

boundaries were defined by giving the coordinates in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). These coordinates can be used to determine boundaries with some accuracy. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposed critical habitat. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed critical habitat. Designated critical habitat in this final rule consists of units separately mapped for each species and is more true to the elevation contours, the distribution of habitat, and other natural features while excluding, to the extent feasible, areas where primary consistent elements are absent.

(48) *Comment:* The Department of Transportation, a State agency, stated that designation of critical habitat would significantly increase the costs of planning, design, construction, and maintenance of a number of State highways and recommended that the buffer zones on each side of the State highway right-of-way (minimum 100 feet), along with all planned roads, be excluded from designation of critical habitat.

*Our Response:* Operation and maintenance of existing manmade features and structures adjacent to critical habitat would not be subject to consultation pursuant to section 7 of the Act because such features or structures do not contain the PCEs, unless there are effects to adjacent critical habitat. If regular maintenance of the roads extends 100 feet from the road base, it is excluded from critical habitat. Otherwise, areas that contain primary constituent elements and which have been determined to be essential to the conservation of a number of the plant species on the island of Hawaii are designated as critical habitat.

#### *Issue 5: Effects of Designation*

(49) *Comment:* Several commenters, including the Department of Land and Natural Resources, Land Division, a State agency, remarked on the need for consultation, pursuant to section 7 of the Act, which would be triggered by designation of critical habitat, and the potentially adverse effect such consultation could have on flexibility of land management and activities such as water diversion projects, manipulation of vegetation, grazing, applications for Federal loans or grants (e.g., the NRCS), conservation district use applications,

property maintenance, and construction projects.

*Our Response:* Under section 7 of the Act, all Federal agencies must consult with us to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. If we find that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences. Every consultation is unique, and it is impossible to comment on what the results of a future consultation would be without details of the proposed activity and the status of the species and its critical habitat at the time of the consultation.

(50) *Comment:* Several commenters stated that designation of critical habitat would unnecessarily adversely affect military training (some of which cannot be duplicated elsewhere) and may delay construction of required training facilities.

*Our Response:* The potential direct and indirect costs to the Army are discussed in detail in Chapter 3, section 3f, of the Draft Economic Analysis (DEA) and in sections 3h and 4f of the Addendum. We have had numerous discussions with the Army regarding these areas, and, as a result, we have removed PTA, based on either the lack of primary constituent elements or other reasons (see “*Analysis of Impacts Under Section 4(b)(2)*”).

(51) *Comment:* One commenter stated that all species should be offered protection, but they cannot support protection for some and not for others. They are concerned about the nonnative animals, whose fate would be decided by agencies that consider them invasive and kill them. The current interpretation of critical habitat in effect allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals with impunity, although such methods may be cruel and environmentally unsound.

*Our Response:* The designation of critical habitat does not give the Federal government or its partners the authority to manage feral animals. Any potential animal management program would be subject to all applicable State, Federal, and local laws.

(52) *Comment:* Several commenters expressed concern over the effect that

designation of critical habitat would have on subsistence hunting and gathering, particularly that the control of feral pigs and ungulates would result in adverse economical and cultural effects to Native Hawaiian people and the State's economy. Others stated that the removal of ungulates from the forest would result in an increased threat and frequency of fire.

*Our Response:* A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting on non-Federal lands, are not regulated by this critical habitat designation and may be affected only where there is Federal involvement in the action and when the action is likely to destroy or adversely modify critical habitat. Such designation also does not require the State or a private landowner to fence the designated area and/or remove game mammals. We also recognize that under certain circumstances, removal of ungulates can result in an increase in weedy growth and associated fire risk, and we recommend that ungulate management programs assess and address this issue.

(53) *Comment:* The Department of Hawaiian Homelands, a State agency, stated that Hawaiian home lands in the area of the Waimea and South Point parcels have already been subdivided into individual lots. The Department of Hawaiian Home Lands does not have the authority to retroactively impose management plans on individual lessees. Therefore, any regulatory impact will fall on these lessees.

*Our Response:* A critical habitat designation does not constitute a land management plan, does not mandate a management plan, and does not mandate particular management actions. On State or private lands, there is no direct Federal regulatory impact from a critical habitat designation unless some sort of Federal permit, license, or funding is involved. If there is a Federal nexus, the Federal agency granting or issuing the permit, license, or funding, not an individual lessee, is required to consult with the Service to ensure that the activity being permitted, licensed, or funded is not likely to destroy or adversely modify critical habitat. By consulting with the Service, the Federal agency can usually minimize or avoid potential conflicts with listed species and their critical habitat, and the proposed activity may be undertaken.

(54) *Comment:* One commenter raised the issue of the number of fires currently burning in the landfill at Keahuolu that have the potential to explode and raised concerns that