

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

| Species | Proposed critical habitat designation or nondesignation | | Final critical habitat | |
|--|---|------------------|------------------------|------------------|
| | Date(s) | Federal Register | Date(s) | Federal Register |
| <i>Viola helenae</i> | 11/7/2000 | 65 FR 66808 | NA | NA |
| <i>Viola kauaiensis</i> var. <i>wahiawaensis</i> | 11/7/2000 | 65 FR 66808 | NA | NA |
| <i>Wilkesia hobbii</i> | 11/7/2000 | 65 FR 66808 | NA | NA |
| <i>Xylosma crenatum</i> | 11/7/2000 | 65 FR 66808 | NA | NA |
| <i>Zanthoxylum hawaiiense</i> | 11/7/2000 | 65 FR 66808 | NA | NA |
| | 12/18/2000 | 65 FR 79192 | | |
| | 12/29/2000 | 65 FR 83158 | | |
| | 1/28/2002 | 67 FR 3940 | | |
| | 4/3/2002 | 67 FR 15856 | | |
| | 4/5/2002 | 67 FR 16492 | | |
| | 5/28/2002 | 67 FR 36968 | | |

At the time each of the 95 plants was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant or would increase the degree of threat to the species. The “not prudent” determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudence determinations for 245 listed plant species in Hawaii, including the 95 species reported from Kauai. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii v. Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the DOFAW, county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered

information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On October 5, 1999, we contacted landowners on the islands of Kauai and Niihau, notifying them of our requirement to designate critical habitat for 95 plant species. We included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19, 20, and 21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. In addition, we met with Kauai County DOFAW staff

and Kauai State Parks staff to discuss their management activities on Kauai.

On November 7, 2000, we published the first of the court-ordered proposed critical habitat designations or nondesignations for 76 Kauai and Niihau plants (65 FR 66808). The proposed critical habitat designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court's order. In those proposals, we proposed that critical habitat was prudent for 85 species (*Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope*