

endangered species more than the mere designation of critical habitat.

Our Response: We agree that cooperative conservation efforts by landowners are important to the conservation of Hawaiian plant species. We did exclude portions of the EMWP, including portions of Hanawi NAR, Haleakala Ranch, and Waikamoi Preserve. However, at this time, we did not find the benefits of excluding other lands within the EMWP to outweigh the benefits of including them in critical habitat, under section 4(b)(2) of the Act. As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (e.g., Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (see “*Analysis of Impacts Under Section 4(b)(2): Other Impacts*” for which the benefits of exclusion exceed the benefits of inclusion).

(33) *Comment:* One peer reviewer stated that it is not strategically wise to exclude most of the East Maui Watershed above 3,500–4,000 ft (1,067–1,219 m).

Our Response: We agree that the area is essential for the conservation of many of these species and have designated portions of this area as critical habitat.

(34) *Comment:* Maui Land and Pineapple Company, Inc. requested that the currently actively managed, conservation-zoned lands on West Maui (A, B1, and B2) be excluded from critical habitat designation. ML&P has cooperated with many other conservation agencies, including the Service, to preserve the native biodiversity of its conservation lands.

Our Response: We have excluded some of ML&P's lands under section 4(b)(2) of the Act, finding that the benefits of their conservation efforts outweigh the benefits of including those lands in this designation (see “*Analysis of Impacts Under Section 4(b)(2): Other Impacts*”). However, there are other ML&P lands for which we did not make this finding, and they are therefore included in this critical habitat designation.

(35) *Comment:* The Service should comment on how Haleakala National Park will function as a result of designation of unit Maui j.

Our Response: Haleakala National Park will continue to function much the same as it had before the critical habitat designation. However, they will need to consult with us, under section 7 of the

Act, if they are planning a project that may affect critical habitat.

(36) *Comment:* The Estate of James Campbell requested that the critical habitat boundaries for their Kula and Kaupo properties be amended in light of a lack of important data on species' life history and habitat. They specifically request that the proposed designation on the Kaupo property be adjusted to exclude unoccupied agricultural land that could be adversely affected by such a designation.

Our Response: Unoccupied agricultural lands of the Kaupo properties were not included in the proposed or final designations. However, we have found that some of the James Campbell Estate lands are essential to the conservation of some of the species and do not meet the criteria under section 3(5)(A) of the Act for exclusion because long-range management goals and plans are not yet in place. These lands have been included in the final critical habitat designation. As resources allow, however, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (e.g., Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (see “*Analysis of Impacts Under Section 4(b)(2): Other Impacts*”).

(37) *Comment:* Ulupalakua Ranch requested that its lands be removed from proposed critical habitat for the following reasons: (1) Likelihood of private party lawsuits resulting in mandated protection for critical habitat; (2) likelihood of private party lawsuits limiting current ranch operations; (3) limits on development of diversified agricultural operations caused by the Ranch's interest in Federal cost share programs; (4) lost revenues; (5) expenditures to assess the impact of the proposed designations; (6) economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; (7) lower economic returns and job loss caused by critical habitat dividing up sections of the Ranch, thus leading to inefficiency; (8) concern over the Service becoming involved in County Permitting processes (as they did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunications purposes); (9) ranch lands consisting of predominantly nonnative alien species that the Service has documented as threats; and (10) a reduced willingness

of the Ranch to participate in voluntary conservation efforts.

Our Response: We found that Ulupalakua Ranch met the requirements under 4(b)(2) of the Act (see “*Analysis of Impacts Under Section 4(b)(2)*”) and therefore has been excluded from critical habitat designation.

Issue 7: Policy and Regulations

(38) *Comment:* One commenter opposed the designation of critical habitat in East Maui from Makawao to Kula because hunters use these areas.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat. According to our economic analysis the probability of a major change in game management by the State is regarded as slight. Thus, designation of critical habitat is expected to have minor economic impacts related to management of game mammals and to hunting.

Issue 8: Economic Issues

(39) *Comment:* An economic analysis (EA) must be completed before critical habitat is designated. Even though the Service is designating critical habitat before conducting an EA in order to meet a court imposed deadline, the Service is not relieved from meeting the prudent and determinable standard for designating critical habitat. It is a disservice to the landowners to not include an economic impact analysis at the time of proposed designation even if the Service anticipates that such designation will not have any significant economic impact. Any