

implementation of section 7 for the 46 Molokai plant species.

Following the close of the comment period on the draft economic analysis, an addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft as necessary. These changes were primarily the result of modifications made to the proposed critical habitat designation based on biological information received during the comment period. In addition, we have examined the economic effects of including the areas identified in the proposed rule as areas not meeting the definition of critical habitat because they were not in need of special management under section 3(5)(a) of the Act.

Together, the draft economic analysis, the addendum and the addendum amendment constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation co-extensive with the listing may result in potential direct economic costs of between \$54,470 and \$269,150, and concludes that economic impacts from the designation of critical habitat would not be significant. The reduction of up to \$536,600 from the costs estimated in the draft economic analysis is due to the exclusion of proposed unit Molokai E2 from final designation and the significant reduction in size of proposed units Molokai A1, A2, B1, C, D, F, and G (designation of 9,843 ha (24,323 ac) versus 17,614 ha (43,532 ac) as proposed critical habitat, a reduction of approximately 7,771 ha (19,209 ac)).

While our final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 46 plant species on Molokai, the reported costs are highly speculative and, in general, thought to have a low probability of occurrence. In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see ADDRESSES section).

No critical habitat units in the proposed rule were excluded or modified due to economic impacts

because the expected cost of the designation is not significant. The likely direct cost impact of designating critical habitat on Molokai for the 46 plant species is estimated to be between \$5,447 and \$27,000 per year over the next ten years.

Other Impacts

Pursuant to section 4(b)(2) of the Act, the Service has decided to exclude approximately 3,731 ha (9,218 ac) within three areas managed by TNCH from final critical habitat designation because the benefits provided by such an exclusion outweigh the benefits provided by a designation of critical habitat.

In the proposed rule (April 4, 2002, 67 FR 16557), the Service solicited comments from the public as to whether certain areas on Molokai should be excluded from final critical habitat, and what methodology we might use to determine if the benefits of such exclusions outweigh the benefits of including such areas as critical habitat. The rationale for our final decision is described below.

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. In the revised proposed determinations of prudence and proposed designations of critical habitat for plant species from the island of Molokai, Hawaii (April 5, 2002; 67 FR 16492), we indicated that we believed that lands managed by TNCH provided adequate special management or protection for 19 of these species, and if any management plans were submitted during the open comment period we would consider whether such plans provide such protections. This was based the definition of critical habitat (section 3(5)), which specifies critical habitat as areas within the geographical area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In order to give meaning to this last clause, we considered that if an area was already adequately managed then there would be no requirement for special management considerations or protection. We believed that adequate special management or protection would be provided by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species. The three criteria identified in the proposed rule for

determining if a plan provides adequate special management or protection are as follows: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan or agreement must provide assurances that the conservation management strategies will be implemented; and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective (*i.e.*, provide for periodic monitoring and revisions as necessary).

We proposed to not include the TNCH lands pursuant to this interpretation of the definition of critical habitat. However, in a recent opinion (*Center for Biological Diversity v. Norton*, Civ. No. 01-409 TUC DCB D. Ariz. Jan. 13, 2003), a Federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that "whether habitat does or does not require special management by defendant or FWS is not determinative on whether or not the habitat is 'critical' to a threatened or endangered species (pages 13-14 of the court's decision)." We continue to believe that our interpretation was reasonable. However, we nevertheless have not declined to include areas from this final designation because they are adequately managed.

It is important to note that this Court ruling also concluded that, under section 4(b)(2) of the Act, "It is certainly reasonable to consider a positive working relationship relevant, particularly when that relationship results in the implementation of beneficial natural resource programs, including species preservation.

We have come to a similar conclusion in relation to certain non-Federal lands on Molokai. As explained below, we believe that the exclusion of TNCH lands from critical habitat will help improve and maintain our relationship with TNCH, and it will also provide incentives to other landowners on Molokai to consider implementing similar voluntary conservation activities on their lands. The Service believes such an outcome will provide greater conservation benefits to these listed species than would a critical habitat designation on these TNCH lands.

The Nature Conservancy of Hawaii

TNCH's Kamakou, Moomomi, and Pelekunu Preserves are occupied habitat for 14 species and unoccupied habitat for five species. According to our published recovery plans, recovery of these species will require reproducing, self-sustaining populations located in a geographic array across the landscape,