

**Former Unit 3. Kanaha Pond—Spreckelsville Unit (formerly 226 ha (559 ac))**

This unit has been subdivided into two smaller, separate units (Unit 5 Kanaha Pond and Unit 6 Kanaha Park) (see Table 2), which resulted in a total net decrease of 145 ha (358 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

**Former Unit 4. Upper Kahoolawe Unit (formerly 1,878 ha (4,641 ac))**

This unit was renamed Unit 7 Upper Kahoolawe, and is now 1,721 ha (4,252 ac) in size (see Table 2). This unit's boundary was adjusted with a total net decrease of 157 ha (389 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species (PBR Hawaii *et al.* 1995).

**Former Unit 6. Puuwaawaa—Hualalai Meta Unit (formerly 18,111 ha (44,753 ac))**

This unit was renamed Unit 8 Puuwaawaa—Hualalai, and is now 9,954 ha (24,598 ac) in size (see Table 2). This unit's boundary was adjusted with a total net decrease of 8,156 ha (20,155 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

**Former Unit 7. Kamoko Flats—Puukolekole Unit (formerly 1,829 ha (4,520 ac))**

This unit was renamed Unit 9 Kamoko Flats—Puukolekole, and is now 1,256 ha (3,105 ac) in size (see Table 2). This unit's boundary was adjusted with a total net decrease of 573 ha (1,415 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are

therefore not essential for the conservation of the species.

**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 " \* \* \* the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and conservation 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 a 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), 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, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary

constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Section 4 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 or alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we believe to be critical habitat, using the best information available to us.

Our regulations state that "The Secretary shall designate critical habitat outside the geographic areas presently occupied by the 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 indicate 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 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