

*Diellia erecta*, *Diplazium molokaiense*, *Dubautia plantaginea* ssp. *humilis*, *Flueggea neowawraea*, *Geranium arboreum*, *Geranium multiflorum*, *Hedyotis coriacea*, *Hedyotis mannii*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Ischaemum byrsonae*, *Isodendron pyrifolium*, *Kanaloa kahoolawensis*, *Lipochaeta kamolensis*, *Lysimachia lydgatei*, *Mariscus pennatifolius*, *Melicope adscendens*, *Melicope balloui*, *Melicope knudsenii*, *Melicope mucronulata*, *Melicope ovalis*, *Neraudia sericea*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Remya mauensis*, *Sanicula purpurea*, *Schiedea haleakalensis*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Spermolepis hawaiiensis*, *Tetramolopium capillare*, *Tetramolopium remyi*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) that are reported from Maui and/or Kahoolawe, as well as Kauai, Niihau, Molokai, and Lanai. We proposed that critical habitat was not prudent for one species, *Acaena exigua*, a species reported from Maui as well as Kauai, because it had not been seen recently in the wild, and no genetic material of this species was known to exist. At the time we proposed critical habitat on Maui, critical habitat was not proposed for four species, *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Melicope balloui*, *Melicope ovalis*, and *Schiedea haleakalensis*, because they were found only in areas on Maui that did not require special management considerations or protection because they were already protected and managed to the benefit of these species, pursuant to 16 U.S.C. 1532(5)(A)(i). (However, a recent Federal District Court disagreed with this interpretation of the definition of critical habitat. *Center for Biological Diversity v. Norton*, Civ. No. 01-409 TUC DCB (D. Ariz. Jan. 13, 2003). While the Service still believes our interpretation is reasonable, we have not excluded areas from this critical habitat designation based on 16 U.S.C. 1532(5)(a)(i).)

On December 18, 2000, we proposed designation of critical habitat on approximately 13,574 ha (33,614 ac) of land on the island of Maui and 207 ha (512 ac) on the island of Kahoolawe. The publication of the proposed rule opened a 60-day public comment period, which closed on February 16, 2001. On February 22, 2001, we published a notice (66 FR 11131) announcing the reopening of the

comment period until April 2, 2001, on the proposal to designate critical habitat for 50 plants from Maui and Kahoolawe and a notice of a public hearing. On March 20, 2001, we held a public hearing at the Renaissance Wailea Beach Resort, Maui.

On October 3, 2001, we submitted a joint stipulation with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council v. Babbitt*) to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On April 3, 2002, we published a revised proposed rule for 70 listed plant species from Maui and Kahoolawe (67 FR 15856). Critical habitat for 61 (*Alectryon macrococcus*, *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Asplenium fragile* var. *insulare*, *Bidens micrantha* ssp. *kalealaha*, *Bonamia menziesii*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Clermontia lindseyana*, *Clermontia oblongifolia* ssp. *mauiensis*, *Clermontia samuelii*, *Colubrina oppositifolia*, *Ctenitis squamiger*, *Cyanea copelandii* ssp. *haleakalensis*, *Cyanea glabra*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea hamatiflora* ssp. *hamatiflora*, *Cyanea lobata*, *Cyanea mceldowneyi*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiense*, *Dubautia plantaginea* ssp. *humilis*, *Flueggea neowawraea*, *Geranium arboreum*, *Geranium multiflorum*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis mannii*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Ischaemum byrsonae*, *Isodendron pyrifolium*, *Kanaloa kahoolawensis*, *Lipochaeta kamolensis*, *Lysimachia lydgatei*, *Mariscus pennatifolius*, *Melicope adscendens*, *Melicope balloui*, *Melicope knudsenii*, *Melicope mucronulata*, *Melicope ovalis*, *Neraudia sericea*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Remya mauensis*, *Sanicula purpurea*, *Schiedea haleakalensis*, *Sesbania tomentosa*, *Spermolepis hawaiiensis*, *Tetramolopium capillare*, *Tetramolopium remyi*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 70 plant species from the islands of Maui and Kahoolawe was

proposed on approximately 51,208 ha (126,531 ac) of land on Maui, and approximately 1,372 ha (4,500 ac) on Kahoolawe (67 FR 15856). We proposed that critical habitat was prudent for six species (*Clermontia peleana*, *Gouania vitifolia*, *Nototrichium humile*, *Phyllostegia parviflora*, *Schiedea hookeri*, and *Tetramolopium arenarium*) for which a prudency finding had not been made previously. Critical habitat was not proposed for *Adenophorus periens*, *Clermontia peleana*, *Delissea undulata*, *Phyllostegia parviflora*, *Schiedea hookeri*, *Schiedea nuttallii*, *Solanum incompletum*, and *Tetramolopium arenarium* on the islands of Maui and Kahoolawe because these plants no longer occur on Maui or Kahoolawe, and we were unable to identify habitat which was essential to their conservation on these islands. Critical habitat was not proposed for *Acaena exigua*, a species reported from Maui as well as Kauai because it has not been seen recently in the wild and was not known to be in storage or under propagation.

The publication of the revised proposed rule opened up a 60-day public comment period, which closed on June 3, 2002. On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional reviews of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On August 26, 2002, we published a notice (67 FR 54764) announcing a public hearing and reopening the comment period until September 30, 2002. On August 27, 2002, September 12, 2002, and September 26, 2002, we held public meetings at the Maui Arts and Cultural Center, Kahului, Maui. On October 2, 2002, we published a notice (67 FR 61845) announcing the availability of the draft economic analysis on the proposed critical habitat and reopening the public comment period until November 2, 2002.

We determined that designation of critical habitat for the multi-island species, *Acaena exigua*, was not prudent on February 27, 2003 (68 FR