

critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives.

We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for on-going projects. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

(50) *Comment:* If endangered species are dying through no fault of the landowner, then the landowner should not be penalized with onerous and costly regulations. What incentives are being provided private landowners to act on behalf of listed plants?

Our Response: Critical habitat designation does not impose additional regulatory requirements upon non-Federal landowners unless they are receiving funding or authorization from a Federal agency for a proposed action that is likely to destroy or adversely modify critical habitat. Many threatened and endangered species occur on private lands and the Service recognizes 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 non-governmental organizations for conservation activities on Kauai, in the State of Hawaii, and throughout the nation.

The Service administers several programs aimed at providing incentives for landowners to conserve endangered and threatened species on their lands, one of which is the Endangered Species Landowner Incentive Program, which was first funded by Congress in fiscal year 1999. Under this program, the Service provides 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 administered by the Service

may be found on our website <http://endangered.fws.gov/landowner/index.html>.

(51) *Comment:* The Service has tried to reassure the public that the wholesale dedication of land as critical habitat will not result in restrictions of public access and that most land use proposals will be approved. One commenter said that this is probably not true, based on what has happened in other parts of the country.

Our Response: Undoubtedly, human activities have had a negative impact to many species in Hawaii. However, numerous threatened and endangered species are currently on the road to recovery through the direct intervention of humans. These include marine and terrestrial vertebrates, plants, and invertebrates. The designation of an area as critical habitat does not in itself restrict public access. The regulatory effect of critical habitat designation is limited to requiring consultation under section 7 of the Act for Federal actions. Since few, if any, Federal actions affect public access to the State and private lands designated as critical habitat for these plants, it is unlikely that public access to these areas will be altered.

(52) *Comment:* By setting aside so many acres of land with no guarantee that the plan will work it will rob the Hawaiian people of their culture and lifestyle. Critical habitat designation should accommodate the traditional cultural gathering rights of Native Hawaiians as reflected in Article XII of the State Constitution and upheld by the Hawaii Supreme Court in PASH and Ka Paakai o Ka Aina decisions. Native Hawaiian issues should be handled by the native Hawaiian people. The Service should make a plan to save plants where the Hawaiian people would have a say.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some sort of Federal permit, license, or funding is involved and the activities may affect endangered or threatened species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies.

Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in such destruction or adverse modification, we will suggest reasonable or prudent alternatives.

Activities of the State or private landowner or individual, such as

farming, grazing, logging, and gathering, generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. 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 impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

The Service actively seeks input and participation from the public in development and implementation of recovery plans for endangered and threatened species and believes that it is only through such active participation by the public that we will be able to recover these plants.

(53) *Comment:* The critical habitat initiative is generating an unwelcome degree of rift between the State Department of Land and Natural Resources (DLNR) and the Service, and may erode public support for needed recovery efforts. The Service should withdraw their plans for critical habitat designation on Kauai, and instead, work with existing agencies on their current efforts at conservation and preservation. The testimony presented by DLNR at the February 2001 hearing recommends suggestions for working together and cites specific methods for its implementation. They deserve the Service's utmost attention.

Our Response: We agree that the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) comments and suggestions should be given the utmost attention. During the public comment periods for the November 7, 2000, proposal for plants from Kauai and Niihau, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We evaluated DOFAW's comments on a species by species basis and incorporated their information into the revised proposal published on January 28, 2002. DOFAW recommended deletion of some of the proposed critical habitat units as they do not believe these areas are suitable for the recovery of some species because they would not be able to manage these areas with their limited staff and funding. Because the basis for identifying areas by DOFAW was made on the manageability of the area, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.