate critical habitat units that are large enough to accommodate the needs of the species within those units. However, based on information received during the public comment period, we have revised the proposed critical habitat units and have excluded proposed units A, B, and C because they are not essential for the conservation of *Hibiscus brackenridgei*, *Cyperus trachysanthos*, *Tetramolopium remyi*, and *Sesbania tomentosa*. Although they possess some of the primary constituent elements for these species, their habitat is largely degraded. We were able to identify an adequate number of sites within the historical range containing more appropriate and less degraded habitat, and/or that are already slated for conservation management and restoration.

(15a) *Comment:* Several commenters, including one peer reviewer, felt that the proposed rule was improved by incorporating clear methodology to designate appropriate unoccupied habitat for plant recovery. (15b)

*Comment:* The Service should not

designate unoccupied habitat. One commenter stated that the Service is acting outside its authority in designating unoccupied habitat because almost any area in Hawaii is capable of supporting one or more protected species, and the entire State would have to be designated if unoccupied habitat is included. (15c) *Comment:* Unoccupied habitat outside of the Conservation District should not be designated because it is degraded.

*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 these species, designating only occupied areas would not meet the conservation requirements of the species. 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. We have revised the December 27, 2000, proposal to designate critical habitat for 18 species from Lanai to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species. Expansion of some of these species to areas that were likely to have been historically occupied is essential to the conservation of the species.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined what 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, are either in good condition for recovery efforts or could be made good 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.

We disagree that all areas outside the Conservation District are degraded and inappropriate for these species. Areas that contain one or more of the primary constituent elements, are either in good