

Currently, this is the only large-scale planned nursery production of the moth's native larval host plants in the State.

We believe that Blackburn's sphinx moth habitat and host plant populations originally included within the Ulupalakua Ranch portion of proposed Unit 1 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on 324 ha (800 ac) or approximately 10 percent of the area originally proposed on ranch lands should directly benefit the moth and its host plants. These benefits include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the potential for reintroduction of moth host plants currently extirpated from various areas. Also, these benefits include what is current or currently planned only, additional benefits could be derived from projects not yet conceived.

On Maui, simply preventing "harmful activities" will not slow the extinction of listed species. Where consistent with the discretion provided by the Act, we believe it is necessary to provide positive incentives to private landowners to voluntarily conserve natural resources. The FEA for this rule concluded that the likelihood of any particular parcel being rezoned as conservation district was low. However, the potential costs of such a rezoning should it occur, could entail additional costs to a landowner. For example, a landowner could be expected to spend \$50,000 to contest a rezoning, and a conservation district use application (CDUA) might cost as much as \$100,000. However, the FEA also conceded that some economic activities such as grazing would likely be permitted to continue even with a conservation district rezoning. Although the FEA concludes that the potential effects of rezoning are anticipated to be low, this landowner and other commenters nevertheless believe there is a risk that the critical habitat designation will result in the rezoning of lands, a decrease in the Ulupalakua Ranch's ability to remain economically competitive, and an increased risk of third-party litigation. The landowner has expressed concern over these potential negative impacts and has stated in several letters that they would cease all voluntary conservation activities on ranch property. We believe the ranch's cooperation on all current and planned future conservation projects on ranch property are necessary to conserve the moth. Current conservation projects alone will result

in the direct restoration and conservation of approximately 10 percent of the ranch's property proposed for designation.

As described earlier, Ulupalakua Ranch has a history of entering into conservation agreements with various Federal and State agencies and private organizations on biologically important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Puu Makua and the two Auwahi Dryland Forest Restoration Partners for Fish and Wildlife projects (in cooperation with USGS-BRD and funded through Partners for Fish and Wildlife), wetland restoration/creation (in cooperation with NRCS and DU), and the Ka naio Dry Forest Restoration Project (in cooperation with DOWAW and funded through Partners for Fish and Wildlife and section 6 of the Act).

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where we have little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Knight 1999; Main *et al.* 1999; Shogren *et al.* 1999; Norton 2000; Bean 2002; James 2002). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of the Blackburn's sphinx moth and other listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners. Thus, we believe it is essential for the conservation of Blackburn's sphinx moth to build on continued conservation activities such as these with a proven partner.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the Ulupalakua Ranch portion of proposed Unit 1 as critical habitat outweigh the benefits of

including it as critical habitat for Blackburn's sphinx moth. This conclusion is based on the following analysis:

(1) *Benefits of inclusion:* There will be little Federal regulatory benefit to the moth as a result of including ranch property in the designation because, as described in the FEA and in this rule, there is a low likelihood that this critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. 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. However, this goal has already been effectively accomplished through the identification of this area in the management agreements described above. Lastly, even if any given ranch parcel were rezoned as conservation district as a result of the designation, the FEA concluded that grazing activities would likely continue. Given the current Partners for Fish and Wildlife agreements between ourselves and the landowner, we believe the overall regulatory and educational benefits of including the Ulupalakua Ranch lands portion of proposed Unit 1 as critical habitat are relatively small.

(2) *Benefits of exclusion:* Excluding Ulupalakua Ranch property from the designation will result in the elimination of uncertainty about decreased land values and potential third party litigation. Potential costs to the landowner resulting from the need to investigate the effect of designation or to contest potential conservation rezoning, for example, will be eliminated. Lastly, and perhaps, most important for the conservation of the moth, excluding the properties from designation will ensure the landowner's continued voluntary participation in proactive conservation agreements and partnerships as the landowner has stated in several letters to the Service.

(3) In the past, Ulupalakua Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. The ranch has a long history of participation in conservation projects beginning in the 1960s through the present. A substantial amount (approximately 10 percent) of the Ulupalakua Ranch portion of proposed Unit 1 is currently being managed by the landowner on a voluntary basis to achieve important conservation goals and which directly benefits numerous native Hawaiian plant and animal species including the