

(4) *Does this special rule apply to mountain plovers throughout their range?* This special rule applies only to mountain plovers in certain areas of the southern portion of their breeding range (see paragraph (c)(2) of this section). It does not apply to wintering range.

(5) *What types of agricultural activities are covered under this rule?* Agricultural activities conducted on summer fallow, cropland idle, or cropland harvested are covered under the rule in this paragraph (c). Agricultural activities include mechanical practices such as tilling and other machinery-type activities that are used to prepare soil, plant crops, and control weeds.

Dated: November 29, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A125

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Designations of Critical Habitat for One Mammal and Two Bird Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis of the proposed designations of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. The proposed designations of critical habitat were published in the *Federal Register* on October 15, 2002 (67 FR 63738). The draft economic analysis shows that over a 10-year period, the estimated total direct cost on Guam would be approximately \$1.4 million and the estimated total direct cost on Rota would be approximately \$149,000. We are now providing notice of extending the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated

draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until January 6, 2003.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001. Copies of the draft economic analysis are available on the Internet at <http://pacificislands.fws.gov> or by request from the Field Supervisor at the above address and telephone 808/541-3441. Copies of the draft economic analysis also are available on Guam at the Nieves M. Flores Memorial Library, East O'Brien Drive, Hagatna, Guam, phone 671/475-4753, and on Rota at the Northern Marianas College, Songsong, Rota, telephone 670/532-9477. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

A review of the status of 12 Guam and Commonwealth of the Northern Mariana Islands (CNMI) vertebrate species was published on May 18, 1979 (44 FR 29128). This review, which led to the listing of nine species in 1984, resulted from three separate petitions to the Service filed by three Governors or Acting Governors of Guam in 1978, 1979, and 1981, and a fourth petition filed by the International Council for Bird Preservation in 1980. In a proposed rule published on November 29, 1983 (48 FR 53729), the Service determined endangered status for 9 of the 12 species in the 4 petitions. The final listing rule for the nine species, including the six species treated in the current proposed rule, was published on August 27, 1984 (49 FR 33881).

We published a proposed rule to designate critical habitat for these six endangered species on Guam in the *Federal Register* on June 14, 1991 (56 FR 27485). However, we withdrew this proposed rule on April 4, 1994 (59 FR 15696), because most of the lands proposed as critical habitat had by this time been incorporated into the Guam National Wildlife Refuge overlay lands. The Service, therefore, determined that

critical habitat designation was not prudent because it would not provide these species with any benefit beyond that already provided by the refuge overlay lands.

Since the withdrawal of the proposed critical habitat, several judicial decisions in court cases examining critical habitat determinations have rejected rationales used by the Service in "not prudent" findings. These cases included *Natural Resources Defense Council v. U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997) involving the threatened coastal California gnatcatcher, and *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp.2d 1280 (D. Haw. 1998) involving 245 listed plant species. The decisions in these cases rejected the Service's rationales of "increased threat" and "no benefit" in the case of the gnatcatcher, and of "increased threat," "no benefit on private lands," and "no additional benefit on federal lands" in the case of the Hawaiian plants.

On April 3, 2000, the Marianas Audubon Society and the Center for Biological Diversity filed a suit to challenge the Service's 1994 withdrawal of critical habitat for the six species. On September 7, 2000, the Service filed a motion to voluntarily remand the withdrawal and non-prudency decision based on the subsequent court decisions. This motion set a deadline of June 3, 2003, for the Service to determine prudency and designate final critical habitat, if prudent, for these six species. On January 25, 2002, the Government of Guam filed a motion for preliminary injunction against the Service to prevent our re-consideration of the 1994 "not prudent" critical habitat determinations for the six species. On February 8, 2002, the Service filed its opposition to the Government of Guam's motion for preliminary injunction. On April 16, 2002, the Guam District Court dismissed the Government of Guam's motion for preliminary injunction and issued a ruling upholding the settlement based on a voluntary remand.

On December 7, 2001, we mailed letters to four major landowners (Chamorro Land Trust Commission, U.S. Air Force, U.S. Navy, and Guam National Wildlife Refuge) on Guam informing them that the Service was in the process of determining the prudency of designating critical habitat for the little Mariana fruit bat, Mariana fruit bat, Mariana crow, Guam broadbill, Micronesian kingfisher, and the bridled white-eye and requested from them information on management of lands that currently support or recently

(within the past 30 years) supported these six species. The letters contained a fact sheet describing the six listed species and critical habitat, the 1991 proposed rule to designate critical habitat, the 1994 withdrawal of the proposed rule, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by January 14, 2002. We received three responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included natural resource management plans, cooperative agreements, and descriptions of management activities such as brown treesnake and feral ungulate control. The information provided in the responses was considered and incorporated into the proposed rule published in the **Federal Register** on October 15, 2002 (67 FR 63738).

We propose designating approximately 10,053 hectares (ha) (24,840 acres (ac)) in two units on the island of Guam for the Mariana fruit bat and the Micronesian kingfisher. For the Mariana crow, we propose designating approximately 9,325 ha (23,042 ac) in two units on the island of Guam and approximately 2,462 ha (6,084 ac) in one unit on the island of Rota in the CNMI. On Guam, the boundaries of the proposed critical habitat units for the Mariana fruit bat and Micronesian kingfisher are identical and the boundaries of the proposed critical habitat for the Mariana crow are contained within these identical boundaries. On Rota, critical habitat is proposed only for the Mariana crow.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data

available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is now available on the Internet and from the mailing address in the Public Comments Solicited section below.

We are now announcing the availability of the draft economic analysis and the extension of the comment period for the proposed designation of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. We will accept public comments on the proposal and the associated draft economic analysis until the date specified in **DATES**. The extension of the comment period gives all interested parties the opportunity to comment simultaneously on the proposal and the associated draft economic analysis.

Public Comments Solicited

We are specifically requesting comments on the following elements of the draft economic analysis:

- (1) Whether indirect economic costs, as discussed in sections 6.3–1.4 and 6.3–1.5 of the draft economic analysis, are likely to be incurred, and if so, by whom and in what amounts;
- (2) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in sections 6.3–1.4 and 6.3–2.2 of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the benefits of the proposed critical habitat designation;
- (3) The extent to which the description of the economic costs of the proposed critical habitat designation to the United States Navy and Air Force are complete and accurate; and
- (4) The extent to which military training and readiness may be impacted by the proposed critical habitat designation, as discussed generally in sections 6.3–1.2 and 6.3–1.3 of the draft economic analysis.

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Guam_crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include “Attn: RIN 1018–AI25” and your name and return address in your e-mail message.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at <http://pacificislands.fws.gov> or by request from the Field Supervisor at the address under **ADDRESSES** and phone number under **FOR FURTHER INFORMATION CONTACT** above.

Author(s)

The primary author of this notice is Eric VanderWerf (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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