

supports the unlikelihood of rezoning or redistricting land based on evaluations of biological value.

(37) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's 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. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be "significant." Multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. 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 land impossible to develop.

*Our Response:* 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, and increased risk of litigation over approvals, are not expected since no known development plans exist for the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the critical habitat is in the Conservation District where development is severely limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the proposed designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area. (The percentages given here are different from those in the addendum because of the Service's decision to exclude Lanai Unit D (see *Exclusions Under Section 4(b)(2)*)

(38) *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 that "adequate provision shall be made for protection of fish and wildlife". HRS 174C-71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners may depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. 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, because none of the listed plants are stream-dependent for their survival and therefore critical habitat designation would not cause a reduction in existing water diversions.

(39) *Comment:* One commenter stated that the cost of potential citizen lawsuits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Another commenter stated that critical habitat designation will bring unnecessary and costly litigation. One commenter stated that proposed critical habitat could entail considerable cost to both the State and private landowners. One commenter stated that critical habitat designation could indirectly result in limitations or special management requirements (such as fencing or control of invasive species) being established on private lands. The DEA estimates that the Palila court decision may be interpreted to mandate private conservation and could cost Lanai landowners up to \$800,000 per year, or \$8 million over ten years. However, Table VI-3 of the Addendum dismisses these costs as minor and does not add them to the total cost estimate. These costs should be considered.

*Our Response:* 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 designated. However, the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Lanai. Specifically, 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, and increased risk of litigation over approvals, are not expected since there are no known development plans within the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the proposed critical habitat is in the Conservation District where development is already limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area.

Thus, 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, or any other associated effect on project delays due to scant historical evidence regarding the Lanai plants.

(40) *Comment:* One commenter stated that the DEA lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement, protection of other stream and riparian biota, and the value of the plants as an indicator of ecological health. Other commenters stated that the DEA ignored the benefit 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. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. 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 service, to determine the benefits of critical habitat. Another commenter stated that the DEA overestimates economic benefits and many of the alleged benefits are entirely speculative, unquantifiable or lack any commercial value.

*Our Response:* The DEA discussed these potential benefits. However, the DEA also indicated that these benefits