

area should not be included in the critical habitat designation.

Our regulations state that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information

available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

#### Prudence

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) 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 (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. In the final critical habitat rule published for Kauai and Niihau plants, we determined that designation of critical habitat was not prudent for *Acaena exigua*, a species reported from Maui as well as from Kauai because it had not been seen recently in the wild, and no genetic material of this species was known to exist (68 FR 9115). In other final rules, we have found that critical habitat would be prudent for the following 45 species that are reported from Maui and Kahoolawe as well as from Lanai, Kauai, Niihau, and Molokai: *Adenophorus periens*; *Alectryon macrococcus*; *Bidens micrantha* ssp. *kalealaha*; *Bonamia menziesii*; *Brighamia rockii*; *Cenchrus agrimonoides*; *Centaurium sebaeoides*; *Clermontia oblongifolia* ssp. *mauiensis*; *Clermontia samuelii*; *Ctenitis squamigera*; *Cyanea copelandii* ssp. *haleakalaensis*; *Cyanea glabra*; *Cyanea grimesiana* ssp. *grimesiana*; *Cyanea hamatiflora* ssp. *hamatiflora*; *Cyanea lobata*; *Cyrtandra munroi*; *Delissea undulata*; *Diellia erecta*; *Diplazium molokaiense*; *Flueggea neowawraea*; *Hedyotis mannii*; *Hesperomannia arborescens*; *Hibiscus brackenridgei*; *Ischaemum byrone*; *Isodendron pyrifolium*; *Kanaloa kahoolawensis*; *Mariscus pennatifolius*; *Melicope knudsenii*; *Melicope mucronulata*; *Neraudia sericea*; *Peucedanum sandwicense*; *Phlegmariurus mannii*; *Phyllostegia mannii*; *Phyllostegia mollis*; *Phyllostegia parviflora*; *Plantago princeps*; *Platanthera holochila*; *Pteris lidgatei*; *Schiedea nuttallii*; *Sesbania tomentosa*; *Solanum incompletum*; *Spermolepis hawaiiensis*; *Tetramolopium remyi*; *Vigna o-wahuensis*; and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1219, 68 FR 9115, 68 FR 12981).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 24 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. However, we examined the evidence available for these taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 24 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur; (2) focusing conservation activities on the most essential area; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 24 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirteen of these species are reported on or near Federal lands (see Table 2 above, under "Discussion of Plant Taxa"), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of