

matter pertaining to the payment to or utilization of a subcontractor.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R1-ES-2013-0003; 4500030113]

RIN 1018-AZ25

#### Endangered and Threatened Wildlife and Plants; Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our June 11, 2012 (77 FR 34464), proposal to designate or revise critical habitat for 135 plant and animal species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe under the Endangered Species Act of 1973, as amended (Act). These 135 species include 2 plant species for which we reaffirmed their endangered listing status on May 28, 2013 (78 FR 32014); 37 plant and animal species we proposed for listing on June 11, 2012, and subsequently listed as endangered on May 28, 2013 (78 FR 32014); 11 plant and animal species that are also already listed as endangered but do not have critical habitat designations; and 85 plant species that are already listed as endangered or threatened and have designated critical habitat, but for which we proposed revisions to critical habitat. We are reopening the comment period to allow all interested parties further opportunity to comment on areas that we are considering for exclusion in the final rule. Comments previously submitted on the proposed rule do not need to be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** *Written Comments:* We will consider comments received or postmarked on or before June 25, 2015. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. If you are submitting your comments by hard copy, please mail

them by June 25, 2015, to ensure that we receive them in time to give them full consideration.

**ADDRESSES:** *Document Availability:* You may obtain copies of the June 11, 2012, proposed rule, this document, and the draft economic analysis of the proposed designation of critical habitat at <http://www.regulations.gov> at Docket Number FWS-R1-ES-2013-0003, from the Pacific Islands Fish and Wildlife Office's Web site (<http://www.fws.gov/pacificislands/>), or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

*Written Comments:* You may submit written comments by one of the following methods, or at the public information meeting or public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R1-ES-2013-0003, which is the docket number for this rulemaking, and follow the directions for submitting a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2013-0003; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will post all comments we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Kristi Young, Acting Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850; by telephone at 808-792-9400; or by facsimile at 808-792-9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for 135 species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe (collectively, "Maui Nui") that was published in the **Federal Register** on June 11, 2012 (77 FR 34464). In that proposed rule, we proposed to list 38 species as endangered, reaffirm the listing of 2 endemic Hawaiian plants currently listed as endangered, and designate critical habitat for 39 of these

40 plant and animal species on the Hawaiian Islands of Molokai, Lanai, and Maui; and to designate critical habitat for 11 plant and animal species that are already listed as endangered, and revise critical habitat for 85 plant species that are already listed as endangered or threatened on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe. On May 28, 2013, we published a final rule listing 38 Maui Nui species (35 plants and 3 tree snails) as endangered and reaffirming the listing of 2 plant species as endangered (78 FR 32014). Critical habitat has not yet been finalized. We have previously extended or reopened the comment period on the proposed critical habitat twice: once for 30 days, on August 9, 2012 (77 FR 47587), and again for 30 days on January 31, 2013 (78 FR 6785).

In particular we are seeking public comment on the areas that we are considering for exclusion from the final designation of critical habitat. Although we had previously indicated that we were considering the possible exclusion of non-Federal lands, especially areas in private ownership, and asked for comment on the broad public benefits of encouraging collaborative conservation efforts with local and private partners, we are now offering an additional opportunity for public comment on this issue. We will consider information and recommendations from all interested parties.

We are particularly interested in comments concerning whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act (16 U.S.C. 1531 *et se.*), after considering the potential impacts and benefits of the proposed critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

- The benefits of including any specific areas in the final designation and supporting rationale.
- The benefits of excluding any specific areas from the final designation and supporting rationale.
- Whether any specific exclusions may result in the extinction of the species and why.

For non-Federal lands in particular, we are interested in information regarding the potential benefits of including such lands in critical habitat versus the benefits of excluding such lands from critical habitat. This information does not need to include a

detailed technical analysis of the potential effects of designated critical habitat on non-Federal property. In weighing the potential benefits of exclusion versus inclusion of non-Federal lands, the Service may consider whether existing partnership agreements provide for the management of the species. This consideration may include, for example, the status of conservation efforts, the effectiveness of any conservation agreements to conserve the species, and the likelihood of the conservation agreement's future implementation. In addition, we may consider the formation or fostering of partnerships with non-Federal entities that result in positive conservation outcomes for the species, as evidenced by the development of conservation agreements, as a potential benefit of exclusion. We request comment on the broad public benefits of encouraging collaborative efforts and encouraging local and private conservation efforts.

Our final determination concerning the designation of critical habitat for 135 species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe will take into consideration all written comments and information we receive during all comment periods; from peer reviewers; and during the public information meeting, as well as comments and public testimony we received during the public hearing, that we held in Kihei, Maui, on February 21, 2013 (see 78 FR 6785; January 31, 2013). The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. On the basis of peer reviewer and public comments, as well as any new information we may receive, we may, during the development of our final determination concerning critical habitat, find that areas within the proposed critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

If you submitted comments or information on the proposed rule (June 11, 2012; 77 FR 34464) during any of the previous open comment periods from June 11, 2012, through September 10, 2012 (77 FR 34464 and 77 FR 47587), from January 31, 2013, through March 4, 2013 (78 FR 6785), or at the public information meeting or hearing on February 21, 2013, please do not resubmit them. We will fully consider them in the preparation of our final determinations.

You may submit your comments by one of the methods listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you submit your comment via U.S. mail, you may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R1-ES-2013-0003, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

The topics discussed below are relevant to designation of critical habitat for 135 species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe. For more information on previous Federal actions concerning these species, refer to the proposed listing and designation of critical habitat published in the **Federal Register** on June 11, 2012 (77 FR 34464), and the final listing rule for 38 species on Molokai, Lanai, and Maui published in the **Federal Register** on May 28, 2013 (78 FR 32014), both of which are available online at <http://www.regulations.gov> (at Docket Number FWS-R1-ES-2011-0098), or from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Previous Federal Actions

On June 11, 2012, we published a proposed rule (77 FR 34464) to list 38 species as endangered and designate or revise critical habitat for 135 plant and animal species. We proposed to designate a total of 271,062 acres (ac) (109,695 hectares (ha)) on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe (collectively called Maui Nui) as critical habitat. Approximately 47 percent of the area proposed as critical habitat is already designated as critical habitat for other species, including 85 plant species for which critical habitat was designated in 1984 (49 FR 44753; November 9, 1984) and 2003 (68 FR 1220, January 9, 2003; 68 FR 12982, March 18, 2003; 68 FR 25934, May 14, 2003). Within that proposed rule, we announced a 60-day comment period, which we subsequently extended for an additional 30 days (77 FR 47587; August 9, 2012); in total, the comment period began on June 11,

2012, and ended on September 10, 2012. On January 31, 2013, we announced the availability of the draft economic analysis on the proposed designation of critical habitat, and reopened the comment period on our proposed rule, the draft economic analysis, and amended required determinations for another 30 days, through March 4, 2013 (78 FR 6785). On January 31, 2013, we also announced a public information meeting in Kihei, Maui, which we held on February 21, 2013, followed by a public hearing on that same day.

#### Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical 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 essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency unless it is exempted pursuant to the provisions of the Act (16 U.S.C. 1536(e)–(n) and (p)). Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consistent with the best scientific data available, the standards of the Act, and our regulations, we have initially identified, for public comment, a total of 271,062 ac (109,695 ha) in 100 units for the 130 plants, 44 units for each of the 2 forest birds, 5 units for each of the Lanai tree snails, and 1 unit for the Maui tree snail, located on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe, that meet the definition of critical habitat for the 135 plant and animal species. In addition, the Act provides the Secretary with the discretion to exclude certain areas from the final designation after taking into consideration economic impacts, impacts on national security, and any other relevant impacts of specifying any particular area as critical habitat.

#### Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration

the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of the 135 Maui Nui species, the benefits of critical habitat include public awareness of the presence of one or more of these species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

Under section 4(b)(2) of the Act, when considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of conservation partnerships; or implementation of a management plan. We also consider the potential economic impacts that may result from the designation of critical habitat.

In weighing the benefits of exclusion versus inclusion, we consider a number of factors, including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. We consider the establishment and encouragement of strong conservation partnerships with non-Federal landowners to be especially important in the State of Hawaii, where there are relatively few lands under Federal ownership; we cannot achieve the conservation and recovery of listed species in Hawaii without the help and cooperation of non-Federal landowners. We consider building partnerships and

promoting voluntary cooperation of landowners essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. Conservation agreements with non-Federal landowners, safe harbor agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal lands through such partnerships than we can through regulatory methods alone, particularly for listed plants which are not subject to the Act's section 9 prohibition on taking (USFWS and NOAA 1996c (61 FR 63854; December 2, 1996)).

Because so many important conservation areas for the Maui Nui species occur on lands managed by non-Federal entities, collaborative relationships are essential for their recovery. The Maui Nui species and their habitat are expected to benefit substantially from voluntary land management actions that implement appropriate and effective conservation strategies, or that add to our knowledge of the species and their ecological needs. The conservation benefits of critical habitat, on the other hand, are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is both desirable and necessary to implement policies that provide positive incentives to non-Federal landowners and land managers to voluntarily conserve natural resources and to remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–14; Bean 2002, p. 2). Thus, we believe it is imperative for the recovery of the Maui Nui species to support ongoing conservation activities such as those with non-Federal partners, and to provide positive incentives for other non-Federal land managers who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory, administrative, or economic impacts. Many landowners perceive critical habitat as an unnecessary and duplicative regulatory burden, particularly if those landowners are already developing and

implementing conservation and management plans that benefit listed species on their lands. In certain cases, we believe the exclusion of non-Federal lands that are under positive conservation management is likely to strengthen the partnership between the Service and the landowner, which may encourage other conservation partnerships with that landowner in the future. As an added benefit, by modeling positive conservation partnerships that may result in exclusion from critical habitat, such exclusion may also help encourage the formation of new partnerships with other landowners, with consequent benefits to the listed species. For all of these reasons, we place great weight on the value of conservation partnerships with non-Federal landowners when considering the potential benefits of inclusion versus exclusion of areas in critical habitat.

In the proposed rule (June 11, 2012; 77 FR 34464), we identified several specific areas under consideration for exclusion from critical habitat, totaling approximately 40,973 ac (16,582 ha) of private lands under perpetual conservation easement, voluntary conservation agreement, conservation or watershed preserve designation, or similar conservation protection. The areas initially identified for potential exclusion, as detailed in our proposed rule, included lands owned or managed by The Nature Conservancy (TNC), Maui Land and Pineapple Company, Ulupalakua Ranch, Haleakala Ranch Company, and East Maui Irrigation Company.

In the document reopening the comment period on our proposed rule, published January 31, 2013 (78 FR 6785), we specifically noted that we are considering the possible exclusion of non-Federal lands, especially areas in private ownership, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We asked for public comment on such potential exclusions, and for information regarding the potential benefits of including private lands in critical habitat versus the benefits of excluding such lands from critical habitat. We further noted that exclusions in the final rule would not necessarily be limited to those we had initially identified in the proposed rule. Subsequent to publication of the proposed rule on June 11, 2012 (77 FR 34464), we have identified additional private or non-Federal lands that we are considering for exclusion from critical habitat. These include lands owned or managed by Nu'u Mauka Ranch; Kaupo Ranch; Wailuku Water Company;

County of Maui, Department of Water Supply; Kamehameha Schools; Makila Land Company; Kahoma Land Company; and Lanai Resorts (Pulama Lanai) and Castle and Cooke Properties. In total, the areas being considered for exclusion from the final critical habitat amount to roughly 85,000 ac (34,400 ha), including approximately 59,500 ac (24,080 ha) on the islands of Maui and Molokai, and 25,413 ac (10,284 ha) on the island of Lanai (which would result in the exclusion of all lands proposed as critical habitat on Lanai). No lands are currently under consideration for exclusion on Kahoolawe. Here we present brief descriptions of the additional non-Federal lands under consideration for exclusion from critical habitat.

*Nuu Mauka Ranch—Native Watershed Forest Restoration at Nuu Mauka Conservation Plan, Leeward Haleakala Watershed Restoration Partnership Management Plan, and Southern Haleakala Forest Restoration Project*

We are considering exclusion of 2,094 ac (848 ha) of lands that are owned by Nuu Mauka Ranch. The ongoing management under the Native Watershed Forest Restoration Conservation Plan, Leeward Haleakala Watershed Restoration Partnership (LHWRP) management plan, and the Southern Haleakala Forest Restoration Project agreement for Nuu Mauka Ranch lands on east Maui provides for the conservation of 46 plants and the 2 forest birds and their habitat, and demonstrates the positive benefits of the conservation partnership that has been established with Nuu Mauka Ranch.

Nuu Mauka Ranch is involved in several important voluntary conservation agreements with the Service and other agencies, and is currently carrying out activities on their lands for the conservation of rare and endangered species and their habitats. In 2008, the Ranch worked with the United States Geological Survey (USGS)-Pacific Island Ecosystem Research Center and Natural Resources Conservation Service (NRCS) to develop cost-effective, substrate appropriate restoration methodologies for establishment of native koa (*Acacia koa*) forests in degraded pasturelands. Nuu Mauka Ranch is a current partner of the LHWRP, with the main goal of protection and restoration of leeward Haleakala's upland watershed. In 2012, Nuu Mauka Ranch obtained a conservation district use permit for a watershed protection project. The ultimate goal of this project is to improve water quality and groundwater recharge through the restoration of

degraded agricultural land to a native forest community. Nuu Mauka Ranch has contributed approximately \$500,000 of their own funds, and received additional funding through the Service and NRCS, for construction of a 7.6-mile (12-kilometer) long deer-proof fence to prevent access by deer and goats into a 1,023-ac (414-ha), upper elevation watershed area on the south slopes of leeward Haleakala (Southern Haleakala Forest Restoration Project). Nuu Mauka Ranch has also prepared a conservation plan, "Native Watershed Forest Restoration at Nuu Mauka" (2012), and has appended it to the LHWRP management plan. Restoration activities outlined in the plan include mechanical and chemical control of invasive plant species, which are known threats to the 48 species and their habitat. Currently, Nuu Mauka Ranch conducts removal of feral ungulates from all fenced areas, along with fence monitoring and follow-up monitoring to assess erosion rates. Also, with fencing and ungulate removal completed, the plan includes continued restoration activities such as replanting and seed scattering of common native plant species.

*Kaupo Ranch—Leeward Haleakala Watershed Restoration Partnership Management Plan and Southern Haleakala Forest Restoration Project*

We are considering exclusion of 931 ac (377 ha) of lands that are owned or managed by Kaupo Ranch. Kaupo Ranch has undertaken voluntary conservation measures on their lands, demonstrating their value as a partner through participation in the LHWRP management plans and the appended written commitments by Kaupo Ranch, and the Southern Haleakala Forest Restoration Project for Kaupo Ranch lands on east Maui. These actions provide positive conservation benefits for 25 plant species and their habitat.

Kaupo Ranch is a current partner of the LHWRP, with the main goal of protection and restoration of leeward Haleakala's upland. Kaupo Ranch has identified the following conservation actions that will be appended to the LHWRP: (1) Fence existing native koa forest and remove ungulates. Kaupo Ranch also plans to expand koa forest restoration on their lands. These actions will benefit adjacent koa forest managed by the State (Kipahulu Forest Reserve (FR)). (2) Continue nonnative plant control, not only to improve their pasturelands, but to benefit adjacent conservation lands (Haleakala National Park (HNP) and Kipahulu FR) by serving as a buffer area. (3) Fence areas dominated by native vegetation on Kaupo Ranch lands, with some fencing

already completed in cooperation with HNP and Nuu Mauka Ranch. (4) Fence some of their coastal lands and control feral goats.

In addition, Kaupo Ranch has been a long time cooperator with HNP, providing access to the park's Kaupo Gap hiking trail across their private lands. This trail extends from the park's boundary near the summit of Haleakala through Kaupo Ranch lands to the coast. The Ranch was also a cooperator with the Service in the creation of Nuu Makai Wetland Reserve, contributing 87 ac (35 ha) of their ranch lands in the coastal area to support landscape-scale wetland protection. In addition, Kaupo Ranch participated in the construction of an ungulate exclusion fence on the upper portion of their lands, bordering HNP, that protects 50 ac (20 ha) of native montane dry forest habitat (Southern Haleakala Forest Restoration Project) and acts as a buffer to the lower boundary of the montane mesic ecosystem that provides habitat for forest birds. Additional conservation actions in this fenced area include weed control and outplanting of native plants.

*Wailuku Water Company—West Maui Mountains Watershed Partnership Management Plan, and Partners for Fish and Wildlife Agreements*

We are considering exclusion of 7,410 ac (2,999 ha) of lands owned or managed by Wailuku Water Company on west Maui, and under management as part of the West Maui Mountains Watershed Partnership (WMMWP). Ongoing conservation actions through the WMMWP management plan and Partners for Fish and Wildlife Agreements for Wailuku Water Company lands on west Maui provide important conservation benefits for 51 plants and 2 forest birds and their habitat, and demonstrate the positive benefits of the conservation partnership that has been established with Wailuku Water Company.

Wailuku Water Company is one of the founding members and a funder of the WMMWP, created in 1998. This partnership serves to protect over 47,000 ac (19,000 ha) of forest and watershed vegetation on the summit and slopes of the west Maui mountains (WMMWP 2013). Management priorities of the watershed partnership are: (1) Feral animal control; (2) nonnative plant control; (3) human activities management; (4) public education and awareness; (5) water and watershed monitoring; and (6) management coordination (WMMWP 2013). Four principal streams, Waihee, Waiehu, Iao, and Waikapu, are part of the watershed area owned by the Wailuku Water

Company on west Maui, which primarily provide water for agricultural use. Conservation actions described in the WMMWP management plan are partly funded by Service grants through the Partners for Fish and Wildlife Program, with at least three grants recently funding projects on Wailuku Water Company lands. Wailuku Water Company's conservation commitments include the following conservation actions: (1) Strategic fencing and removal of ungulates; (2) regular monitoring for ungulates after fencing; (3) monitoring of habitat recovery through photopoints and vegetation succession analyses; and (4) continued surveys for rare taxa prior to fence installations. In 2009, four strategic fences were installed in Waiehu on Wailuku Water Company lands through a Service Partnership agreement. Wailuku Water Company allows surveys for rare taxa on their lands. Additional conservation actions in this area include weed control and outplanting of native plants.

*County of Maui, Department of Water Supply (DWS)—West Maui Mountains Watershed Partnership Management Plan, and Partners for Fish and Wildlife Agreements*

We are considering exclusion of 3,690 ac (1,493 ha) of lands owned by the County of Maui DWS on west Maui, and under management as part of the WMMWP. The County of Maui DWS is a founding partner and funder of the WMMWP, which provides for important conservation actions that benefit the Maui Nui species through implementation of the WMMWP management plan on west Maui. The management plans and projects supported by the County of Maui DWS provide for the conservation of 38 plants and the 2 forest birds and their habitat on their lands, and demonstrate their value as a conservation partner.

Maui County DWS provides water to approximately 35,000 customers on Maui and Molokai combined. The DWS is a founding partner and funder of the WMMWP, with the main goal of protection and restoration of west Maui's upland watershed. The Maui County DWS provides financial support to both the Maui and Molokai watershed partnerships, and to other organizations, private landowners, Federal, and State agencies. Conservation actions by Maui County DWS conducted through the WMMWP are also partly funded by Service grants through the Partners for Fish and Wildlife Program. Maui County DWS's conservation commitments include the following conservation actions: (1) Strategic

fencing and removal of ungulates and removal of invasive nonnative plants; (2) regular monitoring to detect changes in management programs; (3) reduce the threat of fire; and (4) gain community support for conservation programs. In addition, the DWS received funding for installation of an ungulate exclusion fence on the upper portion of their lands on west Maui that protects native habitat and acts as a buffer to the lower boundary of the habitat for plants and the two forest birds. The DWS also received funding in 2010 for feral animal removal from their lands. Other conservation actions in this fenced area include weed control and outplanting of native plants.

*Kamehameha Schools—West Maui Mountains Watershed Partnership Management Plan, and Partners for Fish and Wildlife Agreements*

We are considering excluding 1,217 ac (492 ha) of lands owned or managed by Kamehameha Schools on west Maui, and under management as part of the WMMWP. Kamehameha Schools is an established conservation partner, and has participated the development, implementation, and funding of management plans and projects that benefit the Maui Nui species and other listed species throughout the Hawaiian Islands. In this case, the ongoing conservation actions through the WMMWP management plan for Kamehameha Schools' lands on west Maui provide for the conservation of 42 plants and 2 forest birds and their habitat.

Kamehameha Schools was established in 1887, through the will of Princess Bernice Pauahi Paki Bishop. The trust is used primarily to operate a college preparatory program; however, part of Kamehameha School's mission is to protect Hawaii's environment through recognition of the significant cultural value of the land and its unique flora and fauna. Kamehameha Schools has established a policy to guide the sustainable stewardship of its lands including natural resources, water resources, and ancestral places. Kamehameha Schools is a founder and funder of the WMMWP, and also participates in the watershed partnerships for Oahu, Molokai, Kauai, and the island of Hawaii. Conservation actions conducted by the WMMWP are partly funded by Service grants through the Partners for Fish and Wildlife Program. Kamehameha Schools' conservation commitments include the following conservation actions: (1) Strategic fencing and removal of ungulates; (2) regular monitoring for ungulates after fencing; (3) monitoring

of habitat recovery; and (4) continued surveys for rare taxa prior to new fence installations. In addition, Kamehameha Schools participated in the construction of strategic ungulate exclusion fences on the upper elevations of their lands on west Maui, that protect native habitat and act as a buffer to the lower boundary of the lowland mesic, montane wet, and wet cliff ecosystems. Other conservation actions in this area include weed control and outplanting of native plants. Kamehameha Schools is also conducting voluntary actions to promote the conservation of rare and endangered species and their lowland dry ecosystem habitats on the island of Hawaii, including installing fencing to exclude ungulates, restoring habitat, conducting actions to reduce rodent populations, reestablishing native plant species, and conducting activities to reducing the threat of wildfire.

*Makila Land Company—West Maui Mountains Watershed Partnership Management Plan, and Partners for Fish and Wildlife Agreements*

We are considering exclusion of 3,150 ac (1,275 ha) of lands owned and managed by Makila Land Company on west Maui, and under management as part of the WMMWP. The Makila Land Company is an established partner in the WMMWP, and ongoing conservation actions through the WMMWP management plan for Makila Land Company lands on west Maui provide for the conservation of 47 plants and 2 forest birds and their habitat.

Makila Land Company has set aside upper elevation areas of their property at Puehuhunui and Kauaula on west Maui for conservation and protection of rare dry to mesic forest communities. Makila Land Company is a long-time cooperator with the WMMWP. Conservation actions conducted by the WMMWP are partly funded by Service grants through the Partners for Fish and Wildlife Program. Makila Land Company's conservation commitments include the following conservation actions: (1) Strategic fencing and removal of ungulates; (2) regular monitoring for ungulates after fencing; (3) vegetation monitoring; and (4) allowing surveys for rare taxa by the State and Service's Plant Extinction Prevention Program (PEPP) staff. Much of the area is accessible only by helicopter due to waterfalls and steep terrain. The installation of strategic ungulate exclusion fences on the higher elevation portions of its lands protects native habitat and acts as a buffer to the boundaries of the montane wet and wet cliff ecosystem habitat. Additional conservation actions in these fenced

areas include weed control and outplanting of native plants.

*Kahoma Land Company—West Maui Mountains Watershed Partnership Management Plan, and Partners for Fish and Wildlife Agreements*

We are considering exclusion of 46 ac (19 ha) of lands owned or managed by Kahoma Land Company on west Maui, and under management as part of the WMMWP. The ongoing conservation actions through the WMMWP management plan for Kahoma Land Company lands on west Maui provide for the conservation of 25 plants and 2 forest birds and their habitat, and demonstrate their value as a conservation partner.

Kahoma Land Company is a coalition of Maui residents formed in June, 2000, to acquire former sugar cane land adjacent to Kahoma Valley on west Maui. Kahoma Land Company's long-term management goals for this area include development of land tracts, diversified agriculture, and ecotourism ventures. Approximately 690 ac (279 ha) of the coalition's lands are within the WMMWP boundaries between two State Natural Area Reserves, and 46 ac (19 ha) are within proposed critical habitat. Kahoma Land Company is also a current member of the WMMWP. Kahoma Land Company's conservation actions conducted by the WMMWP are partly funded by Service grants through the Partners for Fish and Wildlife Program. Its conservation commitments include the following conservation actions: (1) Strategic fencing and removal of ungulates; (2) regular monitoring for ungulates after fencing; (3) monitoring of habitat recovery through vegetation succession analyses; and (4) continued surveys for rare taxa prior to new fence installations. The WMMWP management plan includes actions taken on Kahoma lands to control ungulates, including construction of strategic fencing. Ungulate control checks are currently underway on Kahoma lands, with addition of new check installations. Additional conservation actions in this area include weed control and outplanting of native plants.

*Lanai Resorts, LLC, and Castle & Cooke Properties, Inc.—Lanai Conservation Plan and Lanai Conservation Agreement*

We are considering exclusion of 25,413 ac (10,284 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by Lanai Resorts, also known as Pūlama Lanai (PL) and Castle & Cooke Properties, Inc. (CCPI). Our partnership with PL and CCPI provides significant conservation

benefits to 38 plant and 2 Lanai tree snail species on Lanai, as demonstrated by the ongoing conversation efforts on the island, the commitment to develop the Lanai Natural Resources Plan (LNRP), and the recently signed memorandum of understanding (MOU) between the Service and PL and CCPI.

In 2001, the Board of Land and Natural Resources (BLNR) approved its department's (Department of Land and Natural Resources (DLNR)) participation in a Lanai watershed management program that included the Service (through a private stewardship grant), the Hawaii Department of Health, and CCPI. In 2002, the Service and CCPI entered into a memorandum of agreement (MOA) for construction of ungulate-proof fence at Lanaihale, intended to prevent entry by ungulates and to protect the watershed and the listed species within the area. The term of the MOA was for 10 years. The fencing of the summit at Lanaihale was planned to be constructed in three stages or "increments." In 2004, the DLNR also provided funding through the Landowner Incentive Program to the Bishop Museum to remove nonnative plants and outplant and establish a population of more than 500 individuals of *Bidens micrantha* ssp. *kalealaha* and *Pleomele fernaldii* in Waiapaa Gulch at Lanaihale. Museum staff were to also collect seed for long-term storage and provide educational experiences for local Lanai students. In 2006, a fire resulted in the loss of half of the remaining wild individuals of *B. micrantha* ssp. *kalealaha*, and by 2007, none remained. Outplanting was conducted within an ungulate-free enclosure at Awehi Gulch. Also in 2007, the west side (Increment II) of the Lanaihale summit fence perimeter was completed; however, ungulates were able to access the fenced area because the gates were not completed. In 2008, more wild individuals of *B. micrantha* ssp. *kalealaha* were discovered in Waiapaa Gulch, and many seedlings were grown for outplanting by a student group at the local high school, with a second outplanted population established in 2009. This population was fenced by the Lanai Institute for the Environment (LIFE).

The Service and PL and CCPI signed an expansive MOU on January 26, 2015, with a term that extends through 2028. Among the commitments made by PL and CCPI in this MOU are the following: (1) The completion of a Lanai natural resources plan (LNRP) within 18 months of the date of the agreement. Implementation of the LNRP will include identification of priority ecosystems and species, prioritization of

management actions required, and commitment of funding; (2) maintenance and monitoring of the completed existing Lanaihale predator-proof fences; (3) ungulate eradication within the Lanaihale fences and other priority areas as identified in the LNRP; (4) cooperation with, and support of management and monitoring within, TNC's Kanepuu Preserve units; (5) protection of rare plant clusters; (6) Lanai tree snail protection, management, and monitoring; (7) identification of rare species for immediate protective intervention efforts; (8) protection of coastal areas; (9) establishment of nearly 7,000 ac (2,800 ha) of "no development areas" as determined by the LNRP, within which enhancement of overall ecological condition and conservation of listed species will be emphasized; and (10) an overall commitment to ensuring a net conversation benefit for listed species on Lanai. PL and CCPI additionally agree to provide more than \$200,000 annually in funding toward achievement of the conservation measures described in the MOU.

Under the terms of the MOU, PL and CCPI are currently developing the LNRP. This plan will include a description of detailed management actions with timelines that will benefit and provide protection for 38 plant species, the two Lanai tree snails, and their habitat on the island of Lanai. The Service is a member of the LNRP planning and implementation team, and will therefore be an active participant in the ongoing conservation efforts on the island of Lanai.

PL has committed to implementing certain protective measures in advance of the LNRP to ensure species conversation. Actions currently being implemented include: (1) Planning and construction of an enclosure for the protection of the two Lanai tree snails; (2) planning, construction, and maintenance of fences around three rare plant populations; (3) out-planting of rare species in protected locations; (4) implementation of bio-security measures to avoid the incursion and spread of invasive species; (5) maintenance of all existing fences; (6) predator control where necessary and appropriate to protect listed species; and (7) identification of other priority actions and sites. These measures are currently underway and being conducted in coordination with the Service.

*Summary of Potential Exclusions*

We are considering exclusion of these non-Federal lands because we believe the exclusion would be likely to result

in the continuation, strengthening, or encouragement of important conservation partnerships that will contribute to the long-term conservation of the Maui Nui species. The development and implementation of management plans, and ability to access private lands necessary for surveys or monitoring designed to promote the conservation of these federally listed plant species and their habitat, as well as provide for other native species of concern, are important outcomes of these conservation partnerships.

These specific exclusions will be considered on an individual basis or in any combination thereof. In addition, the final designation may not be limited

to these exclusions, but may also consider other exclusions as a result of continuing analysis of relevant considerations (scientific, economic, and other relevant factors, as required by the Act) and the public comment process. In particular, we solicit comments from the public on whether to make the specific exclusions we are considering, and whether there are other areas that are appropriate for exclusion.

The final decision on whether to exclude any area will be based on the best scientific data available at the time of the final designation, including information obtained during the comment periods and information about the economic impact of the designation.

#### **Authors**

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: June 1, 2015.

#### **Michael Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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