

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Endangered and Threatened Wildlife and Plants: Notice Requesting Public Comments on our Re-evaluation of Whether Designation of Critical Habitat Is Prudent for 245 Hawaiian Plants**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On August 10, 1998, the U.S. Fish and Wildlife Service (Service) was ordered by U.S. District Court (Civil No. 97-00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*) to publish proposed critical habitat designations or non-designations for at least 100 federally listed Hawaiian plant species by November 30, 2000, and to publish proposed rules for an additional 145 listed plants by April 30, 2002. At this time, the Service seeks comments, suggestions or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party on our re-evaluation of whether designation of critical habitat is prudent for these 245 species of federally protected Hawaiian plants.

DATES: Comments from all interested parties must be received by March 1, 1999.

ADDRESSES: Comments and materials concerning the notice should be sent to Robert P. Smith, Pacific Islands Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850 (telephone: 808/541-2749; facsimile: 808/541-2756).

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Ecological Services (see **ADDRESSES** section) (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:**Background**

On January 29, 1997, the Sierra Club Legal Defense Fund (now Earthjustice Legal Defense Fund) filed a lawsuit on behalf of the Conservation Council for Hawaii, the Sierra Club, and the Hawaiian Botanical Society in U.S. District Court in Honolulu, Hawaii, for the Service's failure to designate critical habitat for 278 endangered or threatened Hawaiian plant taxa. Because the statute of limitations had elapsed for many of the plants, this list of plants was later reduced to 245 taxa.

Critical habitat is defined in section 3 of the Endangered Species Act (Act) of 1978, as amended, as: (I) the specific

areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

"Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Additional Service regulations (50 CFR 424.12(a)(2)) state that designation of critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The requirement that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat through any action authorized, funded or carried out by such agency (agency action) is in addition to the section 7 prohibition on jeopardizing the continued existence of a listed species; and, it is the only mandatory, legal consequence of a

critical habitat designation. Any future Federal action that may affect the species will be subject to section 7 consultation to ensure that the action does not jeopardize the continued existence of the species. Implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species by reducing reproduction, numbers, or distribution because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

The addition of critical habitat for these species in Hawaii may have the effect of drawing more Federal actions into formal consultation—actions that would not be subject to consultation without designated critical habitat. The reason for this is that critical habitat often includes large habitat areas that are unoccupied by the species, but could be occupied in the future. Therefore, it is possible that formal section 7 consultation may be triggered by Federal actions that trip the "may affect" threshold for consultation solely because such actions cause changes to unoccupied critical habitat.

The 245 plant species that are the subject of this notice were listed by the Service over a period of several years, between 1990 and 1996, at which time the Service determined that designation of critical habitat was not prudent for one or more of the following three reasons: designation of critical habitat would increase the likelihood of illegal taking or vandalism; designation of critical habitat would not be beneficial for plant species located on private property; and, designation of critical habitat for plant species located on Federal lands provides little or no additional benefit beyond the existing

precautions the Federal government must take under section 7 of the Act.

The 245 plant taxa are: *Abutilon eremitopetalum*, *Abutilon sandwicense*, *Acaena exigua*, *Achyranthes mutica*, *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Alsinidendron viscosum*, *Amaranthus brownii*, *Argyroxiphium kauense*, *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Asplenium fragile* var. *insulare*, *Bidens micrantha* ssp. *kalealaha*, *Bidens wiebkei*, *Bonamia menziesii*, *Brighamia insignis*, *Brighamia rockii*, *Canavalia molokaiensis*, *Cenchrus agrimonoides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce depone*, *Chamaesyce halemanui*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia oblongifolia* ssp. *brevipes*, *Clermontia oblongifolia* ssp. *mauiensis*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea acuminata*, *Cyanea copelandii* ssp. *copelandii*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea lobata*, *Cyanea longiflora*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyanea mannii*, *Cyanea mceldowneyi*, *Cyanea pinnatifida*, *Cyanea platyphylla*, *Cyanea procera*, *Cyanea recta*, *Cyanea remyi*, *Cyanea st-johnii*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyanea superba*, *Cyanea truncata*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra crenata*, *Cyrtandra cyaneoides*, *Cyrtandra dentata*, *Cyrtandra giffardii*, *Cyrtandra limahuliensis*, *Cyrtandra munroi*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra tintinnabula*, *Cyrtandra viridiflora*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea subcordata*, *Delissea undulata*, *Diellia erecta*, *Diellia falcata*, *Diellia pallida*, *Diellia unisora*, *Diplazium molokaiense*, *Dubautia herbstobatae*, *Dubautia latifolia*, *Dubautia pauciflora*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haelealeana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gahnia lanaiensis*, *Gardenia mannii*, *Geranium arboreum*, *Geranium multiflorum*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis mannii*, *Hedyotis parvula*, *Hedyotis st-johnii*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*,

Hesperomannia lydgatei, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscadelphus woodii*, *Hibiscus arnotianus* ssp. *immaculatus*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Huperzia mannii*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyrifolium*, *Kokia kauaiensis*, *Labordia cyrtandrae*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lepidium arbuscula*, *Lipochaeta fauriei*, *Lipochaeta kamolensis*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta micrantha*, *Lipochaeta tenuifolia*, *Lipochaeta waimeae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lycopodium nutans*, *Lysimachia filifolia*, *Lysimachia lydgatei*, *Lysimachia maxima*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope adscendens*, *Melicope balloui*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope lydgatei*, *Melicope mucronulata*, *Melicope ovalis*, *Melicope pallida*, *Melicope quadrangularis*, *Melicope reflexa*, *Melicope saint-johnii*, *Melicope zahlbruckneri*, *Munroidendron racemosum*, *Myrsine juddii*, *Myrsine linearifolia*, *Neraudia angulata*, *Neraudia ovata*, *Neraudia sericea*, *Nothoctrum breviflorum*, *Nothoctrum peltatum*, *Nototrichium humile*, *Ocrosia kilauaensis*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia glabra* var. *lanaiensis*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia knudsenii*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago hawaiiensis*, *Plantago princeps*, *Platanthera holochila*, *Pleomele hawaiiensis*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Portulaca sclerocarpa*, *Pritchardia affinis*, *Pritchardia aylmer-robinsonii*, *Pritchardia kaalae*, *Pritchardia munroi*, *Pritchardia napaliensis*, *Pritchardia remota*, *Pritchardia schattaueri*, *Pritchardia viscosa*, *Pteralyxia kauaiensis*, *Pteris lidgatei*, *Remya kauaiensis*, *Remya mauensis*, *Remya montgomeryi*, *Rollandia crispa*, *Sanicula mariversa*, *Sanicula purpurea*, *Schiedea apokremnos*, *Schiedea haleakalensis*, *Schiedea helleri*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kauaiensis*, *Schiedea kealiae*, *Schiedea lydgatei*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Schiedea*

spergulina var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Schiedea verticillata*, *Sesbania tomentosa*, *Sicyos alba*, *Silene alexandri*, *Silene hawaiiensis*, *Silene lanceolata*, *Silene perlmanii*, *Solanum incompletum*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Stenogyne campanulata*, *Stenogyne kanehoana*, *Tetramolopium arenarium*, *Tetramolopium capillare*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetramolopium remyi*, *Tetramolopium rockii*, *Tetraplasandra gymnocarpa*, *Trematolobelia singularis*, *Urera kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, *Viola helenae*, *Viola kauaensis* var. *wahiawaensis*, *Viola lanaiensis*, *Viola oahuensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*.

In accordance with the U.S. District Court's August 10, 1998, order (Civil No. 97-00098ACK Conservation Council for Hawaii, et al. vs. Bruce Babbitt, et al.), the Service is hereby reconsidering the not prudent determinations that were made for these 245 plant species and is seeking any new information that may affect whether the Service proceeds with a proposal to designate critical habitat for these species.

Public Comments Solicited

Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this notice are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, vandalism, or other relevant data concerning any threat to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species;

(5) Additional information on the principal biological or physical constituent elements that are essential to the conservation of these species. These primary constituent elements may include, but are not limited to, the following: seasonal wetland or dryland, water quality or quantity, plant

pollinator, geological formation, vegetation type, and specific soil types; (6) Information on existing management for any of these species and benefits to these species.

The decision on whether to propose critical habitat for any of the subject species will take into consideration the information received in response to this request. Proposed designations or non-designations of critical habitat will also solicit public comments, and any comments received will be considered before making a final decision.

Authority

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

Dated: November 19, 1998.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 98-31757 Filed 11-27-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-1220-00]

Correction to Description of Occupancy and Camping Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Occupancy and Camping Closure on Selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9858 and 9859 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office announced the Closure of certain public lands in the Las Vegas Valley to occupancy and camping. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146)*. A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The increase in population and growth in employment in the Las Vegas area, has attracted many short term and transient residents and workers. Many of these individuals set up residence on public lands under the guise of "camping." This problem is particularly

prone to occur on public lands within the urban Las Vegas Valley.

Trash accumulation and human refuse are impacting public and private lands. There are no public facilities on any of these lands. The existing 14 day camping stay limit has been effective in correcting this situation. In addition, many of these lands are now adjacent to, or included within, private residential and commercial development due to the inter-mixed public-private land ownership pattern in Las Vegas Valley. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation and prevent long-term occupancy of public lands.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affective are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E and certain lands in Townships 23 S and 24 S Range 61 E to 63 E MDM; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management.

Exceptions to Closure

Camping locations which may be designated by the Las Vegas Field Office Manager for over night use. Such designations may be by the posting of appropriate signs, by publications in the **Federal Register**, or be made available to the public by other means deemed appropriate by the authorized officer.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

- a. Camp or engage in camping.
- b. Park, stop, or leave personal property, whether attended or unattended.
- c. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to citation and impoundment at the owner's expense.
- d. Take, drive, or operate any vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

Definitions

"Camp" or Camping means the erection of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

Personal Property includes but is not limited to bicycles, vehicles (whether propelled by living or non-living power sources), motor vehicles, trailers, tents, campers, pets, and livestock.

"Public Lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts or Eskimos (43 CFR 1601.0-5(I)).

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT:

Dave Wolf, Recreation Manager, or Ron Crayton, Ranger, Ken Burger, Ranger, at the Bureau of Land Management, Las Vegas, Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647-5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98-31788 Filed 11-27-98; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-055-1220-00]

Correction to Description of Shooting Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting Closure on selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9860 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office