

Significant Differences presented in the ESD are as follows:

(1) Mechanical pumping of the wells at the MBS location, on a continuous basis, was determined not to be a viable option due to insufficient water volume as described above. The contaminated groundwater would have to be manually extracted by hand bailing the wells.

(2) The small volume of ground water capable of being removed from the extraction wells did not warrant the construction of a treatment system at the MBS location. The manually extracted groundwater would be contained and taken off-site for treatment.

(3) The extraction and treatment of groundwater from the MBS location would not be performed on a continuous basis. Rather, the manual extraction would be performed on a periodic basis.

(4) The free product recharge rate was extremely slow and as a result a free product recovery system was not warranted. Instead the free product was manually removed on the same schedule as the manual removal of the contaminated groundwater.

The ESD for the MBS location was implemented in 1996. Between 1996 and June, 2001 the wells at the MBS location were purged and sampled 4 times. A review of the monitoring data indicates the presence of PAHs which are constituents of gasoline and fuel oil. Benzene and ethylbenzene are present at concentrations above the performance standards. These contaminants have been determined not to be compounds of concern, but instead residuals of the gasoline and fuel oil once stored at the MBS location. Bis(ethylhexyl)phthalate is a suspect contaminant present at concentrations slightly above the performance standards.

Based on a thorough evaluation of the results of the groundwater data collected from the wells at the MBS location, EPA has determined that the volatile organic compounds being found in the groundwater are constituents of gasoline and fuel oil and are not compounds of concern related to the past storage of waste liquids at the MBS location. Also, there are no threats to residents who use groundwater in the area of the MBS location, as the source of potable groundwater is located approximately 3 miles away and the wells are several hundred feet deep. There is no hydraulic connection between the shallow groundwater at the MBS location and the public water supply wells. As such, EPA has discontinued the manual extraction of groundwater. Groundwater will continue to be monitored at the MBS location.

#### Five-Year Review

A five-year review for the Site was completed on June 27, 2000. Five-year reviews for the Site will continue to be conducted. The next Review is scheduled to be completed by September 30, 2004.

#### Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied to make this recommendation of deletion from the NPL are available to the public in the information repositories.

#### Applicable Deletion Criteria

EPA is proposing deletion of this Site from the NPL. PADEP has concurred with EPA that all appropriate responses under CERCLA have been implemented. Documents supporting this action are available from the docket. EPA believes that the criteria stated in Section II(i) and (ii) for deletion of this Site have been met. Therefore, EPA is proposing the deletion of the McAdoo Associates Superfund Site from the NPL.

Dated: September 19, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, U.S. EPA Region III.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-A116**

#### **Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Rota Bridled White-Eye (*Zosterops rotensis*) From the Commonwealth of the Northern Mariana Islands**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose endangered status pursuant to the Endangered Species Act of 1973, as amended, for the Rota bridled white-eye (*Zosterops rotensis*), a bird. The Rota bridled white-eye is a recognized species of white-eyes endemic to the Mariana archipelago, which comprises the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands. The Rota

bridled white-eye is endemic to the island of Rota, and was once widespread, possibly occupying forested habitat at all elevations. The total population of the Rota bridled white-eye was estimated at 1,167 individuals in 1996, which is a decline of 89 percent from the 1982 estimated population. The population estimate of Rota bridled white-eyes in 1999 was 1,092 (Amidon 2000). The Rota bridled white-eye is currently found in four patches of mature wet forests at elevations above 200 meters (650 feet) in elevation. The reasons for this species' decline is likely due to degradation or loss of habitat due to development, agricultural activities, and naturally occurring events; avian disease; predation; and pesticides. This proposal, if made final, would implement the protection provisions of the Act.

**DATES:** Comments from all interested parties must be received by December 3, 2001. Public hearing requests must be received by November 19, 2001.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawaii 96850.

(2) You may send comments by electronic mail (e-mail) to: [rota\\_bwe\\_pr@fws.gov](mailto:rota_bwe_pr@fws.gov). See the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our office at 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawaii.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Rota bridled white-eye (*Zosterops rotensis*) is endemic to the island of Rota, U.S. Commonwealth of the Northern Mariana Islands (CNMI). Rota is approximately 86 square kilometers (km<sup>2</sup>) (33 sq miles (mi<sup>2</sup>)) and is the fourth largest island in the Mariana Islands archipelago. The island of Rota is composed of a series of uplifted coral limestone plateaus with a volcanic outcrop. The climate is tropical marine with high humidity and uniform temperatures throughout the year. Average daytime temperatures are approximately 12 degrees Celsius (80

degrees Fahrenheit), with approximately 200 centimeters (cm) (80 inches (in)) of rainfall annually and about 80 percent humidity. Rainfall averages 27 cm (10.6 in) per month during the wet season and 9.6 cm (3.8 in) per month during the dry season.

The Rota bridled white-eye is a small, flocking bird in the Family Zosteropidae, Order Passeriformes. The name white-eye is derived from the ring of white feathers around each eye. The plumage is tinged with yellow, and the bill, legs, and feet are yellow-orange (Pratt *et al.* 1987). Wing, tail, and tarsal lengths taken from 21 birds captured by the Mariana Avian Rescue and Survey (MARS) Project averaged 5.6 cm (2.2 in), 3.8 cm (1.5 in), and 2.6 cm (1 in), respectively (Scott Derrickson, National Zoological Park, *in litt.* 1998). Average weights taken from birds captured for the MARS Project were 9.7 grams (0.3 ounces) for males and 9.2 grams (0.3 ounces) for females (S. Derrickson, *in litt.* 1998).

Baker (1951) reports that the Rota bridled white-eye was first grouped with a population of birds on Palau as *Zosterops semperi*. The Rota bridled white-eye was later described as a separate subspecies, *Z. semperi rotensis*, by Takatsukasa and Yamashina (1931). All of the Micronesian bridled white-eyes were then placed under one species, *Z. conspicillatus*, by Stresemann (1931). Later, the bridled white-eyes in the Mariana Islands were recognized as three separate subspecies: *Z. c. rotensis* (Rota); *Z. c. saypani* (Saipan and Tinian); and *Z. c. conspicillatus* (Guam) (Fancy and Snetsinger 1996). However, the Rota bridled white-eye has been considered to be a full species, *Z. rotensis*, on the basis of unpublished differences in plumage, vocalizations, and behavior (H. D. Pratt, *in litt.* 1994, as cited in Collar *et al.* 1994). Recent genetic evidence from mitochondrial DNA sequences (Slikas *et al.* 2000) supported the recognition of the species proposed by Pratt *et al.* (1987), and also showed that two distinct lineages occur within the Marianas, one on Guam, Saipan, Tinian, and Aguijan, and the other on Rota. Both recent authorities on the taxonomy of Micronesian white-eyes thus agree that the Rota population is distinct from others in the Marianas and should be recognized as a separate species, which therefore is referred to here as the Rota bridled white-eye (*Z. rotensis*).

The most extensive work on bridled white-eye foraging and social behavior was conducted on Saipan. Craig (1989, 1990) found that bridled white-eyes on Saipan forage in flocks of 10 to 40

individuals in the upper outer layers in the leaves of trees in both limestone forests and *Leucaena leucocephala* (tangantangan) thickets. Bridled white-eyes on Saipan and Guam have also been recorded in other habitats, including suburban areas, beach strand, wetlands, and grasslands (Craig 1996; Jenkins 1983). They forage primarily by gleaning insects from leaves in the upper, outer layers of trees, but also feed on seeds, nectar, flowers, and fruits (Craig 1996).

Foraging behaviors recorded by Craig and Taisacan (1994) found that the foraging behavior of the Rota bridled white-eye appeared similar to that of bridled white-eyes on Saipan. Most foraging took place in the upper, outer layer of canopy trees where they gleaned for insects on leaves and branches. They are known to forage in trees that are 15 cm (6 in) in diameter at breast height (dbh) or smaller (Fred Amidon, pers. comm. 1999). The tree species commonly used by white-eyes on Saipan for foraging were not recorded by Craig (1989, 1990). However, Amidon (2000) commonly observed Rota bridled white-eyes foraging in upper leaves and branches of *Elaeocarpus joga* (yoga), *Hernandia labyrinthica* (oschal), and *Merrilliodendron megacarpum* (faniok).

The typical flock of Rota bridled white-eyes consists of five to seven birds, which is small compared to those on Saipan; this may be due to low numbers of birds on Rota. Craig and Taisacan (1994) believe the white-eye flocks on Rota may be composed of related individuals, based upon their observations of frequent food begging in the flocks. The home ranges of the flocks are estimated to be at least 150 meters (m) (495 feet (ft)) in diameter (Craig and Taisacan 1994).

Very little is known about the breeding biology of the Rota bridled white-eye. Twenty-three nests have been recorded (Yamashina 1932; Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). The smallest nest tree dbh recorded was 23 cm (9 in) (Amidon 2000). The discovery dates of these nests indicate that the breeding season extends at least from December to August. However, a year-round breeding season may be more likely, as indicated by breeding records of bridled white-eye species and subspecies (Marshall 1949; Jenkins 1983). The recorded clutch sizes from four Rota bridled white-eye nests were one to two light blue eggs (Yamashina 1932; Amidon *et al.* unpublished data). Descriptions of eggs of other Mariana bridled white-eyes indicates that completed clutches consist of two to three light blue-green

eggs (Yamashina 1932; Jenkins 1983). Observations of 7 active nests by Amidon (2000) indicate incubation and nestling periods of at least 10 and up to 12 days and an observation of one banded nestling indicates a fledgling period of at least 8 days. Rota bridled white-eye nests were commonly suspended between branchlets and leaf petioles and were composed of rootlets, woven grass or *Pandanus* spp. fibers, moss, spider webs, and a yellow cottony material (Lusk and Taisacan 1997; Amidon 2000). Nests were found above 320 m (1056 ft) elevation in *Hernandia labyrinthica*, *Elaeocarpus joga*, *Merrilliodendron megacarpum*, and *Acacia confusa* (sosugi) trees with dbh between 23 cm (9 in) and 602 cm (237 in) (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000).

Very little is known about the past distribution and abundance of bridled white-eyes on Rota. Early descriptions by Baker (1948) described this species as numerous and found at lower elevations. Residents of Rota during the post World War II years also remember seeing white-eyes at low elevations in Songsong Village (Engbring *et al.* 1986). However, in 1975, Pratt *et al.* (1979) found no white-eyes in the lowland areas and only observed birds on the central plateau. The current distribution of Rota bridled white-eyes indicates that the highest densities are found in the high-elevation wet limestone forests (Fancy and Snetsinger 1996; Amidon 2000). All Rota bridled white-eye nests with recorded locations (22 out of 23 nests) were also recorded in high-elevation wet forest (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). Whether this distribution is the result of habitat preference or is simply an artifact of the population decline is unknown; however, the species appears to have been mostly limited to the upper elevation forests since at least the 1960s (Fancy and Snetsinger 1996).

In 1977, a survey was conducted only on the upper plateau and densities were estimated white-eye densities to be 22 birds/km<sup>2</sup> (35 birds/mi<sup>2</sup>) (Ralph and Sakai (1979). The first island-wide survey of forest birds was conducted in 1982. During this survey, bridled white-eyes were only found in forested areas above 300 m (984 ft) (Engbring *et al.* 1986). The average bridled white-eye density on Rota was determined to be 183 birds/km<sup>2</sup> (292 birds/mi<sup>2</sup>) (1/16 the average density on Tinian) with an island population estimate of 10,763 birds. Other surveys following the 1982 survey showed little change in the white-eye distribution, but did show a decline in white-eye numbers (Engbring 1987, 1989; Craig and Taisacan 1994). In

a 1994 survey, it was found that densities had decreased by 27 percent (155 birds/km<sup>2</sup> (248 birds/mi<sup>2</sup>)) from the 1982 estimate (Ramsey and Harrod 1995). In the fall of 1996, a survey by Fancy and Snetsinger (1996) estimated the population of Rota bridled white-eyes to be 1,167 birds. This estimate indicated an 89 percent decline from the 1982 estimate. In addition, this survey determined that the population was restricted primarily to four patches of forest covering an area of about 254 hectares (ha) (628 acres (ac)) above 200 m (656 ft) elevation. Ninety-four percent of the Rota bridled white-eyes were found to occur in these patches. The white-eye population was estimated to be at 1,092 after a survey conducted in 1999 (Amidon 2000).

Forests in these four high-density areas can be described as a type of cloud forest because of the cloud buildup over the central plateau region, which results in flourishing wet forests with growths of epiphytic ferns and orchids (Fosberg 1960; Falanruw *et al.* 1989). Amidon (2000) found that the primary overstory component of three of the four high-density Rota bridled white-eye areas is *Hernandia labyrinthica* with *Elaeocarpus joga*. The remaining area is almost exclusively made up of *Merrilliodendron megacarpum* in the overstory.

Currently, 85 percent of the Rota bridled white-eye population occurs on public lands and 15 percent occurs on private lands. There is no U.S. government-owned land in the CNMI; all public lands are administered by the CNMI government. Approximately 60 percent of the land on Rota is publicly owned, although much of it has been leased to private individuals.

The Rota bridled white-eye is listed as a critically endangered species in the most recent list of threatened animals of the world by the World Conservation Union (IUCN) (1999). The IUCN list provides an assessment of the conservation status of species on a global scale in order to highlight species threatened with extinction and, therefore, promote their conservation. A critically endangered species is one facing an extremely high risk of extinction in the wild in the immediate future. Also, in 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered.

#### Previous Federal Action

Federal action on the Rota bridled white-eye began when we published a Notice of Review in the **Federal Register** on December 30, 1982 (47 FR 58454). The Rota bridled white-eye was included as a Category 2 candidate for

Federal listing. Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. Subsequent Notices of Review published on September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804) also listed this species as a Category 2 species.

In the November 15, 1994, Notice of Review (59 FR 58982), the Rota bridled white-eye was moved from a Category 2 candidate to a Category 1 candidate for Federal listing. Category 1 species were those for which we had on file substantial information on biological vulnerability and threats to support preparations of listing proposals, but for which listing proposals had not yet been published because they were precluded by other listing activities.

In the February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), Candidate Notices of Review, we discontinued category designations and the Rota bridled white-eye was listed as a candidate species. We define candidate species as those for which we have sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

#### Summary of Factors Affecting the Species

Section 4 of the Act and our regulations (50 CFR part 424) issued to implement the listing provisions of the Act established the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Rota bridled white-eye (*Zosterops rotensis*) are listed below.

##### A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Mariana Islands were believed to have been colonized by humans at least 4,000 years ago (Craib 1983). Before European contact, the island of Rota was thought to have had a large population of people who moved into the area from insular southeast Asia and Melanesia, and who modified most of the island's vegetation (Fosberg 1960). During the Spanish administration (1521 to 1899), the island was largely depopulated, and the vegetation probably recovered on most of the island until the Japanese administration from 1914 to 1944 (Fosberg 1960; Engbring *et al.* 1986). During the Japanese administration, much of the level land was cleared for

sugar cane cultivation, and areas on the upper terrace were cleared for phosphate mining (Fosberg 1960; Engbring *et al.* 1986). Rota was not invaded during World War II, but was bombed (Engbring *et al.* 1986). In 1946, one-fourth of the total area of Rota was covered in well-developed forest, but this was broken into small parcels or located along the base of cliffs (Fosberg 1960). By the mid-1980s, Engbring *et al.* (1986) reported that 60 percent of Rota was composed of native forest, although a good portion of this was in an altered condition. The most mature native forests were found along the cliffs of the upper plateau, with the forests on level portions of the island being primarily secondary growth. Today, less than 58 percent of the native limestone forest remains (Falanruw *et al.* 1989), and plans for further projects, such as agricultural homesteads and resort development in the As Mundo area, continue to threaten the remaining limestone forest, and the available habitat for the Rota bridled white-eye.

Although the habitat in the limestone forest is threatened, the majority of the high-elevation forests along the upper plateau have not been threatened by development and clearing in the past because of their rugged topography. They have, however, received extensive typhoon damage in recent years. In 1988, typhoon Roy hit Rota with winds of over 241 kilometers per hour (150 miles per hour) and completely defoliated almost all of the forests of Rota (Fancy and Snetsinger 1996). In some areas, 50 percent of trees were downed, and 100 percent suffered limb damage. The wet forests of the upper cliffline were drastically altered by this storm and have not recovered well (Fancy and Snetsinger 1996). In December 1997, super typhoon Paka hit Rota, and much of the upper plateau was defoliated again. These storms have limited the available nesting and foraging sites for the Rota bridled white-eye.

##### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Valued for their songs, some species and subspecies of white-eyes are kept as pets in Asian countries (Moreau and Kikkawa 1985). However, there are no reports of Rota bridled white-eyes in the pet trade. Unrestricted collecting or hunting is not known to be a factor currently affecting this species. Vandalism may be a potential concern for this species. For example, on Rota, rare plants have been the target of vandals who feared the plant's existence was an impediment to development

(Raulerson and Rinehart 1997). However, we have no evidence of such vandalism directly affecting Rota bridled white-eyes.

#### C. Disease or Predation

Black drongos (*Dicrurus macrocercus*), also known as king crow, are thought to have been introduced to Rota from Taiwan by the Japanese South Seas Development Company in 1935 to control destructive insects (Baker 1948). Black drongos are noted for their aggression toward and occasional predation on small passerines (Ali and Ripley 1972; Maben 1982). On Guam, black drongos have been observed eating an Eurasian tree sparrow (*Passer montanus*) (Maben 1982), rufous fantails (*Rhipidura rufifrons*), a Guam swiftlet (*Collocalia bartschi*) (Perez 1968), and either a bridled white-eye or a Guam flycatcher (*Myiagra freycineti*) (Drahos 1977). A black drongo was observed eating a bridled white-eye on Rota (Amidon 2000). Maben (1982) observed black drongos harassing birds such as native and introduced doves (Order Columbidae), cardinal (Micronesian) honeyeaters (*Myzomela rubratra*), and Micronesian starlings (*Aplonis opaca*). Harassment by the drongo of potential predators like crows and raptors has also been noted (Ali and Ripley 1972; Maben 1982; Melville 1991).

Craig and Taisacan (1994) believe that a relationship exists between the abundance of black drongos and the decline and range restriction of the bridled white-eye on Rota. They believe the distributions of black drongos and potential prey, like the Rota bridled white-eye and the rufous fantail, show that black drongo predation may be a factor in the decline of these species. Engbring *et al.* (1986) found black drongos abundant in lowlands and uncommon in the forests of the upper plateau where the Rota bridled white-eye is found. In lowland areas, the rufous fantail was also found to be uncommon, while birds too large to be prey of black drongos were abundant (Engbring *et al.* 1986).

On the other hand, Fancy and Snetsinger (1996) believe that black drongos could not be responsible for the distributional changes and population decline of the white-eye. Studies of black drongos on Guam by Maben (1982) found that, although they would harass other birds, black drongos did not regularly attempt to prey on them. Birds have also been reported to forage within black drongo territories and nest near active black drongo nests without harassment (Ali and Ripley 1972; Shukkur and Joseph 1980; Maben 1982). Michael Lusk of the Service

(unpublished data) observed no interactions between black drongos and Rota bridled white-eyes during a 1993–1994 study of their interactions on Rota (cited in Fancy and Snetsinger 1996). However, it is possible that black drongo predation or harassment may be limiting the recovery of the bridled white-eye on Rota (Fancy and Snetsinger 1996).

The brown tree snake (*Boiga irregularis*) was found to be the major factor in the decline of native forest birds on Guam (Savidge 1986, 1987). There have been 43 sightings and 8 captures of brown tree snakes on Saipan since 1982 (Grant Beauprez, CNMI Department of Fish and Wildlife, *in litt.* 2000), and a population of this voracious predator may now be established on Saipan (Vogt 2000). Presently, no observations of live brown tree snakes have been recorded on Rota, although two dead, confirmed brown tree snakes have been found on Rota (Rodda, pers. comm. 1998). Fancy and Snetsinger (1996) do not believe that brown tree snakes are the likely cause of the Rota bridled white-eye decline. The Rota bridled white-eye decline has been island-wide and has not followed the pattern that occurred on Guam in which the range expansion of the brown tree snake correlated with the range contraction of forest birds (Savidge 1987). Also, the densities of rats on Rota appear very high and would have declined if snakes were a problem on the island. However, given that the brown tree snake exists on Guam and may now exist in Saipan, and that two dead brown tree snakes were found on Rota, the accidental introduction of the brown tree snake to Rota is a constant potential threat.

Two species of introduced rat, Asian house rat (*Rattus tanezumii*) and Polynesian rat (*R. exulans*), have been recorded on Rota (Johnson 1962; Flannery 1995). Recent work by Service personnel on Rota, and opportunistic trapping and observations for the Guam rail release program, have indicated that high densities of rats exist on Rota (Fancy and Snetsinger 1996). Introduced rats have been found to be important predators of native birds in Hawaii, New Zealand, and other Pacific Islands (Atkinson 1977, 1985; Robertson *et al.* 1994). However, the role of rats in the population decline and range restriction of the Rota bridled white-eye is unknown. Fancy and Snetsinger (1996) indicated that other causes may have led to the decline, but did not rule out the possibility that rat predation may be an important mortality factor for Rota bridled white-eyes.

Disease has also been implicated as a potential cause for the population decline and range restriction of the Rota bridled white-eye. In Hawaii, research has indicated that avian disease was a significant factor in the decline and distributional change of the native avifauna (van Riper *et al.* 1986, Warner 1968). Observations made by biologists and veterinarians who have worked on Rota, however, do not indicate the presence of pathogens or of an epidemic occurring there (Fancy and Snetsinger 1996, Pratt 1983). Research on Guam has not revealed the presence of significant levels of disease (Savidge 1986). The presence of the haematozoans *Plasmodium* spp. (Savidge 1986) and *Haemoproteus* spp. (Marshall 1949; Savidge 1986) in bridled white-eyes on Saipan has been reported. However, these parasites were considered to be relatively benign based on the good physical condition of the birds (Savidge 1986). Since no studies on the presence and effect of disease on the native birds of Rota have been conducted, the effects of disease on the decline and range restriction of the Rota bridled white-eye remains unclear.

#### D. The Inadequacy of Existing Regulatory Mechanisms

In 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered (the CNMI makes no distinction between the threatened and endangered categories) (Public Law 2–51). However, no regulations prohibit the taking of CNMI threatened and endangered species (Kevin Garlick, Service, *in litt.* 1997).

A current activity that may provide some help in stabilization and protection for this bird on Rota is designation of the Sabana Protected Area (Area). The Area occurs on a plateau of shifting agricultural lands within a mosaic of native forest, and was designated as a protected area in 1994 through Rota Local Law No. 9–1 (Sabana Protected Area Management Committee 1996). A plan was developed to manage the Area as part of an effort by the CNMI government to limit development in this upper elevation area (Sabana Protected Area Management Committee 1996). Zones of activities have been designated for the Area, with rules established for each zone. A number of activities can occur in the Area in certain zones, such as farming, hunting, forestry, and medicinal use of plants. Many of these activities require a permit from the CNMI Department of Lands and Natural Resources. Conservation zones within the Area have been established in areas critical to the continued survival of bats

on Rota (Sabana Protected Area Management Committee 1996). These conservation zones also correspond to most of the current range of the Rota bridled white-eye. However, vegetation that is 15 cm (6 in.) dbh or less may be permitted to be removed in certain zones, including the bat conservation zone. Removal of this vegetation may have negative effects on the bridled white-eye nesting and foraging habitat. While preservation of these forested areas is believed to also be essential for the long-term stability of the Rota bridled white-eye, not all of the species' habitat occurs within the Sabana Protected Area. Since the Rota bridled white-eye is not protected from take as a CNMI-listed species, and since the Sabana Protected Area affords some, but likely inadequate, habitat protection for this species, regulatory mechanisms to protect this species are inadequate.

#### *E. Other Natural or Manmade Factors Affecting its Continued Existence*

The use of pesticides has been implicated as a potential factor in the decline of the Rota bridled white-eye (Fancy and Snetsinger 1996). However, little information is available on the use of pesticides in the post World War II Mariana Islands. The U.S. military is reported to have liberally applied DDT (1, 1-bis (chlorophenyl)-2, 2, 2 trichloroethane) on the Mariana Islands during and after WWII (Baker 1946; Grue 1985). Pesticide use on Guam was implicated as a potential factor in the decline of Guam's avifauna (Jenkins 1983; Diamond 1984). But concentrations of DDT and DDE (1, 1-bis (chlorophenyl)-2, 2-dichloroethane) in swiftlet carcasses and guano were considered to be too low to cause mortality or reproductive failure (Grue 1985; Savidge 1986). The insecticide malathion was also used to control the introduced melon fly (*Dacus cucurbitae*) in 1988 and 1989 on Rota (Engbring 1989). However, a study to monitor the status of birds on Rota before and after the insecticide application did not detect any adverse effects on populations there (Engbring 1989). Approximately 90 to 95 percent of crops grown on Rota are root crops, such as sweet potato and taro, so pesticide use tends to be minimal. The most commonly used insecticides on Rota are diazinon, sevin, and malathion, which are used to control insects on vegetables and livestock (John Morton, Service, pers. comm. 1998). It is not known what impacts these insecticides have on the Rota bridled white-eye.

The small population size and limited distribution of the Rota bridled white-eye places this species at risk from

naturally occurring events and environmental factors. Typhoons, in particular, pose a serious threat, directly and indirectly, to the white-eye and other avian populations (Wiley and Wunderle 1993). Direct effects include mortality from winds and rains. Indirect effects include the loss of food supplies, foraging habitat substrates, nests, nest and roost sites, and microclimate changes. For example, in December 1997, super typhoon Paka defoliated trees and removed large amounts of epiphytic growth and associated organic matter from the limestone forests of Rota (John Morton, pers. comm. 1998). This may have resulted in lower quality habitat and decreased availability of nesting material for the Rota bridled white-eye.

We have carefully evaluated the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, we propose to list the Rota bridled white-eye as endangered. The Rota bridled white-eye is endemic to the island of Rota, and its population has declined an estimated 89 percent over the past 16 years. This species is threatened by one or more of the following: Habitat degradation or loss due to development, agricultural activities, and naturally occurring events such as typhoons; avian disease; predation by black drongos, rats, and potentially the brown tree snake; pesticides; and inadequate existing regulatory mechanisms. The small population size and limited distribution makes this species particularly vulnerable to extinction from random environmental events. Because the Rota bridled white-eye is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

#### **Critical Habitat**

Critical habitat is defined in section 3 of the Act as 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 essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary 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.

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) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the 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.

We find that designating critical habitat is prudent for the Rota bridled white-eye. Consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of 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 modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation would be triggered only if critical habitat is designated—for example, unoccupied habitat that may become occupied in the future. Some educational or informational benefits also may result from designation of critical habitat.

Because of the sharp population decline and currently precariously low numbers of Rota bridled white-eye individuals, we are not spending resources on the proposal of critical

habitat with the proposal to list this species. Section 4(b)(6)(C) of the Act states that the final critical habitat designation shall be published with the final listing determination unless

“\* \* \* (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; \* \* \*”

We will develop a proposal to designate critical habitat for the Rota bridled white-eye as soon as feasible given our financial constraints and in coordination with the priority of other listing actions.

#### Available Conservation Measures

Conservation measures provided to endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with States and requires that recovery plans be developed for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies 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. If a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us, under section 7(a)(2) of the Act.

Federal agency actions that may require conference or consultation include U.S. Army Corps of Engineers involvement in projects such as the construction of roads and bridges;

Natural Resource Conservation Service projects; Federal Emergency Management Agency activities; and U.S. Department of Housing and Urban Development projects.

There are no federally owned lands on the island of Rota. Parts of Rota have been used as, or are under consideration for use as, training areas by U.S. armed forces. In the past, some military training has occurred at the Rota airport and on Angyuta, an island near the commercial port. Neither area contains native limestone forest. Federally supported activities that could affect the Rota bridled white-eye or its habitat in the future include, but are not limited to, low-level helicopter maneuvers over areas occupied by Rota bridled white-eyes.

Listing the Rota bridled white-eye provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.21 for endangered species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th, Avenue, Portland, Oregon 97232-4181, (telephone 503/231-2063; facsimile 503/231-6243).

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely be a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the species. We believe that permitted scientific activities or recreational activities within forested areas that support populations of bridled white-eyes would not likely result in a violation of section 9.

Activities that we believe could potentially harm the Rota bridled white-eye, and would likely violate section 9, include, but are not limited to:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, transporting, or shipping of the species;

(2) Intentional introduction of exotic species that compete with or prey on bird species, such as the introduction of the predatory brown tree snake to islands that support bird populations;

(3) Activities that disturb bridled white-eyes from nesting sites and feeding areas, and unauthorized destruction or alteration of forested areas required by the bridled white-eye for foraging, perching, breeding, or rearing young; and

(4) Engaging in the unauthorized import or export of this bird or interstate and foreign commerce (commerce across State lines and international boundaries).

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of our Pacific Islands Office (see **ADDRESSES** section).

#### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

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

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

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods, as listed above in **ADDRESSES**. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018-A116]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541-3441. Please note that this e-mail address will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available

for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of the proposal in the **Federal Register**. Address your requests to the Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**National Environmental Policy Act**

We have determined that an environmental impact statement and environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Paperwork Reduction Act**

This rule does not contain any collections of information that require

Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered animal species, see 50 CFR 17.22.

**References Cited**

A complete list of all references cited in this proposal is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

**Author**

The primary author of this proposed rule is Leila Gibson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

\* \* \* \* \*  
BIRDS

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* White-eye, Rota bridled.	* <i>Zosterops rotensis</i>	* Western Pacific Ocean—U.S.A. (Commonwealth of the Northern Mariana Islands).	* Entire .....	* E	*	*	* NA
*	*	*	*	*	*	*	*

Dated: September 27, 2001.  
**Marshall P. Jones, Jr.**,  
*Director, Fish and Wildlife Service.*  
 [FR Doc. 01-24659 Filed 10-2-01; 8:45 am]  
**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

[Docket No. 001128334-1239-04; I.D. 092401E]

RIN 0648-AN88

**Marine Mammals; Atlantic Large Whale Take Reduction Plan (ALWTRP) Regulations; Seasonal Area Management (SAM) Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking (ANPR); notice of intent (NOI) to prepare an Environmental Impact Statement (EIS); request for comments.

**SUMMARY:** NMFS is preparing regulations to implement a Seasonal Area Management (SAM) program to seasonally limit fishing operations in certain areas, which was identified as a measure under the reasonable and prudent alternative (RPA) contained in the Biological Opinions (BOs) prepared for the Federal Northeast multispecies (multispecies), monkfish, spiny dogfish, and American lobster (lobster) fisheries under the Endangered Species Act (ESA). The SAM program is intended to provide endangered western North Atlantic right whales (right whales) protection from entanglement with fishing gear used in those fisheries. The measures that have been identified for proposed rulemaking would require the reduction, elimination, and/or modification of certain types of fixed gear (i.e., gillnets and lobster traps) in

specific areas off the Atlantic coast of the United States during times of the year when right whales are known to be present in significant concentrations. NMFS also announces its intention to prepare an Environmental Impact Statement (EIS) for the SAM regulations, in accordance with the National Environmental Policy Act (NEPA), to analyze impacts to the environment of the management alternatives under consideration.

**DATES:** Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. local time on November 2, 2001.

**ADDRESSES:** Written comments should be sent to: Mary Colligan, Acting Assistant Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax to 978-281-9394. Comments submitted via e-mail or Internet will not be accepted. Copies of the BOs may be requested from the above address or can be downloaded from the internet at the following website: <http://www.nmfs.noaa.gov/prot-res/overview/publicat.html>.

**FOR FURTHER INFORMATION CONTACT:** Gregg LaMontagne, NMFS, Northeast Region, 978-281-9291, fax 978-281-9394; Katherine Wang, NMFS, Southeast Region, 727-570-5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

**Background**

In compliance with the Endangered Species Act (ESA)(16 U.S.C. 1531 *et seq.*) section 7 consultation procedures, NMFS prepared Biological Opinions (BOs) for the continued authorization of Federal fisheries under the Fishery Management Plans for the multispecies, spiny dogfish, and monkfish fisheries, and under the Federal regulations for the lobster fishery, to assess the impacts of those fisheries on species protected under the ESA. Previous ESA section 7 consultations on those fisheries

incorporated the Atlantic Large Whale Take Reduction Plan (ALWTRP) as an RPA to avoid the likelihood of jeopardy to right whales from the multispecies, dogfish, and monkfish gillnet fisheries and the lobster trap fishery. NMFS published a proposed rule on April 7, 1997 (62 FR 16519), followed by an interim final rule on July 22, 1997 (62 FR 39157), that contained the provisions of the ALWTRP and implementing regulations. NMFS published an interim final rule that implemented time and area closures, gear requirements, and a prohibition on storing inactive gear at sea, and contained other, non-regulatory measures (e.g., gear research, public outreach, scientific research) intended to reduce serious injury and mortality to four large whale stocks, including right whales.

On February 16, 1999, NMFS published a final rule (64 FR 7529) that made changes to the interim final rule implementing the ALWTRP. On December 21, 2000, NMFS published an interim final rule (65 FR 80368) to implement additional measures (buoy line weak links, net panel weak links with anchoring systems, restrictions on numbers of buoy lines, and gear marking requirements) in response to continued entanglements of right whales with gear used in the multispecies, monkfish, spiny dogfish, and lobster trap fisheries.

NMFS reinitiated consultation on May 4, 2000, for the northeast multispecies, spiny dogfish and monkfish gillnet fisheries, and on June 22, 2000, for the Federal regulations for the lobster fishery, following new whale entanglements resulting in serious injuries, at least one right whale mortality in gillnet gear, new information indicating a declining status for western North Atlantic right whales (Caswell et al. 1999), and revisions to the ALWTRP. In previous consultations, the ALWTRP had been accepted as a reasonable and prudent alternative (RPA) to avoid the likelihood of jeopardy to right whales from these