

(62) *Comment:* Ulupalakua Ranch expressed concerns that the proposed critical habitat will: (1) Limit development of diversified agricultural operations due to the Ranch's interest in Federal cost share programs; (2) cause a loss in revenue; (3) create economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; and (4) lower economic returns and job loss due to critical habitat dividing up sections of the ranch, thus leading to inefficiency.

*Our Response:* Chapter III of the DEA notes that section 7 of the Act requires Federal agencies to consult with the Service to ensure that activities they fund, authorize, or carry out do not result in destruction or adverse modification of critical habitat. Because consultation under section 7 only applies to activities that have Federal involvement, the designation of critical habitat does not afford any additional protections for listed species with respect to strictly private activities.

Chapter VI, Section 3.g.(2) of the DEA and Section 4.e. of the Addendum present estimates of direct section 7 costs associated with participation in Federal cost-share programs with NRCS. The Addendum estimates that total consultation costs for all projects in the critical habitat designation range from \$0 to \$41,200, while project modification costs range from \$0 to \$100,000. The DEA and the Addendum both note that projects sponsored by NRCS programs are generally beneficial in nature and are likely to involve minimal project modifications. However, the DEA and the Addendum recognize that a landowner could decide to forego Federal funding and cancel the contract with NRCS to avoid making modifications identified through the section 7 consultation process. If Ulupalakua Ranch were to be one of the anticipated consultations over the next ten years, and if the section 7 consultation process resulted in project modifications that would limit the development of diversified agricultural operations, then Ulupalakua Ranch could avoid these project modifications by foregoing Federal funding, thus removing the Federal involvement. The cost of project modifications in that case would be the total amount of Federal funding foregone. If no Federal involvement exists, there can be no direct section 7 costs associated with critical habitat designation on Ulupalakua Ranch lands.

The remaining three concerns raised above by Ulupalakua Ranch, specifically that critical habitat designation will cause loss in revenue, create economic

hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands, and lower economic returns and job loss caused by critical habitat dividing up sections of the ranch, are concerns about indirect impacts of critical habitat designation.

There is considerable uncertainty about whether any or all of these indirect impacts may occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. To the extent possible, the possible costs associated with these impacts are discussed in Chapter VI, Section 4 of the DEA and Section 5 of the Addendum. However, based on the limited information available, it is not possible to determine the probability that any of these impacts will actually occur as a result of critical habitat designation.

(63) *Comment:* The Department of Hawaiian Homelands (DHHL) opposes the designation of critical habitat on their land in Unit E and H because the currently degraded land is slated for development of homes for native Hawaiian beneficiaries. DHHL further noted that critical habitat designation will cause significant economic harm, because: (1) The designation of critical habitat would require hundreds of future beneficiaries to conduct an environmental assessment and section 7 consultation in order to construct homes and prepare ground for farming; (2) the identified areas have already been subdivided into individual lots and DHHL does not have the authority to retroactively impose management plans on individual lessees, meaning that any regulatory impact will fall on individual lessees; (3) DHHL's homesteading program uses Federal programs to guarantee and insure the mortgages of homesteaders; (4) Federal funds may be used construct site improvements and homes; and (5) to the extent that the use of these programs triggers consultation under section 7, lessees will be subject to additional filing requirements, delays in homebuilding, possible additional expenditures, and limitations on property use. DHHL supports the proposed designations in areas that are not subject to homestead development, such as the cliff face found in unit G4.

*Our Response:* As discussed earlier, the Service reduced Units E and H to exclude certain areas for biological reasons, including DHHL land subject to homestead development. As such, possible impacts discussed in the comment are not expected.

(64) *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Maui. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. In addition, the government may also take property by excessive regulation as was evidenced in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

*Our Response:* As noted above, none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. Also, Chapter VI, Section 4.e. of the DEA, the Addendum and our response to comment 43 address costs involved in redistricting lands proposed for critical habitat designation from the Agricultural to the Conservation District. Any redistricting of land to Conservation and any corresponding loss of economically beneficial use would be decided by the State Land Use Commission, not the Service, based on an array of state laws and other factors, including the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan; the extent to which the proposed reclassification conforms to the applicable district standards; and the impacts of the proposed reclassification on the following: preservation or maintenance of important natural systems or habitats; maintenance of valued cultural, historical, or natural resources; maintenance of other natural resources relevant to Hawaii's economy; commitment of state funds and resources; provision for employment opportunities and economic development; and provision for housing opportunities for all income groups; and the representations and commitments made by the petitioner in securing a boundary change.

(65) *Comment:* A Federal nexus exists for the non-point source water discharge program. If water discharge into critical habitat does not meet water quality standards, a permit could be denied. The effect on agriculture may be devastating since some run-off from agricultural activities is avoidable.

*Our Response:* The State Department of Health Polluted Runoff Control Program and the State Office of