*lineare* is warranted, an immediate proposal to list is precluded by other higher priority listing actions. During fiscal year 2001, we must spend nearly all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. *Botrychium lineare* will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of the slender moonwort and other candidate species. Should an emergency situation develop with one or more of these species, we will act to provide immediate protection, if warranted.

### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

### Author(s)

The primary authors of this document are Edna Rey-Vizgirdas, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section), and Barbara Behan, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232.

### Authority

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

Dated: March 9, 2001.

**Marshall P. Jones, Jr.,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 01–14170 Filed 6–5–01; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AG99**

## Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the O‘ahu ‘Elepaio

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), propose designation of critical habitat for the O‘ahu ‘elepaio, a bird, pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of five units whose boundaries encompass a total area of approximately 26,853 hectares (ha) (66,354 acres (ac)) on the island of O‘ahu, Hawai‘i.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the O‘ahu ‘elepaio are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. All areas proposed as critical habitat for the O‘ahu ‘elepaio contain one or more of the primary constituent elements.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:**

### Comments

We will consider comments from all interested parties received by August 6, 2001.

### Public Hearings

Requests for public hearing must be received by July 23, 2001.

**ADDRESSES:**

### Comments

Send written comments on this proposed rule to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawai‘i 96850.

### Availability of Documents

Supporting documentation and references used in the preparation of this proposed rule and all comments and materials received will be available for public inspection, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, or Eric VanderWerf, Biologist, U.S. Fish and Wildlife Service at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

**SUPPLEMENTARY INFORMATION:**

### Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth’s crust located near the current southeastern coast of the island of Hawai‘i (Stearns 1985). O‘ahu, the third oldest main island, is 2.5 million to 3.5 million years old and is heavily weathered. O‘ahu has two principal mountain ranges, the Ko‘olau and the Wai‘anae Mountains, separated by a gently sloping plateau. The Ko‘olau Mountains extend 60 kilometers (km) (37 miles (mi)) from northwest to southeast along the eastern half of the island. The windward (northeastern) slope of these mountains is characterized by steep cliffs and short ridges less than 6 km (4 mi) long. The leeward (southwestern) slope is characterized by parallel ridges as long as 18 km (11 mi), alternating with steep-sided stream valleys. The peak elevation in the Ko‘olau Mountains occurs at Pu‘u Kõnāhua-nui (955 meters (m); 3,105 feet (ft)). The drier Wai‘anae Mountains run from northwest to southeast in a 32-km (20-mi) arc along the western half of O‘ahu, in the rainshadow of the Ko‘olau Range. Both the windward and leeward slopes of the Wai‘anae Mountains are characterized by steep cliffs and ridges less than 5 km (3 mi) in length. The peak elevation occurs at Mt. Ka‘ala (1,230 m; 4,025 ft). Approximately 36 percent (134,300 acres) of O‘ahu is forested (Buck *et al.* 1988). Of these forested lands, approximately 49 percent is primarily native forest dominated by koa (*Acacia koa*) and ‘õhi‘á (*Metrosideros polymorpha*), with the remainder, 51 percent, dominated by introduced species, e.g., common guava (*Psidium guajava*), strawberry guava (*P. cattleianum*), christmasberry (*Schinus terebinthifolius*), mango (*Mangifera indica*), and several species of eucalypts (Buck *et al.* 1988).

The O‘ahu ‘elepaio (*Chasiempis sandwichensis ibidis*) is a small forest-dwelling bird (12.5 grams (0.43 ounces)) average weight; 15 centimeters (6 inches) total body length), and is a member of the monarch flycatcher family Monarchidae (VanderWerf 1998). It is dark brown above and white below, with light brown streaks on the breast. The tail is long (6.5 cm, 2.6 in.) and often held up at an angle. Adults have conspicuous white wing bars, a white rump, and white tips on the tail feathers. The throat is white with black markings in both sexes, but males tend to have more black than females, especially on the chin. Juveniles and subadults are rufous above and on the breast, with a white belly and rusty wing-bars. The bill is medium-length, straight, and black, with the base of the lower mandible bluish-gray in adults

and yellow in juveniles. The legs and feet are dark gray and the iris is dark brown. Males average approximately 10 percent larger than females in wing length, tarsus length, and weight, but bill length does not differ between the sexes (VanderWerf 1998).

Three subspecies of ‘elepaio are recognized, each endemic to a single island: The O‘ahu ‘elepaio; the Hawai‘i ‘elepaio (*Chasiempis sandwichensis sandwichensis*); and the Kaua‘i ‘elepaio (*C. s. sclateri*). The forms on different islands are similar in ecology and behavior, but differ somewhat in coloration and vocalizations (Conant 1977, van Riper 1995, VanderWerf 1998). The taxonomy used in this rule follows Pratt *et al.* (1987) and Pyle (1997), in which all forms are regarded as subspecies, but the form on each island was originally described as a separate species. The O‘ahu form was known as *C. s. gayi* (Wilson 1891) until Olson (1989) pointed out that the epithet *ibidis* (Stejneger 1887) has priority. The ‘elepaio comprises a monotypic genus that is endemic to the Hawaiian archipelago (VanderWerf 1998). Its closest relatives are other monarch flycatchers from the Pacific region (Pratt *et al.* 1987, Sibley and Ahlquist 1985).

O‘ahu ‘elepaio occur in a variety of forest types, but are most common in riparian vegetation along streambeds and in mesic forest with a tall canopy and a well-developed understory (Shallenberger and Vaughn 1978, VanderWerf *et al.* 1997). Population density is roughly 50 percent lower in shorter dry forest on ridges (VanderWerf *et al.* 1997). They are not currently found in very wet, stunted forest on windswept summits or in very dry shrub land, but these areas may be used by individuals dispersing among populations. Forest structure appears to be more important to ‘elepaio than plant species composition (VanderWerf *et al.* 1997), and unlike many Hawaiian forest birds, ‘elepaio have adapted well to disturbed forest composed of introduced plants (Conant 1977, VanderWerf *et al.* 1997, VanderWerf 1998). Fifty-five percent of the current range is dominated by introduced plants and 45 percent is dominated by native plants (Hawai‘i Heritage Program 1991). This observation does not imply that ‘elepaio prefer introduced plant species, but simply reflects a preference by ‘elepaio for riparian vegetation in valleys and the high degree of habitat disturbance and abundance of introduced plants in riparian areas (VanderWerf *et al.* 1997). Of the 45 percent dominated by native plants, 23 percent is categorized as wet forest, 17 percent as mesic forest, and 5 percent as dry forest, shrub land, and cliffs (Hawai‘i Heritage Program 1991).

Plant species composition in ‘elepaio habitat varies considerably depending on location and elevation, but some of the most common native plants in areas where ‘elepaio occur are ‘ōhi‘a, pāpala kēpau (*Pisonia umbellifera*), lama (*Diospyros sandwicensis*), māmaki (*Pipturus albidus*), kaulu (*Sapindus Oahuensis*), hame (*Antidesma platyphyllum*), and ‘āla *Pouteria sandwicensis*), and some of the most common introduced plants are guava, strawberry guava, kukui (*Aleurites moluccana*), mango, Christmasberry, and ti (*Cordyline terminalis*) (VanderWerf *et al.* 1997, VanderWerf 1998).

The current population of O‘ahu ‘elepaio is approximately 1,982 birds distributed in six core subpopulations and several smaller subpopulations (Table 1, Figure 1; VanderWerf *et al.* in press). The only previous population estimate (200–500 birds; Ellis *et al.* 1992) was not accurate because little information was available when the estimate was made. The number of birds is divided about evenly between the Wai‘anae Mountains in the west and the Ko‘olau Mountains in the east, with three core subpopulations in each mountain range. At least 10 tiny remnant subpopulations consisting mostly or entirely of males remain in both the Wai‘anae and Ko‘olau mountains (Table 1). These subpopulations were much larger or continuous with other subpopulations in the past, but because of their very small size, skewed sex ratio, and geographic isolation, these relicts likely will disappear in a few years as the last adults die.

The breeding population, about 1,774 birds, is less than the total population because of a male-biased sex ratio; only 84 percent of territorial males have mates in large populations (n = 147, E. VanderWerf unpubl. data), and many small, declining populations contain mostly males (Table 1). The effective population size is probably even smaller than the breeding population because of the geographically fragmented distribution (Grant and Grant 1992). Natal dispersal distances in èlepaio are usually less than one km (0.62 mi) and adults have high site fidelity (VanderWerf 1998), but most èlepaio populations on O‘ahu are separated by many kilometers of unsuitable urban or agricultural habitat. There may be some exchange among subpopulations within each mountain range, but dispersal across the extensive pineapple fields that separate the Wai‘anae and Ko‘olau mountains is unlikely. While the current distribution superficially appears to constitute a metapopulation, it is uncertain if dispersal occurs among subpopulations.

TABLE 1.—ESTIMATED SIZE AND AREA OF O‘AHU ‘ELEPAIO SUBPOPULATIONS

[Data from VanderWerf *et al.* (in press). Letters before each subpopulation correspond to those on Figure 1.]

| Subpopulation | Total population size | Breeding population size | Area (ha) |
|---|---|---|---|
| Wai‘anae Mountains: | | | |
| A. southern Wai‘anae (Honouliuli Preserve, Lualualei Naval Magazine) | 458 | 418 | 1,170 |
| B. Schofield Barracks West Range | 340 | 310 | 532 |
| C. Mākaha, Wai‘anae Kai Valleys | 123 | 112 | 459 |
| D. Pahole, Kahanahāiki | 18 | 4 | 256 |
| E. Schofield Barracks South Range | 6 | 0 | 20 |
| F. Mākua Valley | 7 | 2 | 49 |
| G. Ka‘ala Natural Area Reserve | 3 | 0 | 21 |
| H. Makaleha Gulch | 2 | 0 | 7 |
| I. Kuaokalā | 3 | 2 | 14 |
| J. Kaluakauila Gulch | 1 | 0 | 6 |
| Ko‘olau Mountains: | | | |
| K. southern Ko‘olau (Pia, Wailupe, Kapakahi, Kuli‘ou‘ou, Wai‘alae Nui) | 475 | 432 | 1,063 |
| L. Waikāne, Kahana Valleys | 265 | 242 | 523 |
| M. central Ko‘olau (Moanalua, north and south Hālawa, ‘Aiea, Kalauao) | 226 | 206 | 1,396 |

TABLE 1.—ESTIMATED SIZE AND AREA OF O'AHU 'ELEPAIO SUBPOPULATIONS—Continued

[Data from VanderWerf *et al.* (in press). Letters before each subpopulation correspond to those on Figure 1.]

| Subpopulation | Total population size | Breeding population size | Area (ha) |
|---|---|---|---|
| N. Pālolo Valley | 46 | 42 | 78 |
| O. Waihee Valley | 5 | 4 | 32 |
| P. Mānoa | 2 | 0 | 19 |
| Q. Hau'ula | 1 | 0 | 4 |
| R. Waianu Valley | 1 | 0 | 8 |
| Total | 1,982 | 1,774 | 5,657 |

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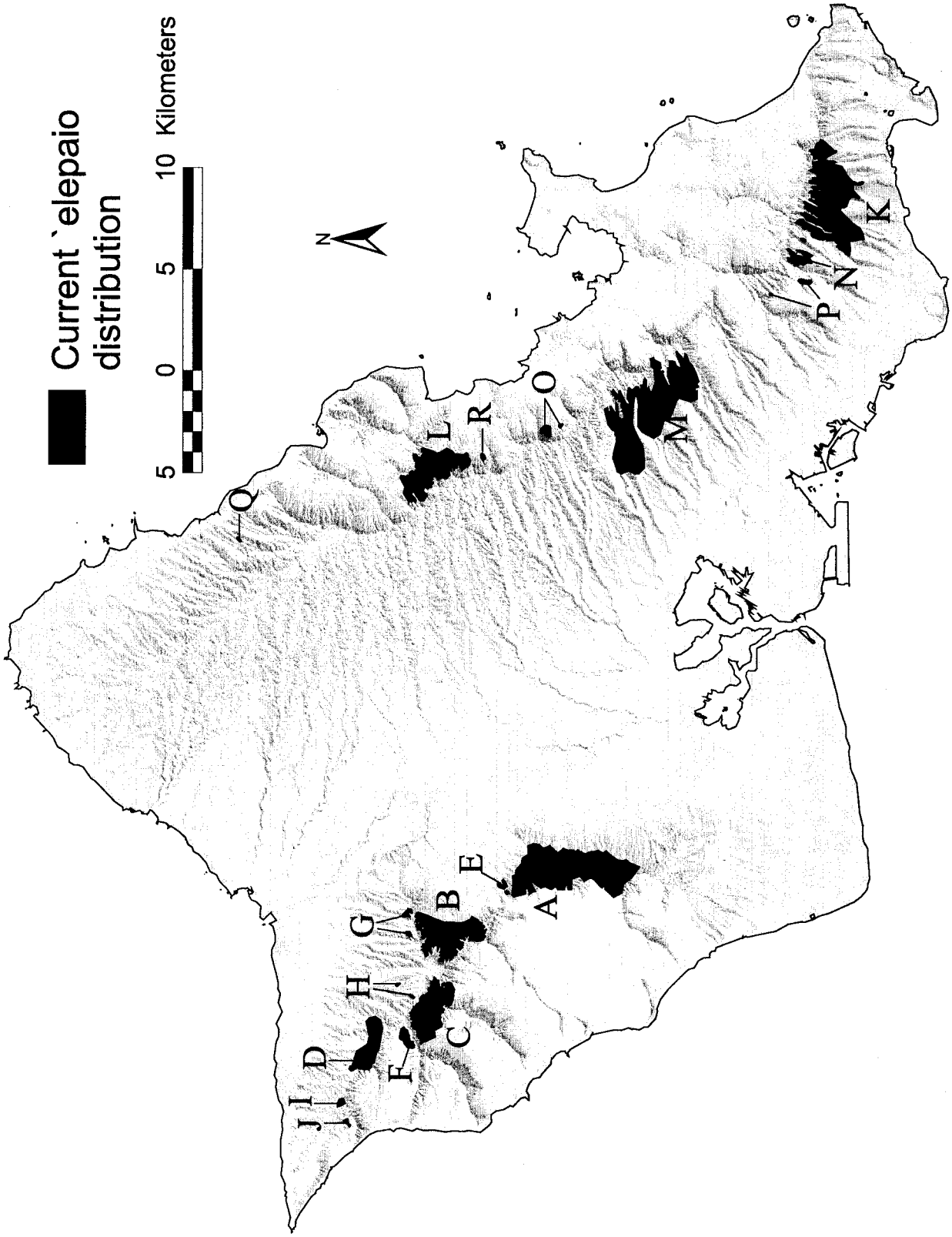


Figure 1. Current distribution of the O`ahu `Elepaio. Subpopulations are identified by letters corresponding to those in Table 1.

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Before humans arrived, forest covered about 127,000 ha (313,690 ac) on O'ahu (Figure 2; Hawai'i Heritage Program 1991), and it is likely that 'elepaio once inhabited much of that area (VanderWerf *et al.* in press). Reports by early naturalists indicate that 'elepaio were once widespread and abundant on O'ahu. Bryan (1905) called the O'ahu 'elepaio ''the most abundant Hawaiian species on the mountainside all the way from the sea to well up into the higher elevations.'' Perkins (1903) remarked on its ''universal distribution * * *, from the lowest bounds to the uppermost edge of continuous forest.'' Seale (1900) stated the 'elepaio was ''the commonest native land bird to be found on the island,'' while MacCaughey (1919) described it as ''the most abundant representative of the native woodland avifauna'' and ''abundant in all parts of its range.'' The historical range of the O'ahu 'elepaio thus apparently included most forested parts of the island, and it was formerly abundant.

Despite its adaptability, the O'ahu 'elepaio has seriously declined since the arrival of humans, and it has disappeared from many areas where it was formerly common (Shallenberger 1977, Shallenberger and Vaughn 1978, Williams 1987, VanderWerf *et al.* 1997). The aggregate geographic area of all current subpopulations is approximately 5,657 ha (13,972 ac; Table 1). The O'ahu 'elepaio thus currently occupies only about 4 percent of its original prehistoric range, and its range has declined by roughly 96 percent since humans arrived in Hawai'i 1,600 years ago (Kirch 1982). In 1975, 'elepaio inhabited approximately 20,900 ha (51,623 ac) on O'ahu, almost four times the area of the current range (Figure 2; VanderWerf *et al.* in press). The range of the O'ahu 'elepaio has thus declined by roughly 75 percent in the last 25 years.

Much of the historical decline of the O'ahu 'elepaio can be attributed to habitat loss, especially at low elevations. Fifty-six percent of the original prehistoric range has been developed for urban or agricultural use, and practically no 'elepaio remain in developed areas (VanderWerf *et al.* in press).

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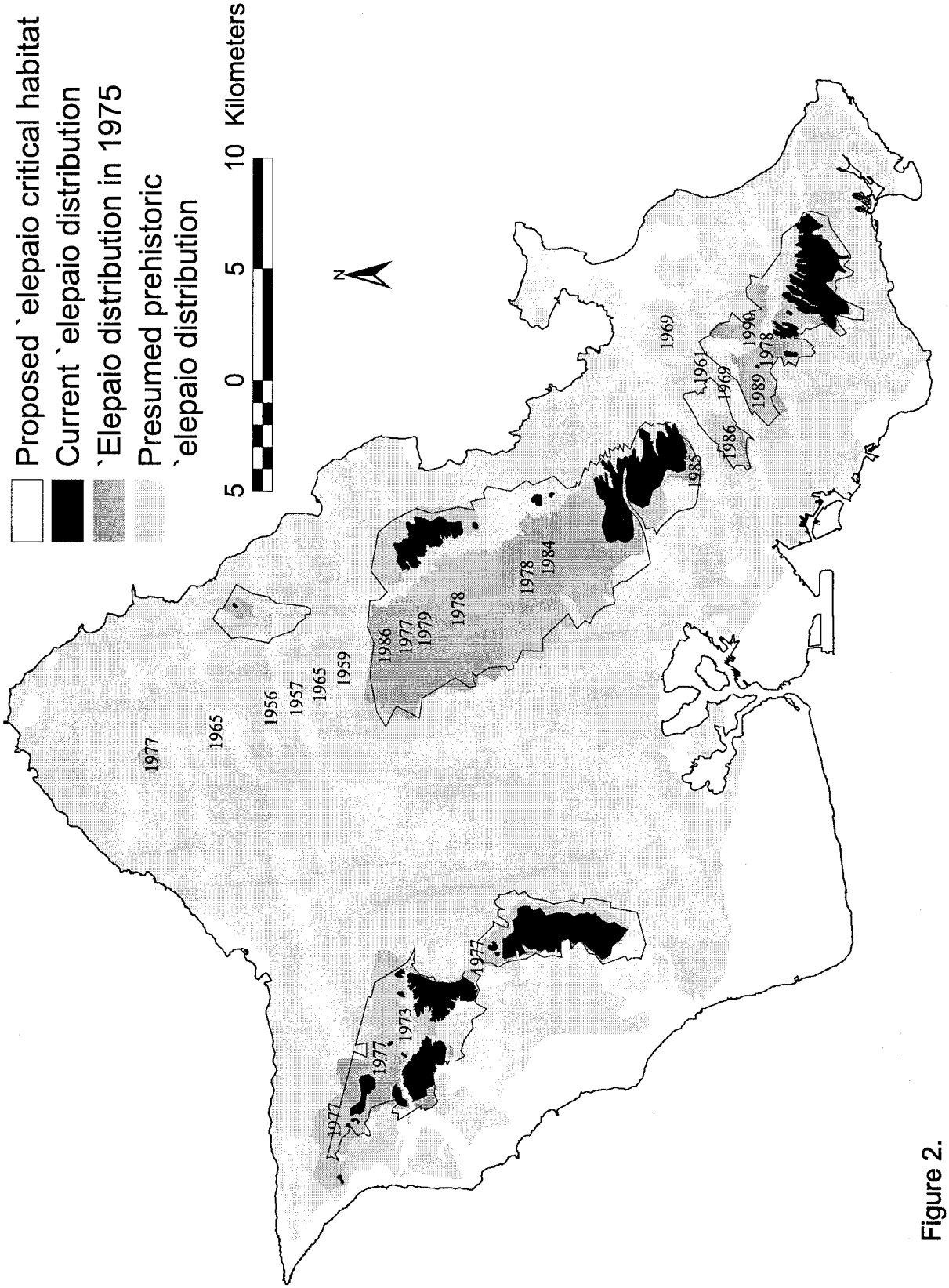


Figure 2.
Current, recent historical (1975), and presumed prehistoric distributions of O`ahu `elepaio. Years indicate when `elepaio were last observed in that area. Prehistoric distribution based on prehuman distribution of forest habitat (Hawai`i Heritage Program 1991).

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However, many areas of O'ahu that recently supported 'elepaio and still contain apparently suitable forest habitat are currently unoccupied, demonstrating that habitat loss is not the only threat. Recent declines in O'ahu 'elepaio populations are due to a combination of low adult survival and low reproductive success. Both annual adult survival and reproductive success are lower on O'ahu (0.76, 0.33, respectively) than in a large, stable population of another subspecies of 'elepaio at Hakalau Forest National Wildlife Refuge on Hawai'i Island (0.85, 0.62; VanderWerf 1998). The main cause of reduced adult survival on O'ahu appears to be diseases, particularly avian pox (*Poxvirus avium*) and avian malaria (*Plasmodium relictum*), which are carried by the introduced southern house mosquito (*Culex quinquefasciatus*). Annual survival of birds with active avian pox lesions (60 percent) was lower than annual survival of healthy birds (80 percent; E. VanderWerf unpubl. data). Malaria is a serious threat to many Hawaiian forest birds (Warner 1968, van Riper *et al.* 1986, Atkinson *et al.* 1995), but its effect on 'elepaio has not been investigated.

The primary reason for low reproductive success is nest predation by the introduced black rat (*Rattus rattus*). An experiment in which automatic cameras were wired to artificial 'elepaio nests containing quail eggs showed that a black rat was the predator in all 10 predation events documented (VanderWerf in press). Control of rats with snap traps and diphacinone (an anticoagulent rodenticide) bait stations was effective at improving 'elepaio reproductive success, resulting in an 85 percent increase in nest success and a 127 percent increase in fledglings per pair compared to control areas (VanderWerf 1999). Reproductive success of 'elepaio is also affected by disease. Pairs in which at least one bird had pox lesions produced fewer fledglings than healthy pairs or those in which at least one bird had recovered from pox (E. VanderWerf, unpubl. data). Many birds with active pox did not even attempt to nest, and infected birds were sometimes deserted by their mate.

A comprehensive treatment of the life history and ecology of the 'elepaio is provided by VanderWerf (1998), from which much of the information below is taken. 'Elepaio are non-migratory and defend all-purpose territories year-round. The average territory size on O'ahu was 2.0 ha (4.94 ac) in forest composed of introduced plant species (Conant 1977), but territory size likely varies with vegetation structure. Population density on O'ahu was 50 percent lower in short forest on ridges than in tall riparian forest along streambeds (VanderWerf *et al.* 1997), and for the related subspecies on Hawai'i, territory size was 50 percent larger in more disturbed forest with an open canopy and grass understory.

O'ahu 'elepaio are socially monogamous, and approximately 63 percent of pairs remain together each year (E. VanderWerf, unpubl. data). Site fidelity is high, with 96 percent of males and 67 percent of females remaining on the same territory from year to year. Annual survival of healthy adults is high, approximately 85 percent in males and 70 percent in females (E. VanderWerf, unpubl. data). Young birds wander (or float) while they attempt to acquire a territory and a mate.

The nesting season usually extends from mid February–May, but active nests have been found from January–July (VanderWerf 1998). Nest site selection is not specialized, and nests have been found in a variety of plants, including 6 native species and 13 introduced species (E. VanderWerf, unpubl. data). The nest is a finely-woven, free-standing cup made of rootlets, bark strips, leaf skeletons, lichen, and spider silk, and is placed in a fork or on top of a branch (Conant 1977, VanderWerf 1998). Both sexes participate in all aspects of nesting, but the female plays a larger role in nest building and the male provides more food for the nestlings. Clutch size is 1 to 3 eggs, usually 2, and eggs hatch after 18 days. The nestling period is 16 days. Fledglings are fed by their parents for more than a month after leaving the nest, and may remain in the natal territory for up to 9 months, until the start of the next breeding season. Fecundity (reproductive rate) is low; even if nest predators are removed the mean number of fledglings per pair is 0.75 per year (VanderWerf 1999). O'ahu 'elepaio will re-nest once or twice after failure, but they rarely attempt to re-nest if the first nest is successful. Other than introduced predators, storms with heavy rain and strong winds are the most common cause of nest failure.

The diet and foraging behavior of 'elepaio are extremely varied. The diet consists of a wide range of arthropods, particularly insects and spiders, and includes introduced species such as fruit flies (Tephritidae; VanderWerf 1998). Large prey, such as moths and caterpillars, are beaten against a branch before being eaten. In a study on Hawai'i Island, VanderWerf (1993, 1994) found that 'elepaio foraged at all heights on all available plant species, and that they caught insects from a variety of substrates, including the ground and fallen logs (2 percent), trunks (5 percent), branches (24 percent), twigs (38 percent), foliage (20 percent), and in the air (11 percent). 'Elepaio are versatile and agile in pursuit of prey, using a diversity of foraging behaviors that is among the highest recorded for any bird, including perch-gleaning (48 percent), several forms of flight-gleaning (30 percent), hanging (11 percent), aerial flycatching (7 percent), and active pursuit (4 percent) (VanderWerf 1994).

**Previous Federal Action**

We were petitioned by Mr. Vaughn Sherwood on March 22, 1994, to list the O'ahu 'elepaio as an endangered or threatened species with critical habitat. The November 15, 1994, Animal Notice of Review (59 FR 58991) classified the O'ahu 'elepaio (then *Chasiempis sandwichensis gayi*) as a category 1 candidate. Category 1 candidates were those species for which we had sufficient data in our possession to support a listing proposal. On June 12, 1995 (60 FR 30827), we published a 90-day petition finding stating that the petition presented substantial information that listing may be warranted. On February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), we published notices discontinuing candidate category designations, and the O'ahu 'elepaio was listed as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list as threatened or endangered. On October 6, 1998 (63 FR 53623), we published the proposed rule to list the O'ahu 'elepaio as an endangered species. Because *C. s. gayi* is a synonym of *C. s. ibidis*, the proposed rule constituted the final 12-month finding for the petitioned action. On April 18, 2000 (65 FR 20760), we published the final rule to list the O'ahu 'elepaio as an endangered species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) also state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial

to the species. In the proposed listing rule we indicated that designation of critical habitat for the O'ahu 'elepaio was not prudent because we believed a critical habitat designation would not provide any additional benefit beyond that provided through listing as endangered. Based partly on comments we received on the proposed listing rule and on recent court rulings which address the prudency standard, in the final listing rule we determined that a critical habitat designation for the O'ahu 'elepaio was prudent because such a designation could benefit the species beyond listing as endangered by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits.

Although we determined in the final listing rule that critical habitat designation for the O'ahu 'elepaio would be prudent, we also indicated in the final listing rule that we were not able to develop a proposed critical habitat designation for the O'ahu 'elepaio at that time due to budgetary and workload constraints. However, on June 28, 2000, the United States District Court for the District of Hawai'i established, in the case of *Conservation Council for Hawai'i* v. *Babbitt*, CIV. NO. 00–00001 HG–BMK, a timetable to designate critical habitat for the O'ahu 'elepaio, and ordered that the Service publish the final critical habitat designation by October 31, 2001. This proposed rule responds to the court's order.

On November 9, 2000, we mailed letters to 32 landowners on O'ahu informing them that the Service was in the process of designating critical habitat for the O'ahu 'elepaio and requesting from them information on management of lands that currently or recently (within the past 25 years) supported O'ahu 'elepaio. The letters contained a fact sheet describing the O'ahu 'elepaio and critical habitat, a map showing the historic and current range of the O'ahu 'elepaio, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by November 27, 2000. We received 11 responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included detailed management plans, provided new information on locations where 'elepaio have been observed recently, and described management activities such as fencing, hunting, public access, fire management, methods for controlling invasive weeds and introduced predators, and collaboration with conservation researchers. In addition, we met with several landowners and managers, including the U.S. Army and the Hawai'i State Division of Forestry and Wildlife, to obtain more specific information on management activities and suitability of certain habitat areas for 'elepaio. The information provided in the responses and during meetings was considered and incorporated into this proposed rule.

**Critical Habitat**

Critical habitat is defined in section 3, paragraph (5)(A) 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 ''the 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.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for

recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

**Methods**

As required by the Act and regulations (section 4(b)(2) and 50 CFR § 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Oàhu èlepaio. This information included: peer-reviewed scientific publications (Conant 1977; Banko 1981; VanderWerf 1993, 1994, 1998, in press; VanderWerf *et al.* 1997, in press); the final listing rule for the O'ahu 'elepaio (65 FR 20760); unpublished reports by the Hawaiì State Division of Forestry and Wildlife (VanderWerf 1999); the Hawaiì Natural Heritage Program database; the Sightings database from the Occurrence and Status of Birds in Hawaiì project maintained at Bishop Museum in Honolulu; the Oàhu Forest Bird Survey conducted in 1991 by the Hawaiì State Division of Forestry and Wildlife; field trip reports in the Èlepaio (journal of the Hawaiì Audubon society); and responses to the Oàhu èlepaio critical habitat outreach package mailed to Federal, State, and private land managers and landowners.

The distribution and abundance of the O'ahu 'elepaio have declined seriously in the last few decades (Williams 1987; O'ahu 'elepaio final listing rule, 65 FR 20760; VanderWerf *et al.* in press). The area currently occupied by the O'ahu 'elepaio represents only about four percent of the species' original range, and the distribution has contracted into numerous small fragments (Figure 2). Moreover, the remaining èlepaio subpopulations are small and isolated, comprising six core subpopulations that contain between 100 and 500 birds, and numerous small remnant subpopulations, most of which contain fewer than 10 birds (Table 1). Even if the threats responsible for the decline of the èlepaio were controlled, the existing subpopulations would be unlikely to persist because their small sizes make them vulnerable to extinction due to a variety of natural processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (Lande 1988, IUCN 2001). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Lande 1988). Survival and reproduction of 'elepaio are known to fluctuate among years in response to variation in disease prevalence and predator populations (VanderWerf 1998, 1999), possibly due to El Niño episodes and variation in rainfall, which may exacerbate the threats associated with small population size (Lande 1988).

Èlepaio are highly territorial; each pair defends an area of a certain size, depending on the forest type and structure, resulting in a maximum population density or carrying capacity (VanderWerf 1998). Although èlepaio have declined island-wide and the range has contracted, density in the remaining core subpopulations is high, and much of the currently occupied land is at or near carrying capacity and cannot support many more 'elepaio than it currently supports (VanderWerf *et al.* 1997, in press). Consequently, each of the currently occupied areas is too small to support an 'elepaio population large enough to be considered safe from extinction. In order for the number of birds in each subpopulation to increase, additional land must be available for young birds to establish new territories and attract mates. The potential for expansion is especially important for the smallest subpopulations that currently contain only a few individuals. Because of their very small size and often skewed sex ratio, these tiny subpopulations are unlikely to persist more than a few generations if limited to the currently occupied area.

Èlepaio are also relatively sedentary; adults have high fidelity to their territory and juveniles rarely disperse more than one km (0.62 mi) in search of a territory (VanderWerf 1998). Because the areas currently occupied by èlepaio are separated from each other by many kilometers (Figure 1) and èlepaio are unlikely to disperse long distances, the existing subpopulations probably are isolated (VanderWerf *et al.* in press). The O'ahu 'elepaio evolved in an environment with large areas of continuous forest habitat covering much of the island (Figure 2), and their dispersal behavior is not adapted to a fragmented landscape. In the past, subpopulations were less isolated and dispersal and genetic exchange among different parts of the island probably was more frequent. Maintaining or restoring links among subpopulations by providing opportunities for dispersal would increase the overall effective population size through metapopulation interactions, thereby helping to alleviate the threats associated with small population size, and would better reflect the conditions under which the life history characteristics of dispersal evolved. In particular, enlargement of small subpopulations by expansion onto adjacent lands not only would increase the chances of their long-term survival, but also would improve connectivity among subpopulations by enhancing their value as ''stepping stones'' within the distribution of the entire population.

Section 3(5)(A)(i) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. Because of the territorial nature of the O'ahu 'elepaio, its small total population size, limited range, fragmented distribution, and resulting vulnerability to genetic, demographic,

and environmental threats, we find that inclusion of currently unoccupied areas identified as containing the primary constituent elements is essential to the conservation of the species. The final rule listing the O'ahu 'elepaio as endangered emphasized that the ''small total population size, limited distribution, and population fragmentation make this taxon particularly vulnerable to reduced reproductive vigor and the effects of naturally occurring events'' (65 FR 20760). Recovery will require restoration of 'elepaio in areas that were formerly inhabited but that are not currently occupied, through natural dispersal, translocation, and/or release of captive birds. Unoccupied areas adjacent to currently occupied areas are needed for recovery to allow expansion of existing subpopulations and help alleviate the threats associated with small population size. Unoccupied lands linking subpopulations are needed for recovery to provide opportunities for dispersal among subpopulations and promote genetic exchange and metapopulation function. Specifically, each of the existing core populations in Pahole-Kahanahaiki, Makaha-Wai'anae Kai, Schofield Barracks West Range, the southern Wai'anae Mountains, the central leeward Ko'olau Mountains, Waikane-Kahana, and the southern leeward Ko'olau Mountains are small and isolated, and are unlikely to be viable on their own. The long-term chances for persistence of these subpopulations would increase if each subpopulation increased in size by expanding onto adjacent lands and if the connectivity among the subpopulations was enhanced by occasional dispersal of individuals across intervening lands.

We determined the amount and spatial arrangement of critical habitat needed to support a viable population of O'ahu 'elepaio. Because a recovery plan for the O'ahu 'elepaio has not been completed yet, in making this determination we looked to the historical distribution of the O'ahu 'elepaio for a model of a viable population. The best and most recent information available on the distribution of an apparently viable O'ahu 'elepaio population is from 1975, when extensive surveys were conducted over much of the island (Shallenberger 1977, Shallenberger and Vaughn 1978, Banko 1981). 'Elepaio began declining on O'ahu before 1975 and had already disappeared from some parts of the island (Figure 2; Conant 1977, Williams 1987, VanderWerf *et al.* in press), but in 1975 the subpopulations were still relatively large and birds were distributed in two well-connected metapopulations, one in the Wai'anae Mountains and one in the Ko'olau Mountains. The areas occupied since 1975 also are likely to be most suitable for recovery because they supported 'elepaio for a longer period. The number and distribution of O'ahu 'elepaio in 1975 has allowed for the persistence of a population, albeit in a declining state, for more than 25 years. We believe that active management of threats, including nest predation and disease, in areas reflecting the distribution in 1975 would allow for long-term recovery. This approach is consistent with the approved recovery outline for the O'ahu 'elepaio; if, after critical habitat for the O'ahu 'elepaio is designated, a final approved recovery plan for Hawaiian forest birds calls for a different approach to the conservation of the O'ahu 'elepaio, we will consider amending the critical habitat designation, subject to resource and workload priorities.

*Primary Constituent Elements*

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such features are termed Primary Constituent Elements, and include but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; sites for nesting and rearing of offspring; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

'Elepaio are adaptable and able to forage and nest in a variety of forest types composed of both native and introduced plant species (Conant 1977, VanderWerf 1993, 1994, 1998). Nest site selection by 'elepaio is non-specialized; nests have been found in seven native and 13 introduced plant species (E. VanderWerf, unpubl. data). Shallenberger and Vaughn (1978) found the highest relative abundance of 'elepaio in forest dominated by introduced guava and kukui trees, but they were also found in the following forest types (in order of decreasing abundance): mixed native-exotic; tall exotic; koa dominant; mixed koa-'hi'a; low exotic; 'hi'a dominant; and 'hi'a scrub. This distribution does not imply that 'elepaio prefer introduced plant species, but probably reflects a preference by 'elepaio for riparian vegetation in valleys and the high degree of habitat disturbance and abundance of introduced plants in riparian areas. VanderWerf *et al.* (1997) found that (1) forest structure was more important to 'elepaio than plant species composition, (2) most birds occurred in areas with a continuous forest canopy and a dense understory, and (3) population density was roughly twice as high in tall riparian vegetation in valleys as in shorter forest on ridges. Fifty-five percent of the currently occupied area consists of forest dominated by introduced plant species, 23 percent is native wet forest, 17 percent is native mesic forest, and 5 percent is native dry forest and shrub land (VanderWerf *et al.* in press).

The primary constituent elements required by the O'ahu 'elepaio for foraging, sheltering, roosting, nesting, and rearing of young are found in undeveloped areas that support wet, mesic, and dry forest composed of both native and introduced plant species. Higher population density can be expected in tall, closed canopy riparian forest than in low scrubby forest on ridges and summits. In addition, the primary constituent elements associated with the biological needs of dispersal and genetic exchange among populations are found in undeveloped areas that support wet or dry shrub land and wet or dry cliff habitat. 'Elepaio may not establish territories in shrub or cliff habitats and may use them only transiently, but areas containing these habitats are important for linking populations by facilitating dispersal and promoting genetic exchange.

*Criteria Used To Identify Critical Habitat*

We used several criteria to identify and select lands proposed for designation as critical habitat. We began with all areas that are currently occupied by 'elepaio, excluding one very small, isolated subpopulation at Hau'ula that contains only a single male (Figure 1; subpopulation Q). We then added unoccupied lands containing the primary constituent elements that were needed for conservation of the species. As discussed in greater detail in the Methods section, in deciding which unoccupied areas were needed for recovery we used the distribution of 'elepaio in 1975 as a model of a viable population. Within this area of distribution in 1975 we gave preference to lands that (a) provided more preferred forest types, (b) were more recently occupied (since 1975), and (c) were contiguous and formed large

blocks of preferred habitat or provided links between areas of preferred habitat. We determined the boundaries of proposed critical habitat units by the extent of suitable forest containing the primary constituent elements, which in many areas coincided with the boundaries of State Forest Reserves, Natural Area Reserves, or other conservation lands. We did not include urban and agricultural lands because they generally do not contain the primary constituent elements and do not meet the definition of critical habitat. We included lower Wailupe Valley, however, which is zoned for urban use but has not yet been developed, because it contains the primary constituent elements and is currently occupied by ‘elepaio, and therefore meets the definition of critical habitat.

We were unable to map the proposed critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. However, existing development features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas that do not contain the primary constituent elements are not proposed as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

**Proposed Critical Habitat Designation**

Lands proposed as critical habitat occur in five separate units and provide the full range of primary constituent elements needed by the O‘ahu ‘elepaio, including: a variety of currently occupied undeveloped forested areas that are used for foraging, roosting, sheltering, nesting, and raising offspring; a variety of currently unoccupied undeveloped forested areas that are adjacent to occupied areas and provide for expansion of existing subpopulations; and shrub land and cliff habitats that link subpopulations and are used for dispersal. If ‘elepaio were restored throughout each of the proposed critical habitat units, the resulting distribution would closely resemble the distribution in 1975, when the subpopulations were larger and less isolated, the overall population appeared to be viable, and when the O‘ahu ‘elepaio was not considered endangered. The area proposed as critical habitat (26,733 ha) is larger than the area occupied in 1975 (20,900 ha) because the proposed critical habitat contains not only lands expected to support breeding ‘elepaio populations, but also intervening lands that provide for periodic dispersal and not permanent occupation.

The potential ‘elepaio population in the area proposed as critical habitat is 10,104 birds, as estimated by multiplying the current density of ‘elepaio in different parts of the island by the area of each critical habitat unit (Table 2). These estimates are approximate, and the actual population in each unit may be larger if density can be increased beyond current levels, or lower if it proves difficult to establish dense populations in some currently unoccupied areas.

TABLE 2.—PROPOSED CRITICAL HABITAT UNITS AND POTENTIAL ‘ELEPAIO POPULATIONS

[Data on current density from VanderWerf *et al.* (in press). Unit 4 is not currently occupied by ‘elepaio; the density used to estimate the potential ‘elepaio population of this unit is an average of the densities in the two nearest units, central and southern Ko‘lau.]

| Critical habitat unit | Area | ‘Elepaio density in currently occupied parts of unit | Potential ‘elepaio population in unit |
|---|---|---|---|
| 1. Northern Wai‘anae Mountains | 4,501 ha<br>11,122 ac | 0.45 per ha<br>0.18 per ac | 2,025 |
| 2. Southern Wai‘anae Mountains | 2,515 ha<br>6,215 ac | 0.39 per ha<br>0.16 per ac | 981 |
| 3. Central Ko‘olau Mountains | 14,840<br>36,669 ac | 0.33 per ha<br>0.14 per ac | 4,897 |
| 4. Kalihi-Kapālama | 800 ha<br>1,977 ac | 0.39 per ha<br>0.16 per ac | 312 |
| 5. Southern Ko‘olau Mountains | 4,197 ha<br>10,371 ac | 0.45 per ha<br>0.18 per ac | 1,889 |
| All Units | 26,853<br>66,354 ac | 0.38 per ha<br>0.15 per ac | 10,104 |

The approximate area and land ownership within each proposed critical habitat unit are shown in Table 3. Proposed critical habitat includes land under Federal, State, and private ownership, with Federal lands being managed by the Department of Defense and the Department of the Interior. Proposed lands include most (99 percent) of the species’ current range and encompass approximately 21 percent of the species’ original range. Approximately 21 percent of proposed lands are currently occupied by ‘elepaio, and 79 percent are currently unoccupied but were recently occupied (since 1975). A detailed description of each unit and reasons for proposing each portion of the unit as critical habitat are presented below.

TABLE 3.—APPROXIMATE AREA (HECTARES, ACRES) OF PROPOSED CRITICAL HABITAT UNITS BY LAND OWNERSHIP

| Unit | Federal [1] | State | County | Private | Total |
|---|---|---|---|---|---|
| 1. Northern Wai‘anae Mountains | 822 ha<br>2,031 ac | 3,033 ha<br>7,495 ac | 646 ha<br>1,596 ac | .....<br>..... | 4,501 ha<br>11,122 ac |
| 2. Southern Wai‘anae Mountains | 616 ha<br>1,523 ac | 377 ha<br>932 ac | | 1,522 ha<br>3,760 ac | 2,515 ha<br>6,215 ac |
| 3. Central Ko‘olau Mountains | 3,109 ha | 3,789 ha | 308 ha | 7,634 ha | 14,840 ha |

TABLE 3.—APPROXIMATE AREA (HECTARES, ACRES) OF PROPOSED CRITICAL HABITAT UNITS BY LAND OWNERSHIP—Continued

| Unit | Federal [1] | State | County | Private | Total |
|---|---|---|---|---|---|
| | 7,681 ac | 9,363 ac | 762 ac | 18,863 ac | 36,669 ac |
| 4. Kalihi-Kap'alama | | 393 ha | 179 ha | 228 ha | 800 ha |
| | | 971 ac | 442 ac | 564 ac | 1,977 ac |
| 5. Southern Ko'olau Mountains | 3 ha | 2,563 ha | 480 ha | 1,151 ha | 4,197 ha |
| | 7 ac | 6,334 ac | 1,187 ac | 2,843 ac | 10,371 ac |
| Total | 4,550 ha | 10,155 ha | 1,613 ha | 10,535 ha | 26,853 ha |
| | 11,242 ac | 25,095 ac | 3,987 ac | 26,030 ac | 66,354 ac |

[1] Federal lands include Department of Defense and U.S. Fish and Wildlife Service.

*Unit 1: Northern Waiànae Mountains*

Unit 1 consists of approximately 4,501 ha (11,122 ac) encompassing the higher elevations of the northern Waiànae Mountains. It is bounded on the south by Kolekole pass, and on the north, east, and west by forest edge created by human actions. Natural features within the unit include Mt. Kaàla, the highest peak on O'ahu at 1,227 m (4,025 feet), several other high peaks along the spine of the Waiànae Range, the upper portions of large, broad valleys on the slopes of the Waiànae Range, including Waiànae Kai, Mākaha, Mākua, Kahanahāiki, and Kuaokalā valleys on the west slope and Haleàuàu and Mohi'akea gulches on the east slope, and the higher portions of several narrow valleys on the north slope of the Waiànae Range. Vegetation consists primarily of mixed-species wet, mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry shrub land and cliff plant communities (Hawaiì Heritage Program 1991).

Unit 1 contains two important èlepaio core subpopulations: one in upper Haleàuàu and Mohi'akea gulches above the firebreak road on U.S. Army Schofield Barracks West Range; the other in upper Mākaha and Waiànae Kai valleys on Waiànae Kai State Forest Reserve and City and County of Honolulu land. The unit also includes small scattered èlepaio subpopulations in Pahole and Kaàla State Natural Area Reserves, Mokulāìa, Mākua-Keaàu, and Kuaokalā State Forest Reserves, and the upper portion of the U.S. Army Mākua Military Reservation. In addition to protecting lands occupied by the two core 'elepaio subpopulations and six smaller subpopulations, proposed lands in Unit 1 provide for expansion of these subpopulations by including currently unoccupied lands that were occupied within the past 30 years and contain the most preferred types of forest. Specifically, currently unoccupied lands in Pahole and Kaàla State Natural Area Reserves, Mokulāia, Mākua-Keaàu, and Kuaokalā State Forest Reserves, upper M̄'akua Valley, and upper Kahanahiki Valley are needed for recovery to allow the number of birds in existing subpopulations to increase. In addition, the current distribution of èlepaio in Unit 1 represents a remnant of what was once a single large continuous èlepaio population in the northern Waiànae Mountains. Inclusion of currently unoccupied forested lands that provide for subpopulation expansion and shrub land and cliff habitats that provide for dispersal among subpopulations will promote needed linkage among subpopulations and help to restore the original metapopulation function that once existed in this area.

*Unit 2: Southern Waiànae Mountains*

Unit 2 consists of approximately 2,515 ha (6,215 ac) encompassing the higher elevations of the southern Waiànae Mountains. It is bounded on the north by Kolekole Pass, and on the east, west, and south by forest edge created by human actions. Natural features of the unit include several high peaks along the spine of the southern Waiànae Range, including Palikea, Kaua, Kānehoa, and Hāpapa, the upper portions of Lualualei and Nānākuli valleys on the west side of the mountains, and the upper portions of numerous narrower valleys on the east side of the mountains. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry shrub land and cliff communities (Hawaiì Heritage Program 1991).

Unit 2 contains the second largest O'ahu 'elepaio subpopulation, encompassing several land parcels, including Honouliuli Preserve (which is managed by The Nature Conservancy of Hawaiì), Naval Magazine Pearl Harbor Lualualei Branch, Nānākuli State Forest Reserve, and other unmanaged State lands. This unit also contains several scattered 'elepaio territories north of the core subpopulation on U.S. Army Schofield Barracks South Range. In addition to protecting currently occupied habitat, proposed lands in Unit 2 include peripheral areas of currently unoccupied habitat in Honouliuli Preserve, Lualualei, and Schofield Barracks South Range that are needed for recovery to allow expansion of the core subpopulation, and dry shrub land and cliff habitats on unmanaged State land between Lualualei and Honouliuli and on Schofield Barracks South Range that provide for dispersal among parts of the southern Waiànae subpopulation and between the northern and southern Waiànae subpopulations.

*Unit 3: Central Koòlau Mountains*

Unit 3 is the largest unit, encompassing 14,840 ha (36,669 ac) of the higher elevations of the central Koòlau Mountains. Natural features of the unit include the summit of the Koòlau Range and the upper portions of numerous narrow valleys separated by steep ridges, including (from south to north) Manaikāi, Moanalua, South Hālawa, North Hālawa, Kalauao, Waimalu, Waimano, M̄nana, Waiawa, Kāpapa, Kaukonahua, and Poamoho on the leeward (western) side, and Waiheè, Kaàlaea, Waiāhole, Waikāne, and Kahana on the windward (eastern) side. Vegetation consists primarily of montane and lowland wet and mesic forest, and smaller areas of shrub land and wet cliff plant communities (Hawaiì Heritage Program 1991). The higher elevations of the unit are primarily native forest dominated by òhià and koa, but the lower elevations are more disturbed and dominated by a variety of introduced plant species.

Unit 3 contains two important core 'elepaio subpopulations: one located almost entirely on private land in Moanalua, North and South Hālawa, Mānaiki, and Kalauao valleys at the southern end of the unit; the other on the windward side in Kahana Valley State Park and on private lands in Waikāne Valley. The unit also contains a few scattered 'elepaio territories in Waīhole State Forest Reserve. Proposed

lands include the existing subpopulations, and also provide for the expansion and recovery of existing subpopulations by including adjacent lands in Manaiki, Waimalu, Waimano, Mānana, Waiawa, Kāpapa, Kaukonahua, and Poamoho on the leeward (western) side, and in Waiheè, Kaàlaea, Waiāhole, Waikāne, and Kahana on the windward (eastern) side that are currently unoccupied but were occupied since 1975. Unit 3 also includes wet shrub land and cliff habitats along the Koòlau summit that provide for dispersal of èlepaio between the windward and leeward sides of the Koòlau Mountains. The existing core subpopulations are geographically distant from each other and probably are isolated. Restoration of èlepaio in intervening areas would increase the chances of dispersal and genetic exchange between subpopulations and restore metapopulation function. Currently unoccupied habitat lies on the Oàhu Forest National Wildlife Refuge, U.S. Army Schofield Barracks East Range, U.S. Army Fort Shafter, Èwa and Waiāhole State Forest Reserves, Kahana Valley State Park, and 9 privately owned parcels. The narrow indentation in the southern portion of Unit 3 reflects the H–3 freeway and adjacent cleared areas in North Hālawa Valley.

*Unit 4: Kalihi-Kapālama*

Unit 4 consists of approximately 800 ha (1,977 ac) encompassing the higher elevations of the leeward (western) side of the central K'oolau Mountains above Kalihi and Kapālama. It is bounded on the north by the Likelike Highway and on the south by the Pali Highway. Natural features of the unit include the upper portions of Kalihi, Kamanaiki, and Kapālama valleys. Vegetation consists primarily of mixed-species wet and mesic forest composed of native and introduced plant species (Hawaìi Heritage Program 1991). The higher elevations are primarily native forest dominated bỳōhìa and koa, but the lower elevations are more disturbed and are dominated by introduced plant species. This unit is not known to contain any 'elepaio at present, but it was occupied within the last 20 years, still contains suitable forest habitat, and provides an important habitat stepping-stone that increases the chances of dispersal and genetic exchange between 'elepaio subpopulations in the central and southern K'oolau units. This unit includes lands within the State of Hawaìi Honolulu Watershed Forest Reserve, two parcels owned by the City and County of Honolulu, and 3 private parcels.

*Unit 5:* Southern K'oolau Mountains

Unit 5 consists of approximately 4,197 ha (10,371 ac) encompassing the higher elevations of the southern K'oolau Mountains. It is bounded on the west by the Pali Highway. Natural features of the unit include: the summit of the southern K'oolau Mountains, including Konahuanui, the highest peak in the K'oolau Range at 960 m (3,150 ft), the upper portion of Maunawili Valley on the windward (northern) side of the mountains, and the upper portions of numerous narrow valleys separated by steep ridges on the leeward side, including (from east to west) Kàalakei, Kulìoùou, Kūpaua, Pia, Kulùī, Wailupe, Kapakahi, Waìalae Nui, Pālolo, Mānoa, Tantalus, and Pauoa. The vegetation consists primarily of mixed-species wet, mesic, and dry forest communities, with small areas of mesic shrub land and wet cliff plant communities (Hawaìi Heritage Program 1991). The higher elevations are primarily native forest dominated bỳōhìa and koa, but the lower elevations are more disturbed and are dominated by introduced plant species, particularly guava, kukui, christmasberry, and mango.

Unit 5 contains the largest remaininġelepaio subpopulation, located in Kulìoùou, Kūpaua, Pia, Kulùī, Wailupe, Kapakahi, and Waìalae Nui valleys, and two smallerelepaio populations located nearby in Pālolo and Mānoa valleys. The current distribution of 'elepaio in the southern K'oolau Mountains represents a remnant of what was once a single large continuous population. In addition to protecting the largest remaining subpopulation and two smaller subpopulations, proposed lands in Unit 5 provide for recovery through expansion of existing subpopulations by including currently unoccupied lands in Maunawili, Pālolo, Mānoa, Nùuanu, Tantalus, and Pauoa that were occupied since 1975 and contain the most preferred forest types. Proposed lands in Unit 5 also provide for recovery by including shrub land and wet cliff habitats along the Kòolau summit that are used for dispersal and link subpopulations on the windward and leeward sides of the K'oolau Mountains, thereby helping to restore metapopulation function. Restoration ofelepaio in unoccupied lands in Tantalus and Pauoa at the western end of Unit 5 would increase the chances of dispersal and genetic exchange between the southern K'oolau subpopulation and the central K'oolau subpopulation. Ownership within Unit 5 consists of the Honolulu Watershed, Maunawili, and Kulìoùou State Forest Reserves, several parcels owned by the City and County of Honolulu, and nine private parcels.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species nor to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation the Federal action agency would ensure that

the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect thèelepaio or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the 'elepaio is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that may directly or indirectly adversely affect critical habitat for the O'ahu 'elepaio include, but are not limited to:

(1) Removing, thinning, or destroyinẹelepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.).

(2) Appreciably decreasing habitat value or quality as an indirect effect of an action (e.g., introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species; forest fragmentation; overgrazing; augmentation of feral ungulate populations; water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat; and activities that increase the risk of fire).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense (Army and Navy) on their lands or lands under their jurisdiction at Schofield Barracks, Mākua Military Reservation, Fort Shafter, Kawailoa Training Area, and Pearl Harbor Naval Magazine Lualualei Branch;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities be Federal agencies;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and

permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

*Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection*

Critical habitat is defined in section 3, paragraph (5)(A) 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. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the O'ahu 'elepaio and do not require special management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider: (1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we find that no areas are adequately managed and protected to address the threats to 'elepaio. Several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the O'ahu 'elepaio, but in no areas does the management adequately reduce the primary threats to this species. Specifically, the threat from introduced nest predators, primarily rodents, has been successfully managed on a small scale in Honouliuli Preserve by The Nature Conservancy of Hawai'i, in Schofield Barracks West Range and M'kua Military Reservation by the U.S. Army, and in the Honolulu Watershed Forest Reserve by the Hawai'i State Division of Forestry and Wildlife, but in each case the management actions have affected only a small proportion of the 'elepaio in the area. Adequate reduction of the threat from rodents will require larger scale management that protects more 'elepaio. The other primary threat to the O'ahu 'elepaio, introduced diseases carried by mosquitoes, has not been managed in any area.

The O'ahu Forest National Wildlife Refuge does not meet these criteria because the refuge was created only recently (December 2000) and there is no current management that meets the recovery needs of the O'ahu 'elepaio. Refuge lands have not been adequately surveyed yet, and even whether the area is currently occupied by 'elepaio remains uncertain.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat. To date, no military installation on O'ahu has completed a final INRMP that provides sufficient management and protection for the 'elepaio.

*Exclusions Under Section 4(b)(2)*

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**.

Currently, there are no habitat conservation plans (HCPs) that include the O'ahu 'elepaio as a covered species. However, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and

management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the O'ahu 'elepaio and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule and provide for the conservation of the covered species. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that includes the O'ahu 'elepaio is ultimately approved after this critical habitat designation is finalized, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

*Public Comments Solicited*

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and distribution of O'ahu 'elepaio and what habitat is essential to the conservation of this species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the O'ahu 'elepaio;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(7) Economic and other values associated with designating critical habitat for the O'ahu 'elepaio, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

If we receive information that any of the areas proposed as critical habitat are currently being managed to address the conservation needs of the O'ahu 'elepaio and provide adequate management and protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in the final critical habitat designation for the O'ahu 'elepaio. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

2. You may hand deliver written comments to our Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawai'i.

3. You may send comments by electronic mail (e-mail) to FW1PIE_OahuElep_crithab@r1.fws.gov. If you are sending comments by electronic mail (e-mail), please submit them in ASCII file format or embedded in the text of the e-mail message, and avoid the use of special characters and encryption. Please include ''Attn: 1018–AG99'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Fish and Wildlife Service Office at phone number 808/541–3441. Please note that the e-mail address (FW1PIE_OahuElep_crithab@r1.fws.gov) will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat. We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful

and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

**Required Determinations**

**Regulatory Planning and Review**

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 4 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of this species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have Federal involvement in their actions are not restricted by the designation of critical habitat.

TABLE 4.—IMPACTS OF O'AHU 'ELEPAIO LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only | Additional activities potentially affected by critical habitat designation[1] |
|---|---|---|
| Federal activities potentially affected.[2] | Activities the Federal Government carries out that result in removing, thinning, or destroying 'elepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (*e.g.,* woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.,* introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat, and activities that increase the risk of fire). | These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation. |
| Private or other non-Federal activities potentially affected.[3] | Activities funded, authorized, or permitted by the Federal Government that results in removing, thinning, or destroying 'elepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (*e.g.,* woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.,* introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat, and activities that increase the risk of fire). | These same activities funded, authorized, or permitted by Federal Agencies in a designated area where section 7 consultations would not have occurred but for the critical habitat designation. |

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the O'ahu 'elepaio since its listing in May 2000. The prohibition against adverse modification of critical habitat would

not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

**Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)**

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated in Table 3 (see Proposed Critical Habitat Designation section), we propose designation on property owned by local governments and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense (Army and Navy) on their lands or lands under their jurisdiction at Schofield Barracks, Mākua Military Reservation, Fort Shafter, Kawailoa Training Area, and Pearl Harbor Naval Magazine Lualualei Branch;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Potentially some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

**Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations would occur regardless of the critical habitat designation. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

**Executive Order 13211**

On May 18, 2001, the President issued Executive Order EO 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

**Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

**Takings**

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the species. The rule will not increase or decrease the current restrictions on private property concerning take of this species. We do not anticipate that property values will be affected by the critical habitat designation. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in

ways consistent with State law and with the continued survival of the species.

**Federalism**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Oàhu ‘elepaio would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

**Civil Justice Reform**

In accordance with Executive Order 12988, the Department of the Interior’s Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the O‘ahu ‘elepaio.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)**

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

**National Environmental Policy Act**

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

**Government-to-Government Relationship With Tribes**

In accordance with the President’s memorandum of April 29, 1994, ‘‘Government-to-Government Relations With Native American Tribal Governments’’ (59 FR 22951) Executive Order 13175 and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat for the O‘ahu ‘elepaio does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this document is Eric A. VanderWerf, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ‘‘‘Elepaio, O‘ahu’’ under ‘‘BIRDS’’ to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | | * |
| ‘Elepaio, O‘ahu | *Chasiempis sandwichensis ibidis (Chasiempis sandwichensis gayi).* | U.S.A. (HI) | Entire | E | | 17.95(b) | |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(b) by adding critical habitat for the O‘ahu ‘Elepaio (*Chasiempis sandwichensis ibidis*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(b) Birds.

* * * * *

O‘ahu ‘elepaio (*Chasiempis sandwichensis ibidis*)

1. Critical Habitat Units are depicted for the City and County of Honolulu on the maps following.

2. Within these areas, the primary constituent elements required by the O‘ahu ‘elepaio are those habitat components that are essential for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young. The primary constituent elements are provided in undeveloped areas that support various types of wet, mesic, and dry forest with a generally continuous canopy and a dense understory and that

are composed of native or introduced plant species. Such forests are found in valleys and on mountain slopes and ridges. The primary constituent elements associated with the biological needs of dispersal and genetic exchange are found in undeveloped areas that separate ‘elepaio populations and support wet or dry shrub land and wet or dry cliff habitat composed of native or introduced species. ‘Elepaio may not establish territories in shrub or cliff habitats and may use them only transiently, but undeveloped areas containing these habitats are important for linking populations by providing dispersal corridors and promoting genetic exchange among populations.

Within the forests and shrub lands providing the primary constituent elements, plant species composition varies with rainfall, elevation, and degree of habitat disturbance and plant species occur in a variety of assemblages. Dominant native and introduced species within these plant assemblages include, but are not limited to, ‘ōhi‘a (*Metrosideros polymorpha*), koa (*Acacia koa*), pāpala kēpau (*Pisonia umbellifera*), lama (*Diospyros sandwicensis*), māmaki (*Pipturus albidus*), kaulu (*Sapindus Oahuensis*), hame (*Antidesma platyphyllum*), ‘āla‘a (*Pouteria sandwicensis*), ‘a‘ali‘i (*Dodonaea viscosa*), naupaka kuahiwi (*Scaevola* spp.), pūkiawe (*Styphelia tameiameiae*), uluhe (*Dicranopteris linearis*), guava (*Psidium guajava*), strawberry guava (*P. cattleianum*), mango (*Mangifera indica*), kukui (*Aleurites moluccana*), christmasberry (*Schinus terebinthifolius*), ti (*Cordyline terminalis*), rose apple (*Syzygium jambos*), mountain apple (*S. malaccense*), and Java plum (*S. cumini*).

3. Existing developed features and structures, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements, are not included as critical habitat.

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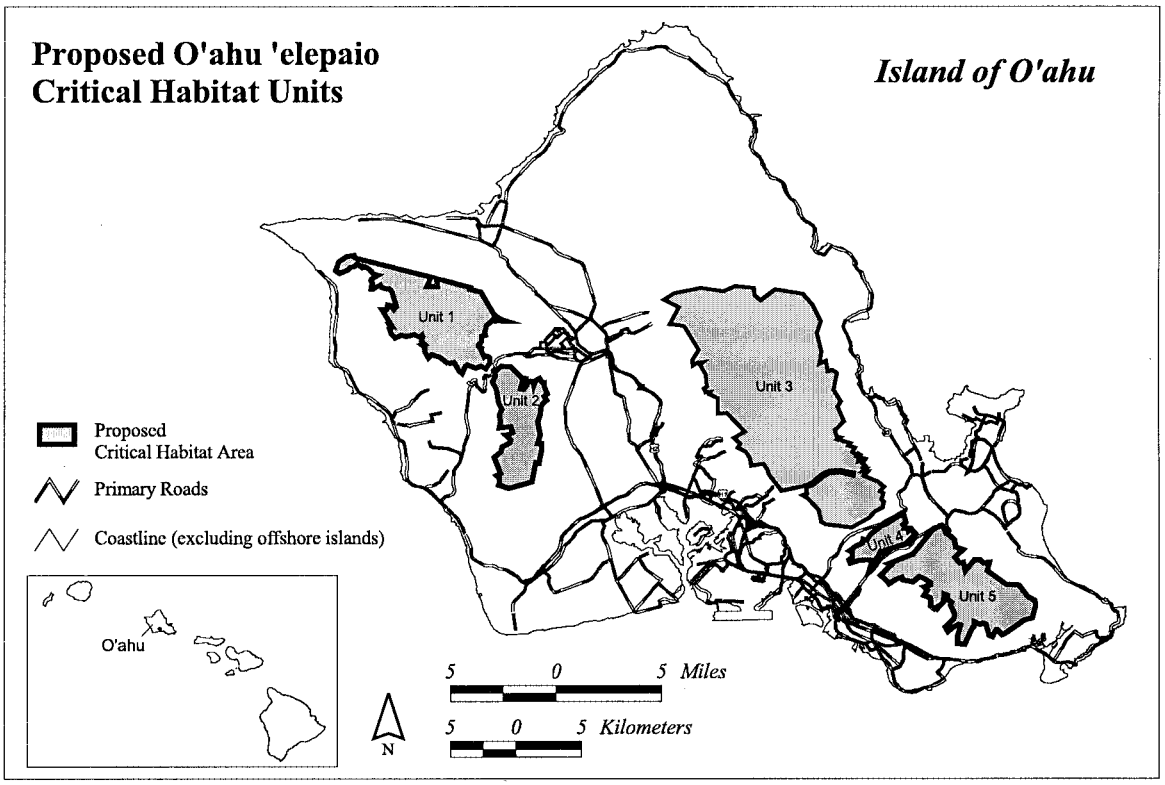


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**Unit 1 (4,502 ha; 11,122 ac)**

Unit 1 consists of one hundred and one boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 588465, 2375750; 587846, 2376228; 587213, 2376416; 586946, 2376176; 586675, 2376658; 586672, 2377028; 586468, 2377154; 586672, 2377219; 586430, 2377462; 586532, 2377741; 586464, 2377863; 586261, 2377727; 585895, 2377915; 585242, 2377801; 584907, 2377864; 584433, 2377671; 584139, 2377961; 583974, 2378388; 584099, 2378414; 584016, 2378599; 584207, 2378563; 583425, 2379849; 583801, 2379814; 583831, 2380171; 584075, 2380122; 584324, 2379841; 584526, 2380031; 584181, 2381150; 584078, 2381295; 583938, 2381385; 583738, 2381388; 583402, 2381505; 583315, 2381668; 582998, 2381518; 582785, 2381368; 582566, 2381369; 582561, 2381485; 582694, 2381702; 582685, 2381865; 582566, 2382005; 582651, 2382112; 583122, 2382432; 582768, 2382529; 582445, 2382889; 581998, 2383075; 581881, 2383019; 581546, 2383276; 581387, 2383071; 581221, 2383069; 581023, 2383019; 580811, 2382809; 580192, 2382557; 580070, 2382662; 579894, 2382772; 580060, 2383144; 580151, 2383425; 580526, 2383690; 580750, 2383802; 581314, 2383901; 581353, 2383719; 587168, 2382252; 586876, 2381574; 587645, 2381564; 587539, 2382159; 590187, 2381495; 590131, 2381324; 590955, 2381123; 591938, 2379504; 592106, 2379316; 592575, 2379032; 592871, 2378937; 592520, 2378940; 592213, 2379019; 592100, 2378936; 592014, 2378940; 591993, 2379074; 591950, 2379089; 591765, 2378955; 591393, 2378631; 591229, 2378138; 591294,

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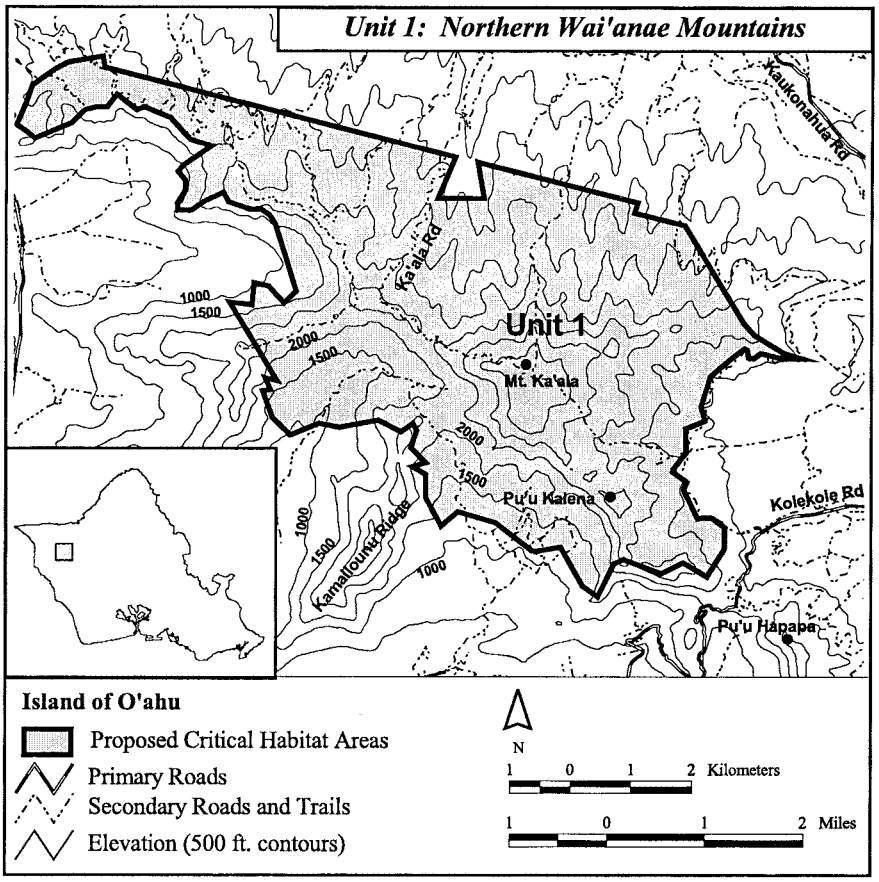


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## Unit 2 (2,515 ha; 6,215 ac)

Unit 2 consists of fifty-six boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 592373, 2366709; 592345, 2367091; 592171, 2367271; 592449, 2367406; 591970, 2368628; 592530, 2369066; 592575, 2369415; 593190, 2369759; 593231, 2369971; 592864, 2370362; 593156, 2370385; 593368, 2370513; 593249, 2370991; 592348, 2370899; 592469, 2371381; 592374, 2371861; 592582, 2372284; 592295, 2372774; 592100, 2373836; 591816, 2374384; 592053, 2374764; 592045, 2375115; 592504, 2375529; 593245, 2375497; 594056, 2374659; 594299, 2374644; 594081, 2374253; 593970, 2373860; 594207, 2373793; 594437, 2374070; 594578, 2374412; 594867, 2374406; 594965, 2374331; 594978, 2374067; 595140, 2374463; 595431, 2374602; 595604, 2374352; 595772, 2374351; 595782, 2374020; 596005, 2373471; 595754, 2373256; 595960, 2372960; 595678, 2372709; 595531, 2372434; 595485, 2371908; 595272, 2371337; 595489, 2370340; 595296, 2369703; 595561, 2369694; 595565, 2369178; 595390, 2368213; 595117, 2368245; 594830, 2366778; 593114, 2366319; 592309, 2366563; 592373, 2366709.

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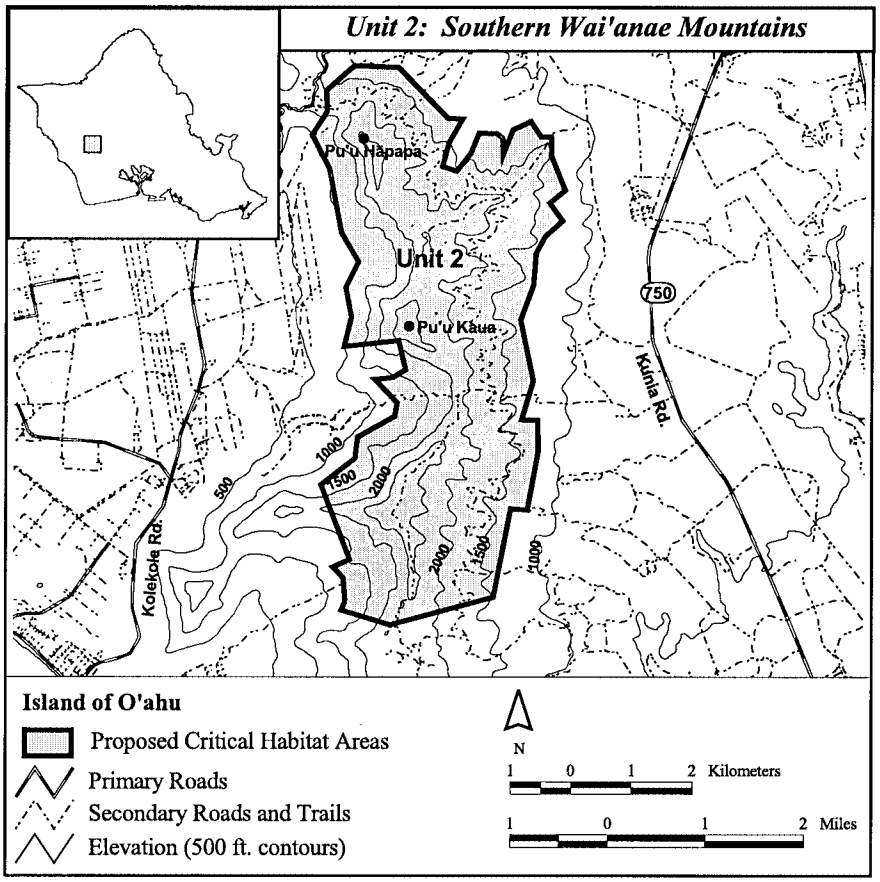


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**Unit 3 (14,840 ha; 36,669 ac)**

Unit 3 consists of one hundred and six boundary points with following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 615481, 2366443; 613829, 2366084; 612845, 2367394; 612829, 2367639; 612488, 2368140; 611561, 2368027; 611448, 2368566; 611117, 2369088; 610523, 2369387; 610693, 2369643; 610226, 2370083; 611040, 2370565; 609681, 2371985; 609025, 2371951; 609034, 2373100; 608391, 2373401; 608469, 2373609; 608065, 2373567; 607941, 2373859; 608199, 2373978; 608109, 2374925; 607637, 2375635; 607869, 2375817; 607456, 2375780; 607136, 2375598; 607046, 2375977; 607565, 2376766; 606428, 2378568; 605381, 2378725; 606026, 2379972; 604900, 2380551; 605708, 2381032; 607698, 2381439; 609468, 2381214; 610319, 2381573; 611728, 2381425; 611797, 2380904; 612201, 2380506; 613364, 2381362; 615459, 2380980; 616152, 2380161; 616780, 2378903; 616513, 2378013; 616873, 2376632; 616699, 2375737; 617180, 2375933; 617356, 2375158; 617664, 2375259; 617994, 2375029; 617757, 2373739; 618311, 2372859; 618082, 2372506; 618563, 2371385; 617894, 2370668; 618022, 2370181; 618247, 2370148; 618043, 2370014; 619043, 2369685; 618878, 2369509; 619381, 2369376; 619182, 2369040; 619525, 2368805; 619611, 2368922; 619747, 2368829; 619588, 2368664; 619928, 2368585; 619650, 2368496; 619614, 2368284; 620097, 2368401; 619967, 2368174; 620164, 2368022; 620005, 2367870; 620257, 2367795; 619954, 2367590; 620341, 2367572; 620055, 2367214; 621150, 2366779; 621549, 2366388; 621302, 2366064; 621511, 2365913; 621381, 2365424; 621553, 2365265; 621489, 2364827; 620880, 2364530; 620469, 2364040; 619115, 2363338; 617176, 2363590; 616868, 2363761; 616638, 2364642; 615913, 2365439; 615777, 2365575; 615420, 2365753; 615767, 2365918; 615684, 2366361; 616156, 2366495; 616990, 2367187; 617469, 2367398; 618312, 2367466; 619282, 2367250; 619336, 2367460; 618293, 2367672; 617426, 2367594; 616876, 2367352; 616189, 2366748; 615713, 2366555; 615481, 2366443.

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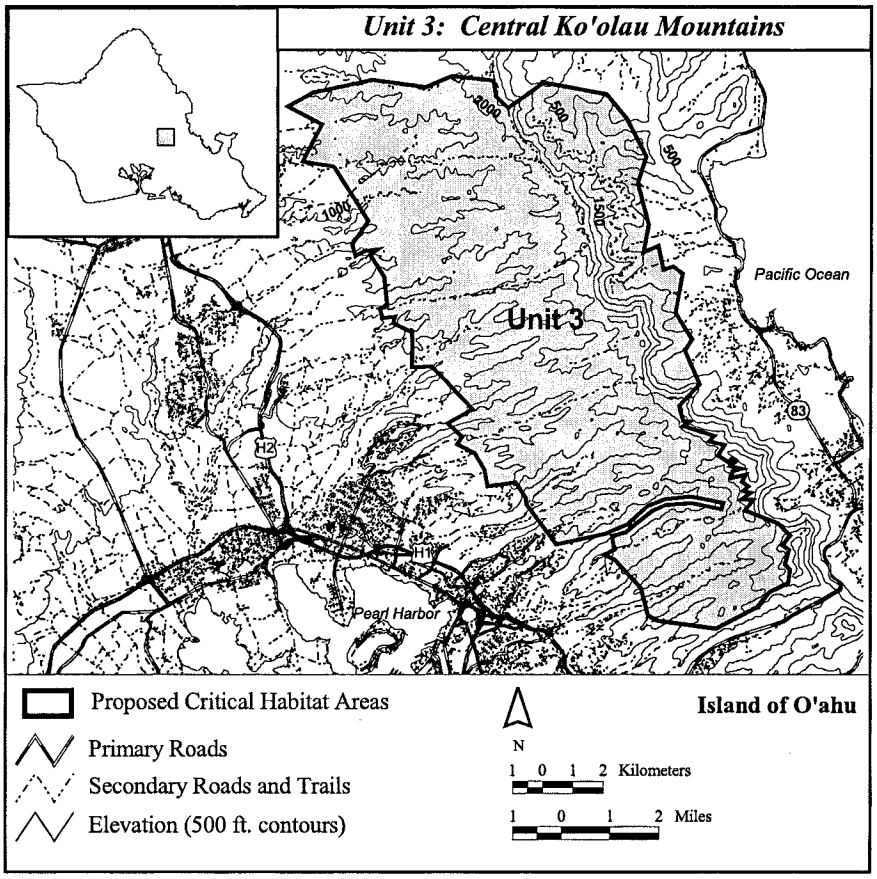


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**Unit 4 (800 ha; 1,977 ac)**

Unit 4 consists of thirty-five boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 619449, 2361897; 619967, 2362184; 619999, 2362473; 620286, 2362404; 620537, 2362773; 621409, 2363520; 621660, 2363584; 622719, 2364191; 622901, 2364348; 623091, 2364242; 623209, 2363699; 623046, 2363507; 623201, 2363403; 623106, 2363264; 623391, 2363271; 623404, 2363073; 623634, 2363216; 623976, 2362864; 623238, 2362105; 621688, 2361633; 621467, 2361418; 621345, 2361518; 620954, 2360860; 620598, 2360514; 620700, 2360831; 620572, 2360908; 619869, 2360908; 619670, 2360852; 619064, 2360661; 618935, 2360886; 619170, 2361072; 619199, 2361402; 619163, 2361470; 618977, 2361595; 619449, 2361897.

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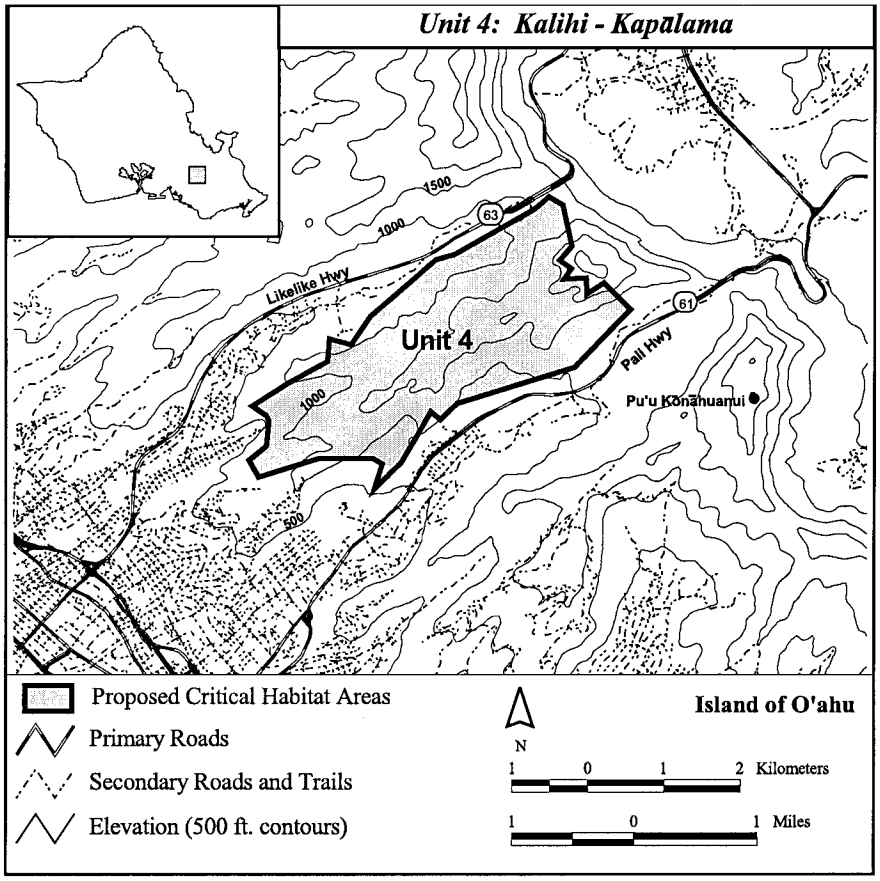


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**Unit 5 (4,197 ha; 10,371 ac)**

Unit 5 consists of seventy-eight boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 626915, 2356759; 626560, 2357502; 626675, 2357669; 626333, 2357906; 626359, 2358234; 626110, 2358313; 626031, 2357725; 625623, 2357254; 625538, 2357354; 625351, 2357186; 625091, 2357420; 625118, 2357617; 625085, 2358039; 624568, 2358236; 624821, 2358624; 624568, 2358859; 625059, 2359019; 625083, 2359182; 624607, 2359469; 624378, 2359605; 624247, 2359627; 623768, 2359261; 623004, 2359366; 622941, 2359584; 622499, 2359435; 621968, 2359088; 621864, 2359256; 621335, 2359722; 622127, 2360488; 621920, 2360603; 623746, 2361359; 625281, 2363179; 625896, 2363475; 626109, 2363219; 626146, 2363135; 626234, 2362910; 626392, 2362857; 626871, 2362399; 626986, 2361859; 627500, 2361686; 626946, 2361095; 627268, 2360638; 627548, 2360727; 627690, 2360077; 628361, 2360895; 628839, 2360922; 629079, 2360676; 629519, 2360722; 629341, 2360070; 630776, 2359069; 631754, 2358982; 632440, 2358108; 632959, 2357815; 633019, 2357425; 632769, 2356517; 632191, 2356385; 630620, 2355286; 630491, 2355266; 630104, 2355644; 630041, 2355624; 629732, 2355117; 629510, 2355214; 629279, 2356032; 629033, 2356130; 628836, 2356015; 628378, 2356236; 628317, 2355841; 628209, 2355703; 627673, 2354542; 627125, 2354591; 627125, 2355143; 627381, 2355990; 627200, 2356033; 626832, 2355846; 626399, 2355498; 626215, 2355823; 626806, 2356493; 626915, 2356759.

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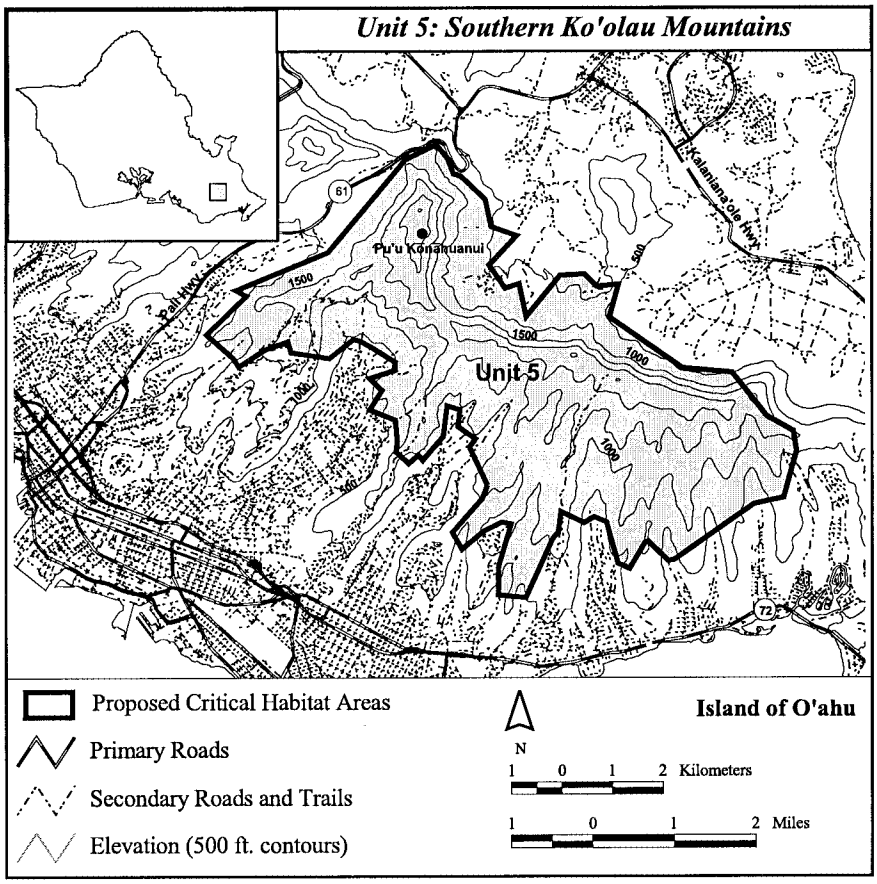


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Dated: May 30, 2001.

**Marshall P. Jones Jr.,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

(Proposed: Designation of critical habitat for the Oàhu èlepaio (*Chasiempis sandwichensis ibidis*))

[FR Doc. 01–14171 Filed 6–5–01; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 053001D]**

## Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, Scallop and Salmon Fisheries off the Coast of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for written comments; notice of scoping meetings.

**SUMMARY:** NMFS announces its intent to prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) for the essential fish habitat (EFH) components of the following fishery management plans (FMPs): Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Groundfish of the Gulf of Alaska; Bering Sea/Aleutian Islands King and Tanner Crabs; Scallop Fishery Off Alaska; and Salmon Fisheries in the EEZ Off the Coast of Alaska. The proposed action to be addressed in the SEIS is the development of the mandatory EFH provisions of the FMPs. The scope of the analysis will address the required EFH components of the FMPs as described in section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS will hold public scoping meetings and accept written comments to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS to describe and identify EFH and potential Habitat Area of Particular Concern (HAPC) designations, to minimize to the extent practicable the adverse effects of fishing on EFH, and to identify other actions to encourage the conservation and enhancement of EFH.

**DATES:** Written comments will be accepted through July 21, 2001. The first public scoping meeting will be held on Monday, June 4, 2001, in Kodiak, AK. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of additional public scoping meetings.

**ADDRESSES:** Written comments should be sent to P. Michael Payne, Assistant Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802. Comments may be sent via facsimile (fax) to (907) 586–7012. NMFS will not accept comments by e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public scoping meetings.

**FOR FURTHER INFORMATION CONTACT:** Cindy Hartmann, EFH Coordinator, Juneau, AK, (907) 586–7235.

**SUPPLEMENTARY INFORMATION:** Amendments to the Magnuson-Stevens Act in 1996 set forth new mandates for NMFS and Regional Fishery Management Councils (Regional Councils) to identify and protect important marine and anadromous fish habitat. The Regional Councils, with