

would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On November 7, 2000, we published the first of the court-ordered proposed critical habitat designations or nondesignations for Kauai and Niihau plants (65 FR 66808). The proposed critical habitat designations or nondesignations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by, or on, November 30, 2000, as required by the court's order. In those proposals, we proposed that critical habitat was prudent for three of the NWHI species (*Cenchrus agrimonoides*, *Mariscus pennatiformis*, and *Sesbania tomentosa*) that are reported from Kauai and/or Niihau, as well as from Maui and Molokai. Critical habitat was proposed for *Cenchrus agrimonoides* and *Mariscus pennatiformis* on Maui, and for *Sesbania tomentosa* on Kauai, Maui, and Molokai.

On October 3, 2001, we submitted a joint stipulation with Earthjustice to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On January 28, 2002, we published revised proposed critical habitat designations or nondesignations for plant species from Kauai and Niihau (67 FR 3940), for plant species from Lanai on March 4, 2002 (67 FR 9806), for plant species from Maui and Kahoolawe on April 3, 2002 (67 FR 15856), and for plant species from Molokai on April 5, 2002 (67 FR 16492); these proposals included critical habitat on one or more islands for three of the NWHI species: *Cenchrus agrimonoides*, *Mariscus pennatiformis*, and *Sesbania tomentosa*.

On May 14, 2002, we published the proposed critical habitat designations or nondesignations for plant species from the NWHI (67 FR 34522), for Hawaii Island plants on May 28, 2002 (67 FR 36968), and for Oahu plants on May 28, 2002 (67 FR 37108). These proposed rules were sent to the **Federal Register**

by April 30, 2002, as required by the 1998 court order.

In the May 14, 2002, proposal, critical habitat was proposed for 493 ha (1,219 ac) on Nihoa, Necker, and Laysan Islands. In that proposed rule, we indicated that critical habitat was prudent, and we proposed critical habitat for *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*. We also proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa*. Critical habitat was not proposed for *Cenchrus agrimonoides* in the NWHI because the only variety of that species that occurs there, *C. a* var. *laysanensis*, has not been seen in the wild for over 20 years and no genetic material of this variety is known to exist. Publication of the proposed rule opened a 60-day public comment period.

On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), the Northwestern Hawaiian Islands (April 30, 2003), Oahu (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002.

On September 12, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat for NWHI (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

Summary of Comments and Recommendations

In the proposed rule published on May 14, 2002 (67 FR 34522), we requested that all interested parties submit written comments on the proposed designation or nondesignation of critical habitat for six plant species from the NWHI. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. No request for a public hearing was received. We received individually written letters from 13 parties, including 4 of the 13 designated peer reviewers, 2 State agencies, 2 branches of the military, and 5 private organizations or individuals.

The majority of commenters supported the designation of critical habitat for the NWHI, and no commenters were expressly opposed to the designation.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 13 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region that the species occurs in, and knowledge of the principles of island conservation biology. We received comments from four of these individuals who generally supported our methods and conclusion and who provided additional information. Comments received from peer reviewers are summarized in the following section and were considered in the development of the final rule.

All comments received were reviewed for substantive issues, notation of errors, and new information regarding critical habitat for *Amaranthus brownii*, *Cenchrus agrimonoides*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. Similar comments received were grouped into four general issues and are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment*: One peer reviewer questioned the Service for considering all three critical habitat units (Nihoa, Necker, and Laysan Islands) to be critical habitat for *Amaranthus brownii*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa* as there is no record that any of these species occurred on all three islands and as at least one species (*i.e.*, *Mariscus pennatiformis* ssp. *bryanii*) is a single-island endemic.

Our Response: All three islands are not considered to be critical habitat for all five of the species. On Nihoa Island, critical habitat is designated for *Amaranthus brownii*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. On Necker Island, critical habitat is designated for *Sesbania tomentosa*, and on Laysan Island critical habitat is designated for *Mariscus pennatiformis* and *Pritchardia remota* (as a recovery population). The critical habitat units on each island are designated for species within extant or historic range or within areas identified in the recovery plans for conservation of the species.