

### Issue 5: Mapping and PCEs

(29) *Comment:* The State of Hawaii Department of Transportation (DOT) stated that the proposed designations near State routes would restrict the design, maintenance, and construction of highways. In particular, Units Maui C1 and C2 may impact Route 30, Honoapiilani Highway, and Unit C3 may impact route 30, Kahekili Highway. Highway corridors require constant upkeep and periodic improvements to maintain safe transportation, keep abreast of changing policies and regulations, limit liability exposure, and manage congestion. These activities, and the intrusive nature of highway traffic itself (pollutants, litter, alien species), tend to conflict with the critical habitat designation. The DOT recommends that buffer zones on each side of the State highway right of way should be excluded from proposed critical habitat to minimize designation-related costs for future improvements, maintenance, and repair to roads, bridges, drainage culverts etc. The buffer zones should be based on topography and be a minimum of 100 feet (30 m) in width.

*Our Response:* Units C1 and C2 have been removed from the final designation and Unit C3 has been substantially reduced in the final designation. State DOT's comments did not identify any planned widening or other significant improvement project within Unit C3. Rather, State DOT's concerns focused on the impact to routine repair and maintenance. Operation and maintenance of existing manmade features and structures adjacent to critical habitat are not subject to section 7 consultation, unless they involve federal funding or permitting and they affect the critical habitat or the species.

(30) *Comment:* The Service should reconsider designating critical habitat on Navy lands because such designation will adversely impact the Navy's ability to accomplish its national defense mission. The designation will also impose costly procedural burdens on the Navy's ongoing efforts to clear ordnance at Kahoolawe. A careful analysis of the benefits and burdens of critical habitat designation may result in a determination that critical habitat designation on Kahoolawe is not prudent, especially in light of potential prescribed burns for clearing ordnance. While the Navy will manage endangered species found on its property, it will not agree to introduce any endangered species to an area where it is currently absent.

*Our Response:* In 1993, the U.S. Congress passed a law that required the

return of Kahoolawe to the State of Hawaii and authorized Federal funding through November 2003. Therefore, critical habitat will not adversely impact the Navy's ability to accomplish its national defense mission as the Navy will not have a presence on the island for that purpose. As modified, the critical habitat designation on Kahoolawe covers the southeastern coastline, an area along the eastern side of the island, and an area on the western side of the island, predominantly overlapping with Level 3 and Level 4 areas—areas which have either received surface clearance only or which have received no ordnance clearance. Anticipated activities in these areas within the next 10 years are likely to be limited to ordnance removal. Part of the designation on the western tip of Kahoolawe is a Level 1 area, and anticipated activities in this area could include operation of overnight campsites with minimal facilities to support restoration efforts. The December 2002 Addendum to the Draft Economic Analysis of Proposed Critical Habitat for the Maui and Kahoolawe plants considered the effects of critical habitat designation on the Navy's clean-up program on Kahoolawe and estimates section 7 consultation costs to range from \$0 to \$47,100. The removal of ordnance, which will enable long-term restoration efforts to proceed, is consistent with the recovery goals for these listed plant species on Kahoolawe. Kahoolawe is essential to the conservation of *Kanaloa kahoolawensis* because this is the only place where this plant currently is known to exist.

### Issue 6: Definition of Critical Habitat

(31) *Comment:* Many commenters, including peer reviewers, noted that critical habitat should be identified for all areas that may need to be managed for the benefit of the listed species. The ESA defines critical habitat (Section 3 (5)(A)(I)) as “the specific areas \* \* \* (I) essential to the conservation of the species and (II) which may require special management considerations or protection. It does not use the phrase “which may require *additional* special management considerations or protection.” Therefore, all areas that meet the definition of critical habitat should be designated, even if they are currently being managed for conservation. Designation of these areas would be in accordance with the mandatory duty to designate critical habitat “to the maximum extent prudent and determinable” 16 U.S.C. 1533(a)(3). Also, designation will provide an additional measure of protection by preventing Federal agencies from

carrying out funding or approving any activity likely to result in adverse modification or destruction of critical habitat, whether directly or indirectly, regardless of the location of the activity. Furthermore, areas that may have adequate management in place may not be safe from even direct threats from Federal activities, which can arise with little warning. Additionally, adequate funding for conservation and management of listed species on lands currently being managed for conservation may not be assured. Multiple commenters wrote that the following areas should be designated as critical habitat: Haleakala National Park; Puu Kukui Watershed Management Area; Waikamoi; Kapunakea Preserves; and Hanawi Natural Area Reserve.

*Our Response:* While we do not necessarily agree with the commenters' interpretation of section 3(5)(A) we considered whether the areas proposed for exclusion because special management was not needed should be designated as critical habitat. 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, ML&P's Puu Kukui 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*”.

(32) *Comment:* Alexander and Baldwin, Inc., requested that the Service consider excluding lands managed by the East Maui Watershed Partnership (EMWP) because future EMWP efforts to protect the watershed are likely to include many of the same management measures identified as necessary for the recovery of endangered plant species within the watershed (e.g., control of ungulates and invasive weeds). Cooperative conservation efforts by landowners ultimately will benefit