

well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a "without section 7" baseline and compared it to a "with section 7" scenario. The "without section 7" baseline represented the current and expected economic activity under all modifications except those associated with section 7, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the implementation of section 7 for the Blackburn's sphinx moth. The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits.

The majority of consultations resulting from the critical habitat designation for the Blackburn's sphinx moth are likely to address land development and road construction or road expansion activities. The planned road projects (proposed Ane Keohokalole Highway) within proposed Unit 5A is not in this designation. The final economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic costs ranging from approximately \$1,183,800 to \$1,739,000, and concludes that economic impacts from the designation of critical habitat would not be significant.

A more detailed discussion of our analyses are contained in the November 15, 2002, DEA and the Addendum to the DEA. Both documents are available for

inspection at the Pacific Islands Office (see **ADDRESSES** section).

(39) *Comment:* The Service has failed to consider the cascading impacts resulting from State-led regulatory activities that must, by law, be implemented as a result of critical habitat designation. Additional concerns include the broad interpretation of "take" under Hawaii's Endangered Species Act (ESA) (HRS Ch. 195D); mandatory "downzoning" of private lands under Hawaii's Land Use Law (HRS Ch. 205); unreasonably frequent requirements for full environmental impact statements for minor actions under Hawaii's Environmental Impact Statement Law (HRS Ch. 343); unreasonable permit delays for County-regulated Special Management Area permits under Hawaii's Coastal Zone Management Law (HRS Ch. 205A); and uncertainty of interpretation of the reach and extent of State regulatory authority under Hawaii's State Water Code (HRS Ch. 174C) and implications for water quality standards under Hawaii Administrative Rules Ch. 11-54, Water Quality Standards.

Our Response: Possible costs resulting from interplay of the Act and Hawaii State laws were discussed in Chapter VI, section 4 of the November 2002 DEA under indirect costs and in section 4 of the Addendum. They examine the indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. Take prohibitions under Hawaii law are attributable to a listing decision and they are not coextensively costs of critical habitat designations. Where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not considered in the economic analysis of critical habitat designation. Other possible indirect impacts, such as the loss of development or loss in property values due to State redistricting of land from agricultural or rural to conservation were analyzed (see also our response to Comment 29a). However, there is considerable uncertainty as to whether any or all of these indirect impacts may occur since they depend on actions and decisions other than the source statute, and there is only limited history to serve as guidance.

(40) *Comment:* A commenter stated the following: The narrative exclusion of areas underlying currently developed areas such as buildings and driveways ("unmapped holes") is too vague considering the cryptic nature of the moth and its habitat. Although the DEA

concedes that the lack of clarity can force landowners to incur costs to investigate the implications of the regulations, it fails to fully consider the economic impacts of landowners' costs to properly demarcate "unmapped holes" in the process of obtaining necessary permits for development projects. The estimate that this will only take 15 to 40 hours is too low given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals.

Another commenter also stated that the DEA's analysis of potential costs expected to be incurred by private landowners to investigate the implications of critical habitat on their lands was flawed, because the analysis failed to recognize that the costs to investigate the implications of critical habitat are associated with the designation process, not additional costs that the final designation would impose. The commenter further stated that any concerned party investigating the proposed designation of critical habitat on their lands would have already hired lawyers and consultants, and would have incurred the costs associated with figuring out the implications of designation on their lands. Moreover, were the private landowners' lands ultimately excluded from the final critical habitat designation, the landowners would still not recoup those costs; the money has already been spent. Thus, the commenter concluded that these costs should not be included in the analysis of future potential costs from designation since they have already been incurred, and were incurred, regardless of the final designation decision.

Our Response: Chapter VI, section 4.I of the DEA indicated that landowners may want to learn how the designation may affect (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. It is recognized that some landowners may spend a great deal of time investigating, while other landowners may not conduct any investigation. The estimate contained in the DEA is a range that reflects the total cost for all landowners based on an average cost per landowner. Public comment did not provide an alternative estimate of time or cost incurred in order to investigate implications of critical habitat sufficient to require changes to the estimated average cost per landowner. Thus, the Addendum does not revise the number of hours that the DEA estimated the landowner and/or his attorneys or professional staff would spend on investigating the issues.