

population of *Melicope balloui* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for five populations of *Clermontia samuelii*; two populations each of *Cyanea glabra*, *Diplazium molokaiense*, *Phlegmariurus mannii*, and *Phyllostegia mannii*; and one population each of *Phyllostegia mollis*, *Platanthera holochila*, and *Zanthoxylum hawaiiense* within their historical ranges.

These modifications resulted in the reduction from 4,612 ha (11,396 ac) to 3,608 ha (8,916 ac). This unit was renamed 8—*Cyanea copelandii* ssp. *haleakalaensis*—a, 8—*Cyanea glabra*—a, 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a, 8—*Diplazium molokaiense*—a, 8—*Geranium multiflorum*—a, 8—*Melicope balloui*—a, 8—*Phlegmariurus mannii*—a, 8—*Phyllostegia mannii*—a, 8—*Phyllostegia mollis*—a, 8—*Zanthoxylum hawaiiense*—a, 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Clermontia samuelii*—a, 9—*Geranium multiflorum*—b, and 9—*Platanthera holochila*—a.

Maui M

This unit was proposed as critical habitat for *Spermolepis hawaiiense*. The entire area proposed for this species is eliminated from this final rule. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (Buck, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is habitat designated elsewhere on Maui for *Spermolepis hawaiiense*.

Kahoolawe A

This unit was proposed as critical habitat for four species: *Hibiscus brackenridgei*; *Kanaloa kahoolawensis*; *Sesbania tomentosa*; and *Vigna o-wahuensis*. We excluded the proposed critical habitat for *Hibiscus brackenridgei*, *Sesbania tomentosa*, and *Vigna o-wahuensis*. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this

species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements for *Kanaloa kahoolawensis*.

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for seven populations.

These modifications resulted in the reduction from 7,683 ha (18,984 ac) to 1,175 ha (2,903 ac). This unit was renamed Kahoolawe 1—*Kanaloa kahoolawensis*—a and Kahoolawe 2—*Kanaloa kahoolawensis*—b.

Kahoolawe B

This unit was proposed as critical habitat for two species: *Kanaloa kahoolawensis* and *Sesbania tomentosa*. We excluded the proposed critical habitat for the multi-island species *Sesbania tomentosa*. There is a lower likelihood that the biological features essential to this species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands.

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for one population.

There was no change in the area proposed in the final designation. It remains at 5 ha (12 ac). This unit was renamed Kahoolawe 3—*Kanaloa kahoolawensis*—c.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation,” as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, areas within the geographical range of the species at the time of listing must contain the physical or biological features essential to the conservation of the species or, for an area outside the geographical area occupied by the species at the time of listing, the area itself must be essential to the conservation of the species (16 U.S.C. 1532(5)(A)).

Section 4 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas that have features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the