

plants on TNCH lands on Molokai would provide a relatively low level of additional regulatory conservation benefit to each of the plant species beyond what is already provided by existing section 7 consultation requirements due to the physical presence of 14 of the 19 listed species. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. The Service also believes that a final critical habitat designation provides little additional educational benefits since the conservation value is already well known by the landowner, the State, Federal agencies, private organizations, and the general public, and the area has been identified as suitable and important to the conservation of 19 Molokai plant species through publication in the proposed critical habitat rule and in this final rule.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these listed plant species on Molokai and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts (Bean 2002, Wilcove *et al.* 1998). For example, five of the 19 species associated with these preserves are extirpated from TNCH lands, and repopulation is likely not possible without human assistance and landowner cooperation.

As described earlier, TNCH has a history of entering into conservation agreements with various Federal and State agencies and other private organizations on their lands. The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Service believes that each of the listed species within TNCH's preserves will benefit substantially from TNCH's voluntary management actions due to a reduction in ungulate browsing and habitat conversion, a reduction in competition with non-native weeds, a reduction in risk of fire, and the

reintroduction of species currently extirpated from various areas and for which the technical ability to propagate these species currently exists or will be developed in the near future.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on Molokai, simply preventing "harmful activities" will not slow the extinction of listed plant species (Bean 2002). Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of these 19 species to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners on Molokai who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, James 2002, Knight 1999, Main *et al.* 1999, Norton 2000, Shogren *et al.* 1999, Wilcove *et al.* 1998). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse *et al.* 2002). Because the Federal government owns relatively little land on Molokai, and because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on Molokai is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the recent Federal District Court decision concerning critical habitat (*Center for Biological Diversity v. Norton, Civ. No. 01-409 TUC DCB D. Ariz.* Jan. 13, 2003), we have determined

that the benefits of excluding TNCH's Molokai preserves as critical habitat outweigh the benefits of including them as critical habitat for *Bidens wiebkei*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, *Cyanea procera*, *Hedyotis mannii*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Melicope mucronulata*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Platanthera holochila*, *Schiedea sarmentosa*, *Silene alexandrii*, *Stenogyne bifida*, *Tetramolopium rockii*, and *Vigna o-wahuense*.

This conclusion is based on the following factors:

1. TNCH's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Therefore, all of their preserve lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals.

2. In the past, TNCH has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

3. Simple regulation of "harmful activities" is not sufficient to conserve these species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of all of the listed species on Molokai due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, plant propagation, and outplanting. This need for landowner cooperation is especially acute because the preserves are unoccupied by five of the 19 species. Future conservation efforts, such as translocation of these five plant species back into unoccupied habitat on these lands and expansion of the extant species, will require the cooperation of TNCH and other non-Federal landowners on Molokai. Exclusion of TNCH lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of TNC to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

4. Given the current partnership agreements between TNCH and many organizations, the Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as