

organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must 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. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate 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 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 one or more of the 99 plant species from Oahu 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 (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not 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 the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may

include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(7) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

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 plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Analysis of Managed Lands Under Section 3(5)(A)

The need for "special management considerations or protections" of the essential habitat features (primary constituent elements) included in a designation is required by the definition of critical habitat in section 3(5)(A) of the Act. If the primary constituent elements are being adequately managed then they do not need "special management considerations or protections." Adequate management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it (1) provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those