

determine, as the recent elections resulted in an administration change and the new Governor's position on the issue of non-point source water pollution is not yet known. Moreover, at this point, critical habitat does not appear to play any role in the proposed rules. Thus, the possible economic impact, if any, caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative and unable to be estimated.

(28) *Comment:* One comment stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Land Use Law. Critical habitat could result in downzoning under State law. HRS Sec. 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS Sec. 195D–5.1 states that the DLNR shall initiate amendments in order to include the habitat of rare species. Even if the DLNR does not act, the State Land Use Commission may initiate such changes, or they may be forced by citizen suits. Areas for endangered species may be placed in the Protective Subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, reduce market value, and make the land unmortgageable. Additionally, forced redistricting from Agricultural to Conservation could increase real property taxes even while driving down the real value of the property.

Our Response: Both the DEA and this Addendum attempt to quantify the potential impacts from downzoning. As indicated earlier in this Addendum, the Service has indicated that it plans to remove most of the land in the Agricultural District from the final critical habitat designation. The intended modification would result in the inclusion of about 2,608 acres of Agricultural lands in the revised designation. Limited grazing takes place in these Agricultural lands. As discussed in section 5.c. of the Addendum, assuming Agricultural land in reserves would not lose value and assuming relatively low land values due to the remoteness of the Agricultural lands designated, reduction in land values due to redistricting land within the intended critical habitat designation from Agricultural to Conservation District could approach \$715,000. As discussed in section 5.c. of the Addendum, redistricting these lands to the Conservation District is not likely to interfere with the use of the land or significantly reduce its economic value.

The remaining privately owned land (715 acres) is considered remote Agricultural land. Therefore, utilizing the value from the lower end of the range, an estimate of the total drop in property value should redistricting of all privately owned Agricultural land occur would be \$715,000 ($715 \times \$1,000$). Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, the likelihood of redistricting is not reasonably certain.

(29) *Comment:* One comment stated that the DEA fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. *New Mexico Cattlegrowers Association v. U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. However, since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law which prohibits destruction of plants in knowing violation of State law).

Our Response: The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

(30) *Comment:* A commenter stated that 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 Sec. 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 Sec. 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 also stated the following: The DEA fails to evaluate the practical effect that 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 it impossible to develop.

Another commenter stated that the Service has taken the position in other States that it has a right to intervene in local land-use proceedings if they affect endangered species on private property. The commenter provided the example of the Service's petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property, even though no Federal approval was being sought. The commenter concluded that the failure of the Service to address these activities in the DEA is a fundamental error of the analysis.

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, increased risk of litigation over approvals, etc., 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 in areas designated as critical habitat highly unlikely: (1) As modified, approximately 89 percent of critical habitat is in the Conservation District where development is already limited; (2) the approximately 11 percent of critical habitat in the Agricultural District is in arid areas or areas lined with gulches or steep cliffs that generally support limited, if any, grazing; (3) there are no known plans for development within the proposed critical habitat as modified; and (4) as modified, most of the land being designated as critical habitat in the Special Management Area is also within the Conservation District, where development is severely limited. In general, the Service does not intervene in local land use decisions, except to provide information on potential effects