

(68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003).

These modifications resulted in the reduction from 10,738 ha (26,535 ac) to 6,564 ha (16,221 ac). This unit was renamed Hawaii 10—*Bonamia menziesii*—a, Hawaii 10—*Colubrina oppositifolia*—a, Hawaii 10—*Delissea undulata*—a, Hawaii 10—*Delissea undulata*—b, Hawaii 10—*Hibiscadelphus hualalaiensis*—a, Hawaii 10—*Hibiscus brackenridgei*—a, Hawaii 10—*Nothocestrum breviflorum*—c, Hawaii 10—*Pleomele hawaiiensis*—b, and Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a.

#### Hawaii AA

This unit was proposed as critical habitat for 10 species: *Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*. The entire area proposed for these species, which is located on PTA lands, was excluded for the reasons described in “Analysis of Impacts Under Section 4(b)(2)”. As a result, no critical habitat was designated for the five multi-island species *Hedyotis coriacea*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* on the island of Hawaii because all of the habitat proposed for these species is within these lands. These excluded lands provide habitat for six populations of *Hedyotis coriacea*, six populations of *Silene lanceolata*, two populations of *Spermolepis hawaiiensis*, seven populations of *Tetramolopium arenarium*, and six populations of *Zanthoxylum hawaiiense*. We have designated critical habitat for *Hedyotis coriacea* on Oahu (habitat for two populations) and Maui (habitat for two populations) (68 FR 25934, May 14, 2003). We designated critical habitat for *Silene lanceolata* on Oahu (habitat for one population) and Molokai (habitat for two populations) (68 FR 12982, March 19, 2003). We have designated critical habitat for *Spermolepis hawaiiensis* on Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for one population), and Maui (habitat for two populations) (68 FR 25934, May 14, 2003). Habitat for one additional population of *Spermolepis hawaiiensis* is in the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003). *Tetramolopium arenarium* is

known historically from Maui, but is currently only found on the island of Hawaii. We have designated no critical habitat for this species. We have designated critical habitat for *Zanthoxylum hawaiiense* on Kauai (habitat for two populations), Molokai (habitat for one population), and Maui (habitat for one population) (68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003).

These excluded lands also provide habitat for seven populations of *Asplenium fragile* var. *insulare*, four populations of *Neraudia ovata*, four populations of *Portulaca sclerocarpa*, seven populations of *Silene hawaiiensis*, and four populations of *Solanum incompletum*. *Asplenium fragile* var. *insulare* is historically known from Maui and we have designated critical habitat for two populations for this species on that island (68 FR 25934, May 14, 2003) and habitat for one population is designated in this rule. *Neraudia ovata* is endemic to the island of Hawaii and habitat for six populations are designated in this rule. We have designated critical habitat for one population of *Portulaca sclerocarpa* on Lanai (68 FR 1220, January 9, 2003) and are designating habitat for five populations in this rule. *Silene hawaiiensis* is endemic to the island of Hawaii, and habitat for three populations is designated in this rule. Habitat for one population of the multi-island species *Solanum incompletum* is in the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003) and we are designating habitat for four populations in this rule.

Exclusion of this unit from critical habitat for *Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* resulted in the overall reduction of 28,384 ha (70,138 ac) of critical habitat on the island of Hawaii.

#### Hawaii BB

This unit was proposed as critical habitat for one multi-island species, *Sesbania tomentosa*. The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 12 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its

historical range on this and other islands. We designated critical habitat for this species on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 28054, May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). There is habitat designated elsewhere on the island of Hawaii for this species, providing habitat for two populations. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 43 ha (106 ac) of critical habitat on the island of Hawaii.

#### 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 “\* \* \* a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery 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 the 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) regarding a not prudent finding, the court found our