

o Kali project area (part of proposed Unit 2) by granting access to the area. Furthermore, the success of this project, a high quality habitat area for the moth and its host plants, can be enhanced and facilitated by voluntary cooperation of Haleakala Ranch. Currently, the ranch is planning to implement similar fire control, weed, and ungulate management, and fence construction efforts on its properties adjacent and partly surrounding the Puu o Kali project area. Additionally, the ranch is fencing and excluding feral ungulates from a high elevation shrubland adjacent to Haleakala National Park, for conservation of endangered plants and animals and habitat protection purposes. Preservation of both these habitat areas conserves critically endangered species of plants and animals in two of Hawaii's most degraded ecosystem types. This management strategy is consistent with the conservation needs of Blackburn's sphinx moth and should directly benefit the moth's host plant habitat.

In addition, Haleakala Ranch has informed us that they are currently devising additional management plans for conserving habitat, including that of the moth. These plans include the following important voluntary actions by Haleakala Ranch:

(1) Construction of a 9 ha (22 ac) enclosure fence around Keokea Gulch in Kihei to reduce sedimentation on the shoreline and reef, and to reduce the fire hazard in the area by using R-1 (highest quality recycled water) water to irrigate a riparian buffer; enclosure fencing of a dryland lava flow in the Keokea area, in cooperation with the Service. Additionally, the ranch has begun planning with the Service and DOFAW to fence and restore a significant portion of the Waipae area (within proposed Unit 1) for habitat protection of native forest and riparian areas. The project would involve the enclosure and management of approximately 445 ha (1,100 ac) of high quality moth habitat, or approximately 30 percent of the amount of Haleakala Ranch lands proposed for designation.

(2) Control of feral ungulates that are negatively impacting listed and rare plants, including the Blackburn's sphinx moth's host plants, within all the currently fenced areas and planned project areas;

(3) Control of nonnative grasses and other fire hazards, and development of fire control measures within many project areas including some occupied by the moth; and

(4) Habitat protection for natural regeneration of native flora including

Blackburn's sphinx moth host plants, within many of the fenced project areas.

We believe that Blackburn's sphinx moth habitat included within the Haleakala Ranch portion of proposed Units 1 and 2 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on approximately 445 ha (1,100 ac) or approximately 30 percent of the ranch property amount originally proposed 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. Furthermore, 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 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 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 therefore 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 Haleakala Ranch's ability to remain economically competitive and that there is 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 and planned conservation projects alone could result in the direct restoration and conservation of approximately 30 percent of the ranch

property acreage amount proposed for designation.

As described earlier, Haleakala Ranch has a history of entering into conservation agreements with various Federal and State agencies, and private organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments ranging from the Partners for Fish and Wildlife projects, and an agreement with DOFAW to fence areas in Waipae, to weed control programs with NRCS WHIP, and a perpetual easement to TNC (Waikamoi Preserve).

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. 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.

### (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 Haleakala Ranch portion of proposed Units 1 and 2 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,