

TABLE 2.—SUMMARY OF LISTING ACTIONS FOR SIX PLANT SPECIES FROM THE NWHI

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
<i>Amaranthus brownii</i> .....	Endangered .....	03/24/93	58 FR 15828	08/21/96	61 FR 43178
<i>Cenchrus agrimonoides</i> .....	Endangered .....	10/2/95	60 FR 51417	10/10/96	61 FR 53108
<i>Mariscus pennatiformis</i> .....	Endangered .....	09/14/93	58 FR 48012	11/10/94	59 FR 56333
<i>Pritchardia remota</i> .....	Endangered .....	03/24/93	58 FR 15828	08/21/96	61 FR 43178
<i>Schiedea verticillata</i> .....	Endangered .....	03/24/93	58 FR 15828	08/21/96	61 FR 43178
<i>Sesbania tomentosa</i> .....	Endangered .....	09/14/93	58 FR 48012	11/10/94	59 FR 56333

TABLE 3.—SUMMARY OF CRITICAL HABITAT ACTIONS, TO DATE, FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Proposed critical habitat designations or nondesignations		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
<i>Amaranthus brownii</i> .....	05/14/02	67 FR 34522	( <sup>1</sup> )	This final rule.
<i>Cenchrus agrimonoides</i> .....	12/18/00	65 FR 79192	05/14/03	68 FR 25934.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
<i>Mariscus pennatiformis</i> .....	12/18/00	65 FR 79192	02/27/03	68 FR 9116.
	01/28/02	67 FR 3940	05/15/03	68 FR 25934.
	04/03/02	67 FR 15856		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 15856		
	05/28/02	67 FR 36968		
<i>Pritchardia remota</i> .....	05/14/02	67 FR 34522	( <sup>1</sup> )	This final rule.
<i>Schiedea verticillata</i> .....	05/14/02	67 FR 34522	( <sup>1</sup> )	This final rule.
<i>Sesbania tomentosa</i> .....	11/07/00	65 FR 66808	02/27/03	68 FR 9116.
	12/18/00	65 FR 79192	03/18/03	68 FR 12982.
	12/29/00	65 FR 83158	05/14/03	68 FR 25934.
	01/28/02	67 FR 3940	( <sup>1</sup> )	This final rule.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
	04/05/02	67 FR 16492		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 37108		
	05/28/02	67 FR 36968		

<sup>1</sup> See **DATES** section of this rule.

At the time each of the six plants were listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant or would increase the degree of threat to the species. The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudence determinations for 245 listed plant species in Hawaii, including *Amaranthus brownii*, *Cenchrus agrimonoides*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court

also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

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

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, nonprofit organizations, county governments, the State's Division of Forestry and Wildlife

(DOFAW), and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants, which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation