

To determine whether critical habitat would be prudent for *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*, we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and populations and their inherent immobility, the three plants may be vulnerable to unrestricted collection, vandalism, or disturbance, though this is unlikely given their inaccessibility. Recently, we received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, Service, *in litt.*, 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia remota*. While we have determined that designation of critical habitat is not prudent for other species of *Pritchardia* because the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection (65 FR 66808, 65 FR 83158), we do not believe this species is threatened by these same activities because of its inaccessibility. Nihoa is more than 273 km (170 mi) from Lihue, Kauai, and more than 1,600 km (1,000 mi) from Midway. It is a part of the HINWR, and a permit is required for access to the island. Access to the island is further limited due to difficult and dangerous landing conditions. Passengers must be dropped off and the boat sent back out to sea, as there are no mooring docks or beaches. The boat must return later to pick up the passengers, when conditions allow. Sea conditions are apt to change without warning, stranding visitors on this inhospitable island that has no fresh water and no regular food supply (C. Rehkemper, pers. comm., 2001).

We examined the evidence available for *Amaranthus brownii* and *Schiedea verticillata* and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these taxa or of similar species. Therefore, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not believe that these three species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

Therefore, we believe that designation of critical habitat is prudent for *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*. The reasons why we believe designation of critical habitat is prudent for *Sesbania tomentosa* and *Mariscus pennatifolius*

are contained in the final rules published on January 9, 2003, and February 27, 2003, respectively (68 FR 1220 and 68 FR 9116). The reasons why we believe designation of critical habitat is prudent for *Cenchrus agrimonoides* are contained in the final rule published on January 9, 2003 (68 FR 1220). Although critical habitat for *Cenchrus agrimonoides* is not being designated on the NWHI (as it has not been seen there for over 20 years and no viable genetic material exists), we are designating critical habitat for this species on Maui (68 FR 25934, May 14, 2003).

B. 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 conservation of *Amaranthus brownii*, *Mariscus pennatifolius*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. Using the best information available, we could not identify areas in the NWHI that are essential for *Cenchrus agrimonoides* for the reasons described in section D. *Criteria Used to Identify Critical Habitat*. This information included the known locations and site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; islandwide Geographic Information System (GIS) coverages (e.g., vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these species; the May 14, 2002, proposal of critical habitat; information received during the public comment period; recent biological surveys and reports; recovery plans for these species; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1998d, 1999; 59 FR 56333; 61 FR 43178; 61 FR 53108; 65 FR 83158; 67 FR 16492; 67 FR 34522).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island*

Plants (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. 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 base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Amaranthus brownii*,