

proposed critical habitat designated without first conducting an economic analysis would be imprudent and premature.

*Our Response:* We did not designate critical habitat before conducting an EA. The draft economic analysis was published and made available for review on October 2, 2002 (67 FR 61845). The comment period on the proposed rule to designate critical habitat for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002, to allow interested and affected parties the opportunity to review the draft economic analysis in conjunction with the proposed critical habitat rule.

The Service determines whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a). In accordance with these regulations, critical habitat designation is not prudent only when one or both of the following two situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation would not be beneficial to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If we find that economic and other impacts outweigh the benefit of designating critical habitat in a given area, that area may be excluded.

(40) *Comment:* The proposal identifies portions of two habitat units (units C1, C2, C3, G1, and G5), that consist in part of private lands and are occupied by only one or two species, which have known current populations on other islands. Portions of these units may have economic value to their respective landowners for eventual shoreline development or as sources of surface water for irrigation. Absent the economic analysis, it is impossible to determine from the proposal whether the benefits of excluding these areas would outweigh the benefits of including them as critical habitat.

*Our Response:* We agree that it is difficult to determine the relative costs and benefits of critical habitat designation without benefit of an economic analysis. It is precisely for this reason that the draft economic analysis was made available for review immediately upon completion on October 2, 2002, and the public comment period on the proposed critical habitat designations for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002. Maui units C1 and

C2 have not been designated as final critical habitat. Maui unit C3 has been reduced to include only State owned lands within the conservation district and G1 and G5 have been reduced to lands within the conservation district. No costs are expected to occur from such impacts to water systems, because none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversions. In addition, water infrastructures are considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(41) *Comment:* The DEA did not address, or did not adequately consider, a variety of costs and benefits that they believe could occur caused by the implementation of section 7 consultation for these species.

*Our Response:* Many of these possible costs were considered and some were addressed in the DEA. In many cases, however, potential costs were purposely not addressed in the DEA because they are not expected to occur. In other cases, it is possible for them to occur. In still other cases, the concerns no longer have substance given the Service's modifications to the proposed critical habitat. Finally, in some cases, the comments provided new information and costs were modified in section 4 of the Addendum.

(42) *Comment:* One commenter stated that the proposed designation fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands. Haleakala Ranch stated that if critical habitat were designated on ranch lands, the ranch would cease participation in conservation projects designed to promote endangered species recovery. The ranch also stated that access to Haleakala Ranch land will be denied to those seeking data about the presence of the listed species, and future partnerships, existing agreements, and a land steward position may be terminated in an effort to insulate the company from outside governmental oversight. The ranch prefers to work cooperatively with the Service and other conservation entities to continue its legacy of land stewardship. Ulupalakua Ranch stated that designation of critical habitat would result in discontinuation of its associations with organizations associated with native plant restoration.

Ulupalakua Ranch will also deny access to those interested in plant conservation and would not allow reintroductions of any native plants to its private property. Similarly, Alexander and Baldwin, Inc. cautioned the Service to carefully consider the benefits of existing cooperative agreements such as the East Maui Watershed Partnership and the potentially chilling effect that designation might have on such agreements. The Estate of James Campbell also stated a preference for encouraging the establishment of voluntary partnerships with landowners to effectuate the desired species conservation. This commenter further stated that the regulatory approach discourages the cooperation which has been a key to successful species conservation. Another commenter stated that if the Service truly wants to carry out its mission statement and "work with others to conserve, protect and enhance fish, wildlife and plants, and their habitats for the continuing benefit of the American people," they should meet with the community of the DHHL Kahikinui homesteads to explain in clear and concise terms what is being proposed and exactly how it may impact our community. Others expressed similar concerns that cooperation and on-the-ground management were more important than critical habitat designation.

*Our Response:* Chapter VI, Section 4.j. of the DEA discusses the potential for reduced cooperation with the Service on conservation projects as a result of critical habitat. The DEA determines that a modest but undetermined reduction in cooperation may occur, along with a corresponding but undetermined environmental loss to society. However, as the comment indicates, the Service received letters from two landowners, Ulupalakua Ranch and Haleakala Ranch, during the public comment period stating that they will no longer participate in conservation projects designed to assist native plant species if critical habitat is designated on their land. Over the past three years alone, these landowners have participated in more than seven different conservation projects, receiving more than \$290,000 from the Service or Natural Resources Conservation Service (NRCS). This funding is often matched by the landowner, and thus the cost of these projects likely exceeds \$580,000. While the benefits of these projects are difficult to quantify (as discussed further in section 6 of the Addendum), the biological value of these projects to the native plants is at minimum equal