

community in the proposed conservation zones.

Our Response: We agree that Hawaiians may have impacted natural areas prior to European settlement. Further, we believe that native Hawaiians can play an important role in species recovery. We do not anticipate that the critical habitat designation will affect their role in species recovery efforts, and we believe it is likely to be compatible with many of the land management goals of native Hawaiians.

(22) *Comment:* Critical habitat must accommodate the traditional cultural gathering rights of native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Paakai o Ka Aina decisions.

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. Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat, unless there is Federal nexus to the activity. A critical habitat designation has no regulatory effect on access to State or private lands. 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.

(23) *Comment:* One native Hawaiian commenter stated that the critical habitat proposal is crucial in guardianship and preservation of not only native plants, but the native species that thrive in such protected habitat.

Our Response: We agree that conservation of native plants is consistent with the land management goals of many native Hawaiians. Though not intended to replace on the ground management, we agree that critical habitat designation plays a role in the protection of native 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 landowners, 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.

Issue 3: Site-Specific Biological Comments

(24) *Comment:* The exclusion of Kanepuu Preserve needs to be reassessed because the string of small preserves may not be adequate to provide for the long-term maintenance of habitat. Critical habitat may need to be established around these preserves in order to sustain native plant communities. One peer reviewer was concerned that, given the exclusion of Kanepuu Preserve, *Bonamia menziesii* may not have enough suitable lowland dry forest designated as critical habitat.

Our Response: We reassessed the exclusion of Kanepuu Preserve and determined that it should be excluded because, in addition to having ongoing management, it is not essential for the conservation of *Bonamia menziesii* or *Hibiscus brackenridgei*. We were able to locate sites on other islands for those two species that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8–10 populations.

(25a) *Comment:* One peer reviewer noted that as long as the units are protected from major threats, adequate, although not ideal, habitat is designated within proposed unit A for species recovery. (25b) *Comment:* Other commenters recommended removing unit A from the proposed designation, citing the following reasons: (1) *Hibiscus brackenridgei* is represented by only one individual in the unit, the unit has a small amount of suitable soil, it has habitat proposed in unit D, habitats exist on other islands, and the species has been extensively cultivated *ex situ*; (2) the physical attributes of Kaena Iki have changed substantially over time,

the ground water spring dried up and seasonally wet soil habitat is no longer present, making it unsuitable habitat for *Cyperus trachysanthos*; (3) the historical location for *C. trachysanthos* is somewhat ambiguous because “Kaena” is also the name of a locality 2.5 miles to the east-northeast outside proposed unit A; and (4) the former population of *C. trachysanthos* within proposed unit A was likely very small and may be considered an unusual occurrence. (25c) *Comment:* Another reviewer suggested reducing the size of proposed unit A to less than 275 acres in the upper portion of the site near the existing populations of *H. brackenridgei*. The unit should be designed to accommodate just one of the 8 to 10 populations needed statewide.

Our Response: Unit A was proposed as critical habitat for two species, *Cyperus trachysanthos* and *Hibiscus brackenridgei*. We excluded the proposed critical habitat for *C. trachysanthos* from the final rule because this area no longer contains the suitable habitat of seasonally wet soils. The water source has permanently dried up due to alterations in the watershed properties of the island. Also, this area is not essential for the conservation of *C. trachysanthos*, a multi-island species, because we were able to locate sites on other islands that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

Based on information received during the public comment period, we have also excluded unit A as critical habitat for *H. brackenridgei*, a multi-island species. We determined that this area is not essential for the conservation of the species because there are at least eight other places for this species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserves, or on a refuge. More appropriate areas on other islands, within historical range, and that provide habitat for 10 populations, are proposed as critical habitat for *H. brackenridgei*.

(26a) *Comment:* One peer reviewer noted that, as long as the units are protected from major threats, adequate, though not ideal, habitat is designated within proposed unit B for species recovery. (26b) *Comment:* Proposed unit B should not be removed from critical habitat designation because recent surveys found no individuals of *Tetramolopium remyi* present in fenced areas, despite favorable environmental conditions. (26c) *Comment:* Proposed unit B should be reduced to less than