

with statutory provisions and not affected by errors).

(44) *Comment:* A commenter stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it “substantially affects a rare, threatened or endangered species or its habitat.” This will result in costly procedural requirements and delays. Another commenter expressed concerns that the Service may get involved in county permitting processes (as it did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunication purposes). Multiple commenters also stated the following: The DEA fails to evaluate the practical effect critical habitat designation will have on development. The draft fails to quantify the indirect costs that critical habitat designation could cause by making the process of obtaining State and county permits for development more difficult, expensive, and time consuming. Similarly, it should take into account the delays and additional cost to ensure compliance with Federal regulations. Special Management Area permits administered by Maui County as required by Hawaii’s Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values and may make it impossible to develop. This economic impact disappears because the DEA’s bottom line erroneously counts only so-called “direct” costs of consultation.

Another commenter also stated that the Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property. For example, the Service petitioned the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. The failure of the Service to address this type of activity in the DEA is a fundamental error of the analysis.

Our Response: Adverse impacts on development, including, but not limited to, delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly

mitigation measures, increased risk of litigation over approvals, are not expected since there are no known development plans within the designation. Furthermore, the following factors make future development projects in the proposed critical habitat unlikely: (1) As modified, approximately 80 percent of the proposed critical habitat is in Conservation District where development is severely limited; (2) the approximately 20 percent of the proposed critical habitat in the Agricultural district is in remote areas, areas lined with gulches or steep cliffs, or areas with limited access to water; (3) there are no known plans for development within the final critical habitat; and (4) most of the land designated in the Special Management Area is also within the Conservation District.

(45) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states “adequate provision shall be made for protection of fish and wildlife.” HRS 174C–71 instructs the commission of Water Resource Management to establish an in-stream use protection program to protect fish and wildlife. Another commenter was concerned that critical habitat is proposed in watershed areas in which stream or irrigation system water flows. This commenter also stated the following: The proposed rule states that activities such as watershed alteration or water diversion may trigger section 7 consultations if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact would be far reaching and affect all lands served by such water sources or systems. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species.

Our Response: No costs are expected to occur from such impacts to water systems, because none of the listed plants are aquatic and therefore would not cause a reduction in water diversion. In addition, water infrastructure is 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.

(46) *Comment:* A commenter expressed concerns that opponents of water diversions may use critical habitat as a tool to delay, and effectively stop, many worthwhile water diversion projects.

Our Response: Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects by the DWS include water source development in Unit B2; construction of a water reservoir adjacent to Unit L; access and intake improvements in Unit L; and repair and maintenance of existing flumes in Unit L. As noted earlier, the Service removed Unit B2 from the final designation. Thus, no section 7 costs would be anticipated to result from future DWS projects in this area. Moreover, most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation caused by Federal funding or permitting, the DEA’s estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). The DEA estimates that the consultations could cost up to \$68,000 with project modifications that could range up to \$200,000.

(47) *Comment:* Several commenters stated that the DEA focuses primarily on the costs of critical habitat and lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement or protection of other stream and riparian biota; the value of the listed plants as an indicator of ecological health; the value of protecting culturally significant species; the value that Hawaii’s people place on conservation of Hawaiian plants; and the benefits of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. The Service cannot exclude land from critical habitat designation if it considers only the costs, and not the benefits, of critical habitat designation. In failing to discuss these benefits, the Service missed an opportunity to educate the public regarding the value of protecting native species and native ecosystems. The Service must use the tools available,