

species and is adjacent to the currently occupied habitat in Unit 6—*Portulaca sclerocarpa*—Isle. It is geographically separated from other designated critical habitat on the island of Hawaii in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

#### Lanai 6—*Portulaca sclerocarpa*—Isle

This unit is critical habitat for *Portulaca sclerocarpa* and is 1 ha (2 ac) on privately owned land. This unit comprises all of Poopoo Islet. This unit provides habitat for one population (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of 300 mature, reproducing individuals of this short-lived perennial and is currently occupied by about 10 plants. This unit is important to the conservation of the species because it supports the one extant colony of this species on Lanai. This unit also includes habitat that is important for the expansion (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of the present population. The habitat features contained in this unit that are important for this species include, but are not limited to, exposed ledges in thin soil in coastal communities. This coastal habitat is unique to Lanai for this species; on the island of Hawaii, this species grows on weathered soils, cinder cones, or geologically young lava; in montane dry shrubland; often on bare cinder; near steam vents; or in open *Metrosideros polymorpha*-dominated woodlands, away from coastal areas. This critical habitat unit provides area for one population within the historical range of this multi-island species. It is geographically separated from other designated critical habitat units on the island of Hawaii to prevent all populations from being destroyed by one naturally occurring catastrophic event.

### Effects of Critical Habitat Designation

#### Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on

Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(1) of the Act requires Federal agencies, including the Service, to use their authorities to carry out programs for the conservation of any species that is proposed or listed as endangered or threatened. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinstitute consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinstitution of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide “reasonable and prudent alternatives” to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency’s legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse

modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, or *Tetramolopium remyi* will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or an incidental take permit under section 10(a)(1)(B) of the Act from us; or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;