

enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

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

If 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 the likelihood of resulting in 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.

Activities on Federal lands that may affect critical habitat of *Amaranthus brownii*, *Mariscus pennatifolius*, *Pritchardia remota*, *Schiedea verticillata*, or *Sesbania tomentosa* will require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate 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. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined in the discussion of the primary constituent elements including, but not limited to: Clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting or herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Construction activities by the U.S. Department of the Interior (the Service);

(3) Research activities funded by the U.S. Department of the Interior (the Service) or National Oceanic and Atmospheric Administration (National Marine Sanctuaries Program, National Marine Fisheries Service); and

(4) Activities not mentioned above funded or authorized by the Department of the Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Western Pacific Regional Fisheries Council, or any other Federal Agency.

If you have questions regarding whether specific activities will likely 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, may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Economic Analysis

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on May 14, 2002, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th

Cir. 2001). The draft analysis was made available for review on September 12, 2002 (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

No comments addressing the economic analysis were received, and no information has come to light that might change the conclusions of the draft economic analysis. Therefore, the draft analyses constitutes the final economic analysis for this rule. The economic analysis estimates that, over the next 10 years, the designation may result in potential economic effects of approximately \$30,800, and that economic benefits from the designation of critical habitat would not be significant. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). We do not believe the economic impacts of this designation, which would result primarily from section 7 consultations on FWS, NMS, and private research activities, would be significant. Therefore, no critical habitat units in the proposed rule were excluded or modified due to economic impacts.

As described above, section 4(b)(2) of the Act also requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. No critical habitat units were excluded or modified due to non-economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of \$100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.