

such as reintroduction of these 11 plant species back into unoccupied habitat on these lands, will require the cooperation of Haleakala Ranch Co.

(iii) The Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The current partnership agreements between TNCH and many organizations, the State and many organizations, ML&P and many organizations, and current agreements between the Service and Ulupalakua Ranch and Haleakala Ranch already provide significant conservation and educational benefits.

The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above and through public outreach efforts. Likewise, there will be little additional Federal regulatory benefit to the species because (a) there is a low likelihood that these proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) on land owned by TNCH, the State, Ulupalakua and Haleakala Ranches, and ML&P much of the areas are already occupied by listed species and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these proposed units.

(iv) It is documented that publicly and privately owned lands and lands owned by conservation organizations such as these, alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002, Crouse *et al.* 2002). Excluding these lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on Maui who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000, Main *et al.* 1999, Shogren *et al.* 1999, Wilcove and Chen 1998). As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (e.g., Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation.

As described above, the overall benefits to these species of a critical habitat designation for these areas are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with each landowner and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. There is a higher likelihood of beneficial conservation activities occurring in these and other areas of Maui without designated critical habitat than there would be with designated critical habitat in these areas. In conclusion, we find that the designation of critical habitat on the TNCH Maui preserves, the State's Hawaii upper Hanawi NAR, ML&P's Kukui WMA, the Ulupalakua Ranch portion of proposed unit Maui H, and the Haleakala Ranch portion of proposed units Maui H, I1, I2, and I4 would most likely have a negative effect on the recovery and conservation of the Maui plant species concerned. Therefore, the Service's conclusion is that the net benefits of excluding these areas from critical habitat outweigh the benefits of including these areas.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of the TNCH preserve lands might result in the extinction of any of the 16 reported species, the Service first considered the impacts to the five species endemic to Maui (*Argyroxiphium sandwicense* ssp. *macrocephalum*, *Geranium arboreum*, *Geranium multiflorum*, *Melicope balloui*, and *Remya mauiensis*).

For both the five endemic and the 11 "multi-island" species, it is the Service's conclusion that the TNCH's mission and management plans will provide as much or more net conservation benefits as would be provided if these preserves were designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these preserves due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. The DEA indicates that there may be future programmatic consultations. These management actions were designed to

protect and provide for the conservation of these species and will not create any threats or risks of extinction to these species. Further, these areas are already occupied by 13 of the 16 species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of these preserves will not increase the risk of extinction to any of these species, and it may increase the likelihood that these species will recover by encouraging other landowners to implement voluntary conservation activities as TNCH has done.

In addition, critical habitat is being designated on other areas of Maui for all five of the endemic species (9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, Maui 15—*Geranium arboreum*—c, Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, Maui 9—*Geranium multiflorum*—c, Maui 8—*Melicope balloui*—a, Maui 9—*Melicope balloui*—b, Maui 17—*Remya mauiensis*—a, Maui 17—*Remya mauiensis*—b, Maui 17—*Remya mauiensis*—c, and Maui 18—*Remya mauiensis*—d), and critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining 11 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations and are sufficient to prevent extinction of the species concerned.

In considering whether or not exclusion of the State's upper Hanawi NAR might result in the extinction of *Clermontia samuelii*, *Cyanea mceldowneyi*, and *Geranium multiflorum* the Service considered potential impacts. For all three endemic species, it is the Service's conclusion that the State's NAR mission and management provide a significant conservation benefit. The management will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in the NAR due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this area is already occupied by two of the three species and thereby benefits from the section 7 protections of the Act, should such an unlikely Federal threat actually