

our recovery goals of 8 to 10 populations for *Geranium arboreum*.

(2) *Comment:* One commentor stated that the "best scientific data available at this time" does not support the areas being proposed for *Vigna o-wahuensis* on Kahoolawe. The proposed areas for this plant are based on a single observation at each of two different sites. Repeated surveys in these areas by plant specialists over the last 5 years have yet to confirm the presence of *Vigna* at these sites. However, the Navy commented that the area excluded from critical habitat perhaps merits reconsideration because *Vigna o-wahuensis* has appeared in the Lua Makika area on Kahoolawe that was previously the subject of a planned burn. That fact supports the conclusion that fire apparently does not adversely affect the constituent elements for *Vigna*.

*Our Response:* We have reevaluated the proposed designation of critical habitat for *Vigna o-wahuensis* on Kahoolawe in response to additional information received during the comment periods. Critical habitat was not designated for *Vigna o-wahuensis* on Kahoolawe because there is some question about the location of the earlier observations and because we were able to locate other sites that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(3) *Comment:* One peer reviewer noted that reducing the amount of designated critical habitat for *Hibiscus brackenridgei* on West Maui and Lanai, because it occurs on more than one island, might adversely affect the retention of the genetic diversity needed for recovery. The diversity of East versus West Maui populations will not be retained if unit Maui D1 is reduced or removed. The Lanai prostrate form of the species is distinct from all other populations and should be conserved as a distinct recovery unit.

*Our Response:* We have retained our proposed designation of critical habitat for *Hibiscus brackenridgei* on Maui in this final rule. Because the Lanai populations are not considered by taxonomists to be a distinct subspecies, and therefore were not listed as such, we cannot consider them as separate from the Maui taxon. However, if the taxonomy is revised and the scientific community approves such revision, we will consider the new information with regard to critical habitat.

(4) *Comment:* One commenter was concerned that *Bidens micrantha*,

*Lipochaeta kamolensis*, and *Sesbania tomentosa* might hybridize with other members of their families. It is possible that such unnatural hybridization could lead to further endangerment of the species while inducing the endangerment of other species.

*Our Response:* Hybridization presents potential problems with species recovery. To the maximum extent possible, we separated critical habitat of species that potentially had hybridization potential. In addition, issues of hybridization and other technical questions will be addressed in project specific recovery planning actions.

(5) *Comment:* In the case of *Phyllostegia mollis*, it appears that the Service is unsure for which species it is designating critical habitat. In the 1998 recovery plan for this species, the Service states, "the Maui population may be separated into its own species." Critical habitat designation cannot be made for a plant or animal for which the science is so scant that more harm may come to the species by the designation.

*Our Response:* At the time the recovery plan was completed for *Phyllostegia mollis*, the Service acknowledged that the Maui population may warrant recognition as a separate species, based on a personal communication from Joel Lau, a botanist with the Hawaii Natural Heritage Program. In 1999, a taxonomic revision of the species was published by Dr. Warren L. Wagner in which the Oahu populations were recognized as *Phyllostegia mollis* and the Maui populations were assigned to *P. pilosa*. Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for this species. We plan to publish a taxonomic change notice for *Phyllostegia mollis* after we have published the final critical habitat designations on Maui and Kahoolawe. We do not believe that the designation of critical habitat for *Phyllostegia mollis* will entail harm to the species. Federal agencies are required to consult with the Service regarding any action they may fund, authorize, or permit that may affect a listed species or designated critical habitat. The consultation process results in conservation benefits to the species, not in harmful actions to the species.

(6) *Comment:* One commenter expressed concern about the designation of critical habitat for *Alectryon macrococcus* var. *auwahiensis* and *Melicope adscendens* on Ulupalakua Ranch. Forty *A. m.* var. *auwahiensis*

trees were last sighted in 1910. No other populations of this tree were documented. However, the Service recommends that four new populations be established, even as far away as Kaupo. In the case of *M. adscendens*, the Service stated that within historic times, this species has apparently always been extremely rare. Restoring any plant or animal beyond their historical numbers and or geographical distribution is not the intent of the Act.

*Our Response:* *Alectryon macrococcus* var. *auwahiensis* trees were reported from the area as recently as 1990 and 1999. However, Ulupalakua Ranch has been excluded from critical habitat designation under section 4(b)(2), which states that critical habitat may be excluded if the benefits of not designating outweigh the benefits of designating critical habitat. We were also able to locate other sites for *A. m.* var. *auwahiensis* that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(7) *Comment:* One peer reviewer and many commenters did not support the Service's conclusion that *Acaena exigua* would not benefit from critical habitat designation. These commenters pointed out that the fact that *Acaena* has not been sighted since 1999 (only three years ago) does not justify the Service's refusal to protect its critical habitat, as it is common for biologists in Hawaii to rediscover plants that have not been seen for decades. Some also felt that the decision was based on a faulty interpretation of the Act's direction to designate critical habitat "to the maximum extent prudent." In enacting this language, according to these commenters, Congress clearly intended that the Service would designate critical habitat in all but the rare instances in which designation would actually increase threats to listed species from overcollecting or vandalism, or otherwise affirmatively harm the species. The Service cannot refuse to designate critical habitat merely because it cannot come up with examples of how critical habitat would benefit this species. Absent a finding that designation would actually harm *Acaena exigua* in some concrete way, the Service must designate its critical habitat. Furthermore, if the Service believes this species is extinct, it must follow the procedures set forth in the ESA for delisting species. As long as this species remains on the endangered species list, the Service cannot lawfully deny it the habitat protection that