

ungulate control and fencing. Critical habitat increases protection of federally listed species by requiring consultation under section 7 of the Act to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of the critical habitat. The management of nonnative species is an important conservation issue that is addressed in the recovery plans for these species.

(12) *Comment:* One peer reviewer stated that degraded areas should only be excluded if they lack the ability to become habitat in the future. Another peer reviewer felt that, in some situations, populations in degraded habitat might be critical to the viability of the overall populations. Other peer reviewers commented that degraded habitat should be considered secondary only if adequate non-degraded habitat is available and designated. Many peer reviewers were optimistic about the potential for degraded areas to be restored. One peer reviewer suggested that sites significantly altered by human activities, such as roads and buildings, should not be included in conservation plans, but that areas that have been altered by agriculture and other activities that do not significantly disturb the soil should be included as they provide potential sites for restoration of plant species. Other commenters objected to critical habitat designation in degraded areas.

*Our Response:* We agree that recovery of a species is more likely in designated critical habitat in the least degraded areas containing primary constituent elements. During our evaluation of areas essential for the conservation of the species we tried to select the least degraded areas where possible because these areas are most essential. However, for some species, especially those only known from low-elevation areas, only degraded habitat remains. Therefore, some units still contain degraded habitat, but only if the area could be restored. Management for the restoration of these habitats is addressed in the species' recovery plans.

(13) *Comment:* The proposed designation failed to contain all historically known listed plants, and therefore failed to propose critical habitat for all listed plants statewide. The following endangered plant species lack proposed critical habitat on Maui and Kahoolawe: *Abutilon menziesii*; *Argyroxiphium sandwicense* ssp. *sandwicense*; *Abutilon menziesii*; *Caesalpinia kaviensis*; *Gardenia brighamii*; *Haplostachys haplostachya*; *Panicum fauriei* var. *carteri*; *Santalum*

*freycinetianum* var. *lanaiense*; and *Scaevola coriacea*.

*Our Response:* These species were not part of the lawsuit (see "Previous Federal Action" section) and subsequent stipulations, and therefore were not included in this rulemaking. Critical habitat for these species may be considered in the future if warranted and funding and resources are available.

(14) *Comment:* Peer reviewers and other commenters wrote that the amount, location, and type of land proposed for critical habitat appears to be mostly adequate for the long-term conservation of these species. In order to build self-sustaining populations, adequate land for expansion is required, and most peer reviewers supported inclusion of larger amounts of land. One peer reviewer believes that removing significant portions of any of the proposed critical habitat units is likely to prevent the recovery of, or lead to the extinction of, listed species. One peer reviewer felt that the boundaries appear to be set by landowner parcels and not based upon the habitat features required for protection, especially units Maui H and L. Other commenters questioned the methodology that led to the increase in proposed critical habitat from 33,614 acres (13,574) in the original proposal to 126,531 acres (51,208 ha) in the revised proposal. These commenters believe the proposed critical habitat units are larger than necessary. The Service should work to ensure that (1) areas designated as critical habitat are "essential for the conservation of the species", and that (2) "critical habitat does not include the entire geographical area which can be occupied by the threatened or endangered species" 16 U.S.C. 1532(5)(C).

*Our Response:* We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of proposed units, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In many cases, critical habitat boundaries were reduced for multi-island species because we have identified adequate and more appropriate habitat on other islands within the historical range in at least eight other places that have more primary constituent elements or are less degraded; already undergoing

restoration; within a partnership, NAR, or TNCH preserve; or on a refuge.

No critical habitat units in the proposed rule were excluded or modified due to economic impacts. However, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). We have removed the two TNCH Maui Preserves, the State's Hanawi NAR, Maui Land and Pineapple Company, Inc.'s (ML&P) Puu Kukui Watershed Management Area (WMA), and Ulupalakua and Haleakala Ranches from final critical habitat designation based upon either their conservation history or the relevant issue that designation of critical habitat would have a negative effect on the landowner's voluntary ongoing conservation activities as well as future activities under consideration by the landowner. In both cases, we believe it is in the best interest of the species to exclude habitat from the designation based on their conservation actions. See "Analysis of Impacts Under Section 4(b)(2): Other Impacts".

The land area in the second proposal of critical habitat was increased from the first proposal caused by the Service's decision to include unoccupied habitat. To recover the species, it is essential in some instances to conserve suitable habitat that is not currently occupied to allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (e.g., hurricanes, fire, and nonnative species introductions).

(15) *Comment:* The majority of our peer reviewers agreed that the methodology used to define critical habitat is appropriate, scientifically well grounded, and conceptually sound. The proposed rule represents the best scientific information available and the most scientifically appropriate techniques for determining critical habitat on Maui. On the other hand, some commenters felt that the Service's approach to designating critical habitat was not based on scientific principles and knowledge of the needs of the plant species. The proposed rule acknowledges that little is known about the life history, threats, or preferred