

Our Response: We are required under section 4 of the Act to designate critical habitat based on the best available information we have at the time of designation. In addition, we are directed by the Act to recover the species and the ecosystems on which they depend, not just preserve them in a horticultural facility. We realize that designation of critical habitat alone will not achieve recovery. Many threatened and endangered species occur on private lands, and we recognize the importance of conservation actions by private landowners. Cooperation from private landowners is an important element of our conservation efforts, and we have had considerable success in developing partnerships with large and small landowners, government agencies, and nongovernmental organizations for conservation activities on the island of Hawaii, in the State of Hawaii, and throughout the nation.

We administer several programs aimed at providing incentives to landowners to conserve endangered and threatened species on their lands. One of these programs is the Endangered Species Landowner Incentive Program, which was first funded by Congress in fiscal year 1999. Under this program, we provide technical assistance and funding to landowners for carrying out conservation actions on their lands. In the first year alone, 145 proposals totaling \$21.1 million competed for \$5 million in grant money. Additional information on landowner incentive programs that we administer may be found on our Web site (<http://endangered.fws.gov/landowner/index.html>).

(59) *Comment:* Several commenters raised concerns about the nature of the public hearings. Several commenters requested that there be a process that would reach the more rural areas, and others requested that more public hearings be held, particularly after the economic analysis was completed, to make the conclusions available to the general public.

Our Response: Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to two requests from recreational hunting organizations, we published a notice of two public hearings on the proposed critical habitat designations for 47 plants from the island of Hawaii, and we reopened the comment period, which originally closed on July 29, 2002. The two public hearings were held on the island of Hawaii in Kailua-Kona and Hilo on October 29 and October 30, 2002, respectively. These notices were

advertised in the *Honolulu Star-Bulletin*. We also held several informal meetings to discuss critical habitat with a variety of groups, including trade organizations, community associations, and hunting clubs. Although we did not have a public hearing on the economic analysis, notice of its availability was published in the **Federal Register** and comments were solicited.

(60) *Comment:* One commenter asked how long it would take to undo designation of critical habitat if necessary to correct or adjust for future conditions.

Our Response: If provided with new information, we may revise the critical habitat designation at any time in the future. The time it takes to produce a proposed rule, receive peer review and public comment, and to publish a final rule varies with the situation.

(61) *Comment:* One commenter stated that, should current public use of any area that is designated as critical habitat be reduced or removed, the Service should provide in-kind mitigation.

Our Response: Possible effects resulting from interplay of the Federal Endangered Species Act and Hawaii State law are discussed in the DEA and Addendum under indirect costs (e.g., possible conservation management mandate for the private landowner and reduction in game mammals' population). Further, the DEA and Addendum discuss the indirect impacts resulting from the possible redistricting of private land into the Conservation District, noting that, under a most extreme scenario, areas designated as critical habitat could be placed in the Protective Subzone with the most severe restrictions, which could restrict development or a new agricultural use, or interfere with irrigation water development. As indicated in the Addendum, the likelihood of mandated redistricting is undetermined but is expected to be small.

(62) *Comment:* One commenter stated that the newly elected governor and her staff be allowed time to comment, as she will need to deal with any economic or social fallout from the designation of critical habitat on the island of Hawaii. Another commenter stated that as more than 50 percent of the lands proposed for designation are State lands, the Hawaii State legislature should have significant input into the designation.

Our Response: All persons were invited to comment on the proposed rule. Four public comment periods were open for this rule. The first opened upon publication of the rule on May 28, 2002, for initial comments on the rule, and remained open until July 29, 2002 (67 FR 36968). The second was open

from August 26, 2002, until September 30, 2002 (67 FR 54766). The third was open from September 24, 2002, until November 30, 2002 (67 FR 59811). The fourth opened on December 18, 2002, to allow comments on the DEA and closed on January 17, 2003 (67 FR 77464). Comments were received from representatives of various State agencies.

(63) *Comment:* Several commenters stated that the designation of critical habitat will result in a flood of lawsuits. One commenter was concerned that if it is found that more critical habitat was designated than is needed, it will be impossible to rescind the designation for these areas.

Our Response: The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been designated. However, the DEA does discuss the potential impacts pursuant to the interplay with State law, including the possibility of litigation. Specifically, adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, and increased risk of litigation over approvals, are not expected.

(64) *Comment:* One commenter stated that proposed critical habitat on lands owned by the Queen Liliuokalani Trust at Keahuolu are surrounded by urban development and have been designated for future urban development by the State and County of Hawaii.

Our Response: We have excluded Queen Liliuokalani Trust lands and other lands in this area (see "*Analysis of Impacts Under Section 4(b)(2)*"). We met with owners of land in the proposed critical habitat in the Keahuolu area and have revised unit Hawaii Y2 based on new information received during the public comment period.

(65) *Comment:* We received a comment letter on February 21, 2003 (after the close of the comment period), requesting additional time to work with us to implement interim conservation measures believed to be more beneficial to *Nerodia ovata* (and Blackburn's sphinx moth (*Manduca blackburni*)) and their respective habitats on lands owned by TSA and MID corporations. The landowner offered to: (1) Set aside 100 to 130 contiguous areas located in the proposed critical habitat unit Hawaii Y1 (and proposed Blackburn's sphinx moth proposed critical habitat); (2) Enter into