

would be detrimentally affected; (2) designation may conflict with existing operations of an economically vital surface water collection system that is maintained in Kaunakakai ahupuaa and Kawela Forest Reserve lands; and (3) lands proposed for designation on the west end of the ranch are used for grazing and recreation.

Our Response: As modified, the designated acreage of land owned by Molokai Ranch is approximately 226 ha (558 ac) (reduced for biological reasons from the 1,080 ha (2,670 ac) proposed for designation). Approximately 77 ha (190 ac) are located near the northern coastline on the west side of Molokai, in a remote area. Most of the 77 ha (190 ac) are in the Agricultural District, but a portion of the land along the coastline is within the Conservation District. The remaining 149 ha (367 ac) are located in the Conservation District within the Molokai Forest Reserve.

Chapter VI, Section 4.g. of the DEA discussed the potential indirect impact that the designation of critical habitat could have on property values. The DEA noted that the worst-case scenario—and one that is not expected over the long term because uncertainties about the implications of the designation are likely to dissipate over time—would be a perception among potential buyers that the land should be valued as if it were subject to the same restrictions as land in the Conservation District. The DEA also states that land values on Molokai could drop between \$1,000 per acre for remote agricultural land to \$75,000 per acre for land suitable for development as a result of redistricting to the Conservation District. The commenter did not provide alternative numbers.

Thus, an estimate of the potential impact on Molokai Ranch's land values is as follows: The 149 ha (367 ac) are not likely to lose value due to critical habitat designation because of their presence within the Conservation District. While the total decrease in value for the approximately 77 ha (190 ac) in the Agricultural District could range from \$190,000 to \$14.2 million, any loss in value due to redistricting is more likely to be on the lower end of the range due to the remote location and distance from infrastructure of these 77 ha (190 ac).

No costs are expected to occur from impacts to the existing water collection system because none of the designated species are stream-dependent for their survival and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance

are not considered critical habitat, as these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

No costs are expected to occur from impacts to designated lands on the west end of the ranch that are used for grazing and recreation. As noted in Chapter III of the DEA, the Service does not have jurisdiction under section 7 to consult on activities occurring on non-Federal lands when the activities are not federally funded, authorized, or carried out. Because there is no known Federal involvement in the grazing and recreational activities identified by the commenter, no costs are anticipated to occur as a result of critical habitat designation.

(26) *Comment:* One commenter stated that because unemployment is so high on Molokai, restrictions on subsistence activities, such as hunting and fishing, may cause a much greater economic impact than is suggested in the DEA.

Our Response: Chapter VI, Section 4.d. of the DEA discussed the economic impact critical habitat designation may have on subsistence activities. The designation of critical habitat by itself will not directly impact subsistence activities, as critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters or gatherers. Instead, it requires only that if the State or a private landowner seeks to undertake an activity that may affect the designated area using Federal funding or with a Federal permit, the Federal Action agency consult with the Service.

However, the DEA recognized that there is some risk that designation of critical habitat could have an indirect impact on subsistence activities if, as a result of a future lawsuit, a court mandated actions that reduce the ability of individuals to practice subsistence activities in these areas. However, the probability of a lawsuit being filed, the likelihood of its success, and the role of critical habitat in the suit are unknown. In addition, the DEA recognized the possibility that the State or private landowners could adopt a policy of restricting access into areas that overlap critical habitat units without a judicial mandate. The likelihood of voluntary landowner restrictions is also unknown. Based on professional judgment, however, the probability of a complete restriction of subsistence activities within critical habitat as a result of lawsuits or voluntary action was deemed unlikely.

The DEA was unable to quantify this indirect impact because of (1) The lack of information on the amount of the subsistence harvest; (2) the lack of information on the proportion of the subsistence harvest derived from areas within versus outside of critical habitat; and (3) the lack of information on the cultural significance of the subsistence activities conducted within critical habitat. Thus, the DEA concluded that while there could be a significant loss associated with the restriction of subsistence activities within the proposed critical habitat, the probability of subsistence activities actually being restricted within the proposed critical habitat was undetermined but generally unlikely.

(27) *Comment:* One commenter notes that a Federal nexus exists for the nonpoint source water discharge program. This commenter was concerned that if water discharge into critical habitat does not meet water quality standards, a permit could be denied. The commenter suggested that the effect on agriculture may be devastating since some runoff from agricultural activities is unavoidable.

Our Response: The State Department of Health Polluted Runoff Control Program and the State Office of Planning, Coastal Zone Management Program, work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create State-wide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to critical habitat. The proposed rules simply provide a general prohibition on nonpoint source pollution and allow for exemption of violation under certain conditions (for example, if best management practices are utilized). The probability that these rules will be adopted without significant changes is impossible to