

occurrence at this site are lacking, (3) since the species is confined to vertical cliffs, habitat above the cliff is inappropriate, (4) few available niches exist for this species along the cliffs, (5) the species was likely always rare in this area, and (6) the cliffs are already protected under applicable shoreline setback laws.

*Our Response:* Lanai G was proposed as critical habitat for the multi-island species *Portulaca sclerocarpa*. Modifications were made to this unit to exclude inland areas that do not contain the primary constituent elements. Although there are no historical records for this species on the main island of Lanai, we believe the species did historically occur there as plants continue to survive just off shore on Poopoo Islet. Poopoo Islet is a small rocky outcrop approximately 200 m (600 ft) from the south shoreline. It is likely that the species disappeared from the main island Lanai as a result of the threats there prior to adequate surveys being conducted. Further, the areas designated as critical habitat on Lanai proper contain one or more of the primary constituent elements and provide additional area for one of the 8 to 10 populations needed for the recovery of this species as outlined in the recovery plan. Critical habitat designated for *P. sclerocarpa* includes only cliff faces along the shore. While it is true the cliffs are already protected under applicable State shoreline setback laws, the specific habitat features for this species are not directly protected by those laws. Actions taken adjacent to the cliffs, which may not be affected by State laws, could appreciable alter the ability of the habitat to support a population of this species. This unit was renamed Lanai 5—*Portulaca sclerocarpa*—Coast.

(32) *Comment:* Commenters supported the designation of critical habitat for *Portulaca sclerocarpa* at proposed unit H. One commenter noted that although surveys found no evidence of the species in proposed unit H, the islets' cliff faces remain appropriate for a species that was likely naturally rare due to the area's few suitable niches.

*Our Response:* We agree this species is rare, but this unit continues to support the one extant colony of this species on Lanai. No changes were made to this unit and it is designated as critical habitat for *Portulaca sclerocarpa*. It has been renamed Lanai 6—*Portulaca sclerocarpa*—Isle.

#### Issue 4: Mapping

(33) *Comment:* The Service should define affected property lines in a

manner that allows for the descriptions to be used in real property conveyance documents in the State of Hawaii.

*Our Response:* The maps in the **Federal Register** are meant to provide the general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats and were made available electronically upon request for use with GIS programs. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

(34) *Comment:* The final proposal should map or identify how many populations are being accommodated in each unit and the acreage allotted for each population.

*Our Response:* The final rule identifies the number of populations accommodated in each unit. We do not have the scientific information to precisely identify how many acres each population requires. We did, however, ensure that each population is separated by 1,000 meters or by some distinct geologic feature.

#### Issue 5: Economic Issues

(35) *Comment:* The Draft Economic Analysis (DEA) fails to consider 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 Cattlegrowers 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. However, 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).

*Our Response:* Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State law are discussed in the economic analysis under indirect costs (e.g., possible conservation management mandate for the private landowner and reduction in game mammal populations). The economic analysis considers 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 economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level (e.g., further regulating the take of federally listed species), the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are tied to the Federal listing of the species and do not co-extensively occur because of critical habitat designations. However, our analysis did consider the other ways in which the Federal Endangered Species Act and Hawaii State law may interplay.

(36) *Comment:* Two commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii's Land Use Law. Critical habitat could result in changes to zoning under State law. 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 in, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, and make the land unmortgageable.

*Our Response:* As indicated in the final addendum to the DEA (Addendum), about 362.4 ac of agricultural lands and 8 ac of rural lands are included in the final designation. No agricultural or ranching activities take place on these agricultural lands. Assuming a worst-case scenario, one which is not envisioned, reduction in land values due to redistricting land from the Agricultural or Rural District to Conservation District could range from \$50,736 to \$163,080 (\$140 to \$450 per acre) for agricultural lands and \$1.3 million to \$2.7 million (\$160,000 to \$334,000 per acre) for rural lands. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, the likelihood of redistricting is not certain and could be small. The State's history