

2002, we held public meetings at the Waimea Community Center, Waimea, Kauai, and the War Memorial Convention Center, Lihue, Kauai, respectively.

On January 9, 2003, we determined that critical habitat was prudent for the following 15 species: *Adenophorus periens*, *Bonamia menziesii*, *Centaurium sebaeoides*, *Ctenitis squamigera*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Isodendron pyriformis*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Vigna owahuensis* and *Zanthoxylum hawaiiense* (68 FR 1220), which also occur on Kauai or Niihau.

#### *Summary of Comments and Recommendations*

We received a total of 20 oral and 2,740 written comments during the three comment periods. These included responses from 7 State offices, 5 public officials, and 70 private organizations or individuals. Of the written comments, we received approximately 680 letters by facsimile and 1,998 electronic letters by e-mail, which stated general support for the proposed critical habitat designations, but that did not provide substantive comments. Of the other 82 comments, nine supported the designation, 60 were opposed to it, and 13 provided information but did not state a position on the designation. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Kauai and Niihau plants. Similar comments were grouped into nine general issues relating specifically to the proposed critical habitat designations and the draft economic analysis on the proposed determinations. These are addressed in the following summary.

#### *Peer Review*

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 23 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region, or the principles of conservation biology. We received comments from eight. All eight generally supported our methodology and conclusion, but none expressed a position for or against the designation of critical habitat. Comments received from the peer reviewers are summarized in the following section and incorporated into the final rule.

#### *Issue 1: Biological Justification and Methodology*

(1) *Comment:* One peer reviewer commented that there is no easy way to assess the match between the Service's proposed boundaries and the summation of habitat requirements of the individual taxa in each unit. Specifically, the intermediate step of indicating the species models for each of the listed taxa that is combined into the aggregate polygons that form the basis for the unit boundaries is not well documented. This leaves the reviewer with little basis to assess the match between habitat of the listed taxa and inclusion of such habitat in the critical habitat units. Species should be addressed individually, but the designation of conservation areas (or critical habitat) can and should consider the use of common areas to provide for multiple species. Another commenter stated that the Service's analysis has not demonstrated that inclusion of controversial areas has been minimized. There is no way to tell whether all of a given unit is necessary for that subset of taxa, which absolutely require the habitat found in that unit. The discussion of how each critical habitat unit provides for individual species helps one understand the reason for proposing the unit. However, additional information is needed in some instances (e.g., units J and N). The Service must justify every acre of land proposed for critical habitat designation, identify the specific species scheduled for recovery on that land, and explain why specific acreages are needed to do so.

*Our Response:* In response to these concerns, we have included the critical habitat maps and unit justifications for each species in the final rule, as well as descriptions of primary constituent elements and a composite map showing the overlap of the areas for all of the species combined.

(2) *Comment:* The majority of our peer reviewers agreed that the methodology is appropriate, scientifically well-grounded and conceptually sound. The approach of mapping the elevation, moisture, and habitat type for the listed taxa to the landscape is a sound approach to designating critical habitat. It seems that there is a good match of habitat identified long-term conservation of multiple populations of the listed species. The methodology uses information on species elevation range, vegetation type, associated species, physical location, and community type. It will allow the Service to revise or update habitat units as new information becomes available. This is more likely to provide habitat for

the recovery of these species. The proposed rulemaking represents the best scientific information available and is a scientifically appropriate technique for determining critical habitat on Kauai. On the other hand, some commenters felt that the proposed rule was an overly broad approach to designating critical habitat not based on scientific principles and knowledge of the needs of these plant species unique to the island State of Hawaii, but on litigation and the threat of future litigation. Additional consultation with academic and professional experts was recommended. Some reviewers stated that no assessment of the quality of any of the data sources is provided, and no information is given as to how data sources of varying qualities were weighted in making delineations of critical habitat or how decisions were made as to what to rely on in the absence of rigorous assessments of relative quality. These commenters agreed with the Service's statement that "lack of detailed scientific data makes it impossible for us to develop a quantitative model." Lack of knowledge means that the proposed critical habitat designation is based only on the general habitat features of the areas in which the plants currently occur. While this approach may be expedient, it has resulted in designations based on best guess estimations, rather than on science or the realities of plant recovery. The Service needs to give greater weight to scientific or commercial data that is empirical and has been field tested or verified, and needs to allow peer review by a panel of unbiased scientists. Other commenters felt the data on which the proposed critical habitat is based is 30 years-old and may need updating. The proposed critical habitat covers too much acreage and was put together too quickly, using obsolete data, sloppy science, and lots of guess work.

*Our Response:* In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Kauai plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation. The majority of the peer reviewers support our methodology. All data and information on species status received in preparation of this rule was equally weighted and considered to come from reliable sources. Where