

(7) *Comment*: One commenter felt that critical habitat should be designated for *Pritchardia munroi*. This commenter opposed the Service's decision that it is not prudent to designate critical habitat on the grounds that: (1) Designation of critical habitat would not increase the threat of vandalism to this species; (2) the Service failed to list overcollecting as one of the threats to this species in the revised proposal (67 FR 16497); (3) the species' existence on non-Federal land is irrelevant; (4) the Service cannot refuse to designate critical habitat because it cannot think of a future Federal activity likely to trigger consultation under section 7 of the Act; and (5) critical habitat offers benefits that go far beyond the protection that *Pritchardia munroi* receives under section 7, namely, critical habitat will help a species *recover*, whereas section 7 merely protects a species from *extinction*.

Our Response: In this final rule to designate or not designate critical habitat for 42 plants from Molokai we have incorporated new information and addressed comments and new information received during the comment periods. However, no additional information was provided during the comment periods that demonstrates that the threats to *Pritchardia munroi* from vandalism or collection would not increase if critical habitat was designated for this species on Molokai.

We believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on Molokai. First, it is easy to identify, and second, it may be attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). We believe that the evidence shows that this species of palm may be attractive to such collectors. Several nurseries advertise and sell *Pritchardia* palms, including *Pritchardia munroi* and six other federally listed *Pritchardia* species. See the section entitled "Prudence" in this rule for more information regarding instances of vandalism, collection, and commercial trade of Hawaiian species of *Pritchardia*. Although the final listing rule and proposed critical habitat do not list vandalism or overcollection as threats, in light of documented vandalism and overcollection events on species in the same genus on Kauai, we believe that *Pritchardia munroi* is vulnerable to the same types of threats because of the similarity in appearance of the species.

In addition, we believe that designation would not provide significant benefits that would outweigh

these increased risks. First, *Pritchardia munroi* does not occur on Federal land. The private land where it is found is zoned for agriculture, though the single tree has been fenced (HINHP Database 2000). In addition, this species is found in a small ravine in an area that is remote and inaccessible to standard vehicles. It is, therefore, unlikely that the land on which it is found will be developed. Since there does not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species that it does not already have through listing alone. If, however, any future Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development, or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for this species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we have determined that designation of critical habitat for *Pritchardia munroi* is not prudent.

(8) *Comment*: One commenter asked why other federally listed plants on Molokai and historically listed plants were not included in the critical habitat proposal. One peer reviewer questioned the decision to not designate critical habitat for *Gardenia brighamii* and *Kokia cookei* based on: (1) Recent records of *Gardenia brighamii* on Molokai; (2) the recovery plan's stated need for three populations of *Gardenia brighamii* on Molokai; and (3) *Kokia cookei* being known only from Molokai.

Our Response: The proposed rule to designate critical habitat for 46 species found on Molokai was prepared in response to a lawsuit (see "Previous Federal Action"). Species listed prior to 1991, such as *Gardenia brighamii* and *Kokia cookei*, were not included in this lawsuit and were thus not addressed in the proposed rule. In addition, critical habitat was not proposed for four species (*Bonania menziesii*, *Cyperus trachysanthos*, *Melicope munroi*, and *Solanum incompletum*) that no longer

occur on Molokai and for which we were unable to identify any habitat that is essential to their conservation on the island. Finally, critical habitat is not designated for four species (*Hedyotis mannii*, *Phyllostegia mollis*, *Platanthera holochila*, and *Vigna o-wahuensis*) 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 within TNCH preserves.

Issue 2: Effects of Critical Habitat Designation

(9) *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. 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.

(10) *Comment*: Several commenters believed that critical habitat will not help to recover listed plants and is unnecessarily restrictive, even if it is scientifically based. These commenters