

included in the critical habitat designation.

Our regulations State that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to 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 package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. 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 Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. 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 efforts if new information

available to these planning efforts calls for a different outcome. 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.

A. Prudence

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. Two species, *Acaena exigua*, a multi-island species, and *Melicope quadrangularis*, a Kauai endemic species, are no longer extant in the wild. *Acaena exigua* was last seen in 2000 and no individuals were seen in a subsequent visit in 2001 to the last known location (Oppenheimer, pers. comm. 2002). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991. This species has not been seen in surveys of this area subsequent to Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm. 2000). In addition, neither species is known to be in storage or under propagation. Under these circumstances, designation of critical habitat for *Acaena exigua* and *Melicope quadrangularis* is not prudent because such designation would be of no benefit to these species. If either species is relocated we may revise this final determination to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 93 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these taxa and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for three species of *Pritchardia*, the native palm, on Kauai and Niihau. At the time of listing we determined that designation of critical habitat was not prudent for *Pritchardia napaliensis*, *P. aylmer-robinsonii*, and *P. viscosa* because it would increase the degree of threat from vandalism or collecting, and would provide no benefits (60 FR 53070). At

that time, we had information that at least one of the remaining adult plants has been damaged by spiked boots used either by a botanist or seed collector to scale these trees (61 FR 53070). Since publication of the listing rule, we learned of additional instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia*. In 1993, the State's DOFAW planted 39 young *Pritchardia napaliensis* plants within a fenced enclosure near the Wailua River. A short time after this, the fence was vandalized and all 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, *in litt.* 1999). In mid-1996, a young plant and seeds of *Pritchardia viscosa* were removed from the only known location of this species (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *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 aylmer-robinsonii* and *P. napaliensis*.

In light of this information, we believe that designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism or collection. These plants are easy to identify, and they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). The final listing rules for these three species contained only general information on their distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult (61 FR 53070).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia napaliensis* and *P. viscosa* do not occur on Federal land, and the State lands where they are found are zoned for conservation. Some of the plants are on lands set aside in perpetuity to conserve their natural flora and fauna, or as geological sites (State of Hawaii natural area reserves) (HRS 195-1). In addition, these species are found in areas that are remote and accessible only by four-wheel drive (*Pritchardia viscosa* only), foot, boat, or helicopter. It is, therefore, unlikely that the lands on which these