

At the time each plant was listed, we found that designation of critical habitat was prudent for two of these plants (*Labordia triflora* and *Melicope munroi*) and not prudent for the other 49 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent findings for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency findings for 245 listed plant species in Hawaii, including 49 of the 51 species reported from Molokai. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii v. Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Labordia triflora* and *Melicope munroi* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these two taxa, along with eight others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii v. Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but the court ordered us to publish proposed critical habitat designations for the 10 Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209).

We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants, which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On February 18, 1999, we contacted landowners on the island of Molokai, notifying them of our requirement to designate critical habitat for 51 plant species. We included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held an open house on the island of Molokai, at the Mitchell Pauole Community Center, on March 15, 2000, to meet one-on-one with local landowners and other interested members of the public. In addition, we met with Maui County DOFAW staff and discussed their management activities on Molokai.

On December 29, 2000, we published the fourth of the court-ordered proposed critical habitat designations or nondesignations for 32 Molokai plants (65 FR 83158). The prudency findings and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Lanai plants on December 27, 2000 (65 FR 82086). All of these proposed rules had been sent to the **Federal Register** by or on November

30, 2000, as required by the court orders.

In those rules, we proposed that critical habitat was prudent for 47 species (*Adenophorus periens*, *Alectryon macrococcus*, *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Centaurium seabaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Diplazium molokaiense*, *Flueggea neowawraea*, *Hedyotis mannii*, *Hesperomannia arboreascens*, *Hibiscus arnottianus* ssp. *immaculatus*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Marsilea villosa*, *Melicope mucronulata*, *Melicope reflexa*, *Neraudia sericea*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Plantago princeps*, *Platanthera holochila*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene alexandri*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Tetramolopium rockii*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) that are reported from Molokai as well as on Kauai, Niihau, Maui, Kahoolawe, and Lanai. We proposed that critical habitat was not prudent for one species, *Pritchardia munroi*, because it would increase the threat of vandalism or collection of this species on Molokai. Critical habitat was not proposed in that rule for two species, *Lysimachia maxima* and *Phyllostegia mannii*, because they are currently found only in areas on Molokai that do not require special management consideration or protection because they are already protected and managed to the benefit of these species.

On December 29, 2000, we proposed designation of critical habitat on approximately 6,163 hectares (ha) (15,228 acres (ac)) of land on the island of Molokai. The publication of the proposed rule opened a 60-day public comment period, which closed on February 27, 2001. On February 22, 2001, we published a notice (66 FR 11132) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Molokai and a notice of a public hearing. On March 21, 2001, we held a public hearing at the Mitchell Pauole Center Hall, Molokai.

On October 3, 2001, we submitted a joint stipulation to the U.S. District Court with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council v. Babbitt*) requesting extension of the court order for the final rules to designate critical habitat for plants from