

species are found will be developed. Since there do not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species than they do not already have through listing alone. If, however, in the future any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

*Pritchardia aylmer-robinsonii* is only found on Niihau, which is presently zoned for agriculture. There are no hotels, resorts, or other commercial development on the island. Public access to the island is not generally authorized by the landowner. Most of the people living on this island (fewer than 300) are employed in ranching activities (Department of Geography 1998). While future activities on the island are unknown, it is unlikely that the land on which this species is found will be developed. Future projects that would require Federal permitting or funding such as those mentioned above are particularly unlikely on this privately owned island. Although access to the island has been and continues to be restricted, *P. aylmer-robinsonii* is endemic only to Niihau, so any commercial availability indicates that collection, either with or without the land owner's permission, has occurred in the past and may still be occurring.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these three species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we determine that designation of critical habitat for *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* is not prudent.

On January 9, 2003, we found that critical habitat was prudent for the following 15 multi-island species: *Adenophorus periens*, *Bonamia menziesii*, *Centaurium seabaeoides*, *Ctenitis squamigera*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Isodendron piriifolium*, *Sesbania*

*tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Vigna o-wahuensis* and *Zanthoxylum hawaiiense* (68 FR 1220), which also occur on Kauai or Niihau.

Four species no longer occur on Kauai or Niihau but are reported from one or more other islands. To find whether critical habitat would be prudent for these four species we analyzed the potential threats and benefits for each species in accordance with the court's orders. These four plants were listed as endangered species under the Act between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for these four species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Achyranthes mutica*, *Mariscus pennatifolius*, *Phlegmariurus manni*, and *Phlegmariurus nutans* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i) and the court's discussion of these regulations, we do not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Achyranthes mutica*, *Mariscus pennatifolius*, *Phlegmariurus manni*, and *Phlegmariurus nutans* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. None of these four species are reported from Federal lands on Kauai (the entire island of Niihau is privately owned) where actions are subject to section 7 consultation. However, two of

these species, *Phlegmariurus manni*, and *Phlegmariurus nutans* are reported from Federal lands or lands that are administered by a Federal agency on other islands (*Phlegmariurus nutans* is reported from the United States Army's Schofield Barracks Military Reservation and Kawaihoa Training Area, and the Service's Oahu Forest National Wildlife Refuge on Oahu, and *Phlegmariurus manni* is reported from Haleakala National Park on Maui). Although *Achyranthes mutica* and *Mariscus pennatifolius* are located exclusively on non-Federal lands with limited Federal activities on Oahu and Maui, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *Achyranthes mutica*, *Mariscus pennatifolius*, *Phlegmariurus manni*, and *Phlegmariurus nutans* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we find that critical habitat is prudent for these four species (*Achyranthes mutica*, *Mariscus pennatifolius*, *Phlegmariurus manni*, and *Phlegmariurus nutans*).

We examined the evidence available for the other 71 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 71 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has