

the DOT's Regulatory Policies and Procedures. With respect to the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, it will serve to increase the number of qualified SAPs available to employees and employers.

The Department is issuing this as a final rule without opportunity for notice and public comment. The Department determined that doing so would be impracticable, unnecessary, and contrary to the public interest because the parameters for the Department's decisions with regard to counselor certification groups have been long established in part 40 and have been amply commented upon previously. In addition, our review, verification, and corroboration process of NBCC's petition and documentation were very comprehensive and followed the review criteria in appendix E to part 40. Finally, an immediate increase in the number of those counselors eligible to become SAPs will be realized within the transportation industries near to part 40's SAP "qualification training" deadline, which was December 31, 2003.

For the same good cause and reasons stated in the above paragraph, the Department is issuing this final rule with an immediate effective date rather than one 30 days from date of publication.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Dated: January 13, 2004.

Norman Y. Mineta,
Secretary of Transportation.

■ For reasons set forth in the preamble, the Department of Transportation amends part 40 Title 49, Code of Federal Regulations, as follows:

PART 40—[AMENDED]

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45102 *et seq.*

■ 2. Revise § 40.281(a)(5) to read as follows:

§ 40.281 Who is qualified to act as a SAP?

(a) * * *

(5) You are a drug and alcohol counselor certified by the National Association of Alcoholism and Drug

Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI16

Endangered and Threatened Wildlife and Plants; 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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine 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-eye endemic to the island of Rota, Commonwealth of the Northern Mariana Islands. The Rota bridled white-eye 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, representing a decline of 89 percent from the 1982 estimated population of 10,763 individuals. The Rota bridled white-eye has continued to decline: In 1999, the population estimate was approximately 1,092 individuals. The Rota bridled white-eye is currently found in four patches of mature wet forest at elevations above 200 meters (650 feet). The reasons for this species' decline are likely the degradation or loss of habitat due to development, agricultural activities, and naturally occurring events; avian disease; predation; and pesticides. This final rule implements the protection provisions of the Act.

DATES: This rule is effective February 23, 2004.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and

Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850.

To request copies of regulations on listed species, or for inquiries on prohibitions and permits, write or visit the Service's Portland Office, U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE., 11th Avenue, Portland, OR 97232-4181.

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Assistant Field Supervisor, at the Pacific Islands Fish and Wildlife Office (*see ADDRESSES* section) (telephone (808) 792-9400; facsimile (808) 792-9580).

Endangered Species, Portland Office (*see ADDRESSES* section) (telephone (503) 231-2063; facsimile (503) 231-6243).

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). The fourth largest island in the Mariana Archipelago, Rota is approximately 86 square kilometers (km²) (33 square miles (mi²)), and 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 adult 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).

All of the bridled white-eyes in Micronesia, including the Rota bridled white-eye, were placed under one species, *Zosterops 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) (Mees 1969). However, the Rota bridled white-eye is now considered to be a full species, *Z. rotensis*, on the basis of recent genetic evidence from mitochondrial DNA sequences (Slikas *et al.* 2000) and unpublished differences in plumage, vocalizations, and behavior (H. D. Pratt, *in litt.* 1994, as cited in Collar *et al.* 1994).

Rota bridled white-eyes are primarily found in native forests and introduced *Acacia confusa* (sosugi) forests at upper elevations in Rota's Sabana region (Amidon 2000). On Saipan and Guam, bridled white-eyes were recorded at a wide range of elevations in native and introduced forests, suburban areas, beach strands, wetlands, and grasslands at a wide range of elevations (Craig 1996; Jenkins 1983). Rota bridled white-eyes forage primarily by gleaning insects from leaves in the upper, outer layers of trees, but also feed on seeds, nectar, flowers, and fruits (Craig and Taisacan 1994; Amidon 2000). The majority of the foraging observations were recorded in *Elaeocarpus joga* (yoga) trees (Amidon 2000). However, these birds have also been observed foraging in eight other tree species, including *Hernandia labyrinthica* (oschal), *Merrilliodendron megacarpum* (faniok), and *sosugi* (Amidon 2000).

Rota bridled white-eyes are highly gregarious and are often observed foraging in small groups of five to seven birds (Craig and Taisacan 1994). These foraging groups sometimes include rufous fantails (*Rhipidura rufifrons*) (Amidon 2000). Historically, flock sizes were larger, but available evidence indicates that group sizes have decreased as the population has declined (Craig 1989; Craig and Taisacan 1994; Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001). Home ranges of Rota bridled white-eye 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), and 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). Clutches from four Rota bridled white-eye nests consisted of one

to two light blue eggs (Yamashina 1932; Amidon 2000). Observations of 7 active nests by Amidon (2000) indicate incubation and nestling periods of at least 10 and up to 12 days, and observations of 1 banded nestling indicates a fledgling period of at least 8 days. Nests were found above 320 m (1,056 ft) elevation in oschal, yoga, faniok, and sosugi trees with diameter at breast height (dbh) between 23 cm (9 in) and 60.2 cm (24 in) (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). 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 cotton-like material (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 observed birds in the Sabana region only at upper elevations. The current distribution of Rota bridled white-eyes indicates that the highest densities are found in the high-elevation wet forests on the Sabana (Amidon 2000; Fancy and Snetsinger 2001). Most 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 population decline is unknown; however, the species appears to have been mostly limited to this distribution since at least the 1960s (Fancy and Snetsinger 2001).

In 1977, a bird survey, conducted only on the Sabana, estimated Rota bridled white-eye densities to be 22 birds/km² (35 birds/mi²) (Ralph and Sakai 1979). The first island-wide survey of forest birds was conducted in 1982. During this survey, bridled white-eyes were found only 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/km² (292 birds/mi²), 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). A 1994 survey found that densities had

decreased 27 percent (155 birds/km² (248 birds/mi²)) from the 1982 estimate (Ramsey and Harrod 1995). In the fall of 1996, a survey by Fancy and Snetsinger (2001) 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. In 1999, survey work by Amidon (2000) estimated the Rota bridled white-eye population to be 1,092 within the high-density areas identified by Fancy and Snetsinger (2001).

The forest in these four high-density areas can be described as a type of cloud forest, with growths of epiphytic ferns and orchids, because of the cloud buildup over the Sabana region (Fosberg 1960; Falanruw *et al.* 1989). Amidon (2000) found that the primary overstory components of three of the four high-density Rota bridled white-eye areas were oschal and yoga. The remaining area of the overstory was almost exclusively faniok.

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 Mariana Public Land Authority for people of Mariana Island descent. Approximately 60 percent of the land on Rota is administered by the Mariana Public Land Authority, 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) (2002). 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. According to the IUCN, 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 (the CNMI makes no distinction between the threatened and endangered categories).

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 publication of a proposed rule. 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 designated 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 listed the Rota bridled white-eye as listed as a candidate species. We define candidate species as those for which we have sufficient information on biological vulnerability and threats to support a proposal to list the species as threatened or endangered.

On August 29, 2001, a settlement agreement was announced between the Service, the Center for Biological Diversity, and others regarding endangered species litigation. The terms of agreement required that the Service submit to the **Federal Register**, on or by September 29, 2001, a proposed rule to list the Rota bridled white-eye as endangered. On October 3, 2001, we published a proposed rule to list the species as endangered (66 FR 50383). Because all available listing funds in 2002 were used to fund the proposal and designation of critical habitat for other species required by court order, we were not able to finalize our decision to list the Rota bridled white-eye. On August 22, 2002, the U.S. District Court in Hawaii approved an agreement between the Service and the Center for Biological Diversity to modify the court-ordered deadlines for submitting final critical habitat designations for the Kauai cave amphipod (*Spelaeorchestia koloana*), Kauai cave wolf spider (*Adelocosa anops*), and Blackburn's sphinx moth (*Manduca blackburni*). In consideration for an extension of time on these critical habitat proposals, the Service committed to take final action

on the proposal to list the Rota bridled white-eye by January 15, 2004.

Summary of Comments and Recommendations

In the proposed rule (66 FR 50383), we requested that all interested parties submit comments on the proposal. We also contacted all appropriate Commonwealth and Federal agencies, local governments, landowners, and other interested parties and invited them to comment. The comment period closed on December 3, 2001 (66 FR 50383).

During the public comment period, we received five comment letters. Commenters included one Federal agency, two organizations, and two individuals. We did not receive any comments from State agencies. In total, none of the commenters opposed the listing, three supported the listing, and two were neutral.

This final rule incorporates and addresses comments and information we received during the comment period. We address substantive comments concerning the rule below. Comments of a similar nature are grouped together.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 43270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the Rota bridled white-eye. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Information and suggestions provided by reviewers were incorporated or addressed as applicable.

We received peer reviews from three experts. All agreed that the Rota bridled white-eye is imperiled throughout its range, and that the proposed rule was based on scientifically sound data, assumptions, and analysis. These experts' comments are incorporated in the final rule and summarized in the following responses to comments.

Comment 1: Several commenters stated that critical habitat should have been proposed for the Rota bridled white-eye at the time the proposed rule was published. Two peer reviewers and two commenters suggested that critical habitat be designated as soon as possible.

Our Response: As stated in the proposed rule, we believe that designation of critical habitat for the Rota bridled white-eye would be prudent. However, due to our limited listing budget, we are not able to propose critical habitat for the Rota bridled white-eye at this time and it is essential to the conservation of the species that this final listing decision be published promptly. See 16 U.S.C. 1533(b)(6)(c)(i). When funds become available, we will propose critical habitat for the Rota bridled white-eye as required under section 4(a)(3) of the Act.

Comment 2: One commenter requested information on the plans that will be proposed for the recovery of the species.

Our Response: A recovery plan will be developed, in coordination with stakeholders. This plan will identify recovery objectives and describe specific management actions necessary to achieve the conservation and long-term survival of the species. We anticipate that these management actions will include habitat protection and restoration, and efforts to study and reduce Rota bridled white-eye mortality.

Comment 3: One commenter suggested that high mosquito densities within the Rota bridled white-eye's range and resulting blood loss should be considered a limiting factor.

Our Response: We do not agree that blood loss from high mosquito densities is having an impact on species survival. Compared to other areas of Rota, mosquito densities appear to be higher on the Sabana within the Rota bridled white-eye's range (Amidon pers. obs. 1999). However, high mosquito densities would also likely impact other bird species and reduce their abundance in this region. Review of bird survey results do not indicate that the abundance of native species differs between the Sabana region and other areas of the island (Amidon unpubl. data 2000).

Summary of Factors Affecting the Species

Section 4 of the Act and our regulations issued to implement the Act's listing provisions (50 CFR part 424) establish the procedures for adding species to the Federal List of Endangered and Threatened Species. We may determine a species 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 are as follows:

A. *The present or threatened destruction, modification, or*

curtailment of its habitat or range. The Mariana Islands are 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 human population that moved into the area from insular (interior) southeast Asia and Melanesia and modified most of the island's vegetation (Fosberg 1960). During the Spanish administration (1521–1899), 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, including areas on the Sabana, and additional areas were also cleared on the Sabana for phosphate mining (Fosberg 1960; Engbring *et al.* 1986). Rota was heavily bombed but not invaded during World War II (Engbring *et al.* 1986). In 1946, one-fourth of the total area of Rota was covered in well developed forest, but this was broken later 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 majority of the mature native forest was found along the cliffs of the upper plateau, with the forest on level portions of the island being mostly secondary growth. Today, less than 60 percent of the native limestone forest remains (Falanruw *et al.* 1989), and there are plans for further projects, such as agricultural homesteads and resort development in the As Mundo and As Rosalia areas, in the remaining limestone forest, and the available habitat for the Rota bridled white-eye.

Although the habitat in the limestone forest may be threatened by development, the majority of the high-elevation forests on the Sabana have not been subjected to development and large-scale clearing in the past because of their rugged topography. The forests have, however, received extensive typhoon damage in recent years, which has increased fragmentation and reduced the availability of breeding and foraging habitat. 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 the trees were downed, and 100 percent of the trees suffered limb damage. The wet forests of the upper cliffline were drastically altered by this

storm and have been heavily degraded (Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001). In December 1997, Supertyphoon Paka hit Rota, and much of the upper plateau was defoliated again. These storms have resulted in the degradation and destruction of high-elevation wet forests on Rota and have limited the available nesting and foraging sites for the Rota bridled white-eye. This habitat loss may be the primary factor in the range restriction and population decline of the Rota bridled white-eye over the last two decades (Amidon 2000; Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001).

Although land clearing on the Sabana has been limited, it may have played a part in the extent of typhoon damage to the forests on the Sabana. Clearings increased forest fragmentation on the Sabana, and thus increased the amount of forest edge, especially in the center and this increased forest exposure to typhoon damage. Probably the damage caused by typhoons might not have been as extensive if the forests on the Sabana had not been fragmented by land clearing.

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 is a potential concern for this species. Rare plants on Rota 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*), a bird species from Asia, was 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 were noted for their aggression toward and occasional predation on small passerines (Ali and Ripley 1972; Maben 1982). On Guam, black drongos were observed eating a Eurasian tree sparrow (*Passer montanus*) (Maben 1982), rufous fantails (*Rhipidura rufifrons*), a Mariana swiftlet (*Aerodramus bartschi*) (Perez 1968), and either a bridled white-eye or a Guam broadbill (*Myiagra freycineti*) (Drahos 2002). A black drongo was also observed eating a Rota bridled white-eye (Amidon 2000). In addition to predation, Maben (1982) observed black

drongos harassing native and introduced doves (Order Columbidae), cardinal (Micronesian) honeyeaters (*Myzomela rubratra*), and Micronesian starlings (*Aplonis opaca*). Drongos have also been observed harassing other potential drongo predators such as crows and raptors (Ali and Ripley 1972; Maben 1982; Melville 1991).

Craig and Taisacan (1994) believe that a relationship exists between the abundance and distribution of black drongos and the decline and range restriction of the Rota bridled white-eye. Engbring *et al.* (1986) found black drongos to be uncommon in the forests of the upper plateau, where the Rota bridled white-eye is found, and abundant in lowlands. In lowland areas, the rufous fantail, another potential prey species of the black drongo, was also found to be uncommon, while birds too large to be prey for black drongos were abundant (Engbring *et al.* 1986). Amidon (2000) analyzed 1982 and 1994 bird survey data and found that black drongo numbers had increased on the Sabana between 1982 and 1994, while Rota bridled white-eye numbers decreased. However, Amidon did not find a negative relationship between black drongo, Rota bridled white-eye, and rufous fantail abundance estimates at survey stations on the Sabana.

Not all researchers agree that the black drongo was the main factor in the decline and range restriction of the Rota bridled white-eye. Maben (1982) found that, although they would harass other birds on Guam, 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). In addition, Amidon (2000) observed only one black drongo predation on a Rota bridled white-eye over 11 months, despite efforts to record observations of black drongo predation on Rota bridled white-eyes. However, it is possible that black drongo predation or harassment, in combination with other factors, such as habitat loss, may be limiting the Rota bridled white-eye population (Amidon 2000; Fancy and Snetsinger 2001).

The brown treesnake (*Boiga irregularis*) is recognized as the major factor in the decline of native forest birds on Guam (Savidge 1986, 1987). There have been 46 sightings and 8 captures of brown treesnakes on Saipan

since 1982 (Nate Hawley, CNMI Department of Fish and Wildlife, *in litt.* 2002), and a population of this voracious predator may now be established on Saipan (Hawley, *in litt.* 2002). Presently, no observations of live brown treesnakes have been recorded on Rota, although two confirmed dead brown treesnakes have been found on Rota (Hawley, *in litt.* 2002). Currently, brown treesnakes are not believed to be a factor in the decline of the Rota bridled white-eye (Fancy and Snetsinger 2001). However, given that the brown treesnake is well established on Guam and may now be established on Saipan, and that two dead brown treesnakes were found on Rota, the accidental introduction of the brown treesnake to Rota is a serious potential threat.

Two species of introduced rat, Asian house rat (*Rattus tanezumi*) 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 2001). Introduced rats have been found to be major predators of native birds in Hawaii, New Zealand, and other Pacific Islands (Atkinson 1977, 1985; Robertson *et al.* 1994). It appears unlikely that rat predation is responsible for the Rota bridled white-eye's restricted distribution because rat numbers within their range are similar to other areas outside their range on Rota (Amidon 2000). However, rat predation may be limiting the recovery of the species and may, in combination with other factors, be playing a role in the population decline.

Avian disease has also been implicated as a potential factor in 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 an epidemic (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). In addition, 21 Rota bridled white-eyes captured by the MARS Project were sampled for avian disease, and no diseases were detected (Glenn Olsen, Biological Resources Division, pers. comm. 2000). However, no large-scale studies on the presence and effect of disease on the native birds of Rota have been conducted. Therefore, the role of avian disease in the decline and range restriction of the Rota bridled white-eye remains unclear. However, the accidental introduction of a new avian disease, such as West Nile virus, could also pose an additional threat to the species.

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, CNMI regulations do not prohibit the taking of CNMI-listed threatened and endangered species (Kevin Garlick, Service, *in litt.* 1997).

In addition to listing the species, the CNMI has also designated a protected area on the Sabana in 1994 through Rota Local Law No. 9–1 (Sabana Protected Area Management Committee 1996). A plan was developed to manage this protected 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 protected area, with rules established for each zone. A number of activities are allowed to occur in the protected 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 protected 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) diameter at breast height 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 Rota 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 its habitat occurs within the Sabana Protected Area. In the As Rosalia area, there are plans for projects such as agricultural homesteads and resort

development. Since the Rota bridled white-eye is not protected from take as a CNMI-listed species, and since the Sabana Protected Area affords minimal 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 2001). 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; Drahos 2002). But concentrations of DDT and DDE (1, 1-bis (chlorophenyl)-2, 2-dichloroethane) in Mariana 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 may 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. In particular, typhoons pose a serious threat, directly and indirectly, to the white-eye and other avian populations (Wiley and Wunderle 1993). This threat can also be exacerbated by human land-use practices, which can affect the extent of damage caused by these storms (*see* "The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range," above). Direct effects include mortality from winds and rains. Indirect effects include the short-term and potential long-term loss of food supplies, foraging habitat, 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 forests of Rota (John Morton, pers. comm. 1998). This may have resulted in lower-quality foraging and breeding habitat and decreased availability of nesting material for the Rota bridled white-eye until the forests regenerated from the typhoon. Typhoon damage can also lead to long-term forest composition changes (Lugo and Scatena 1996), which can affect bird community composition. For example, Amidon (2000) found that Rota bridled white-eye abundance decreased on the Sabana between 1982 and 1994, while black drongo, collared kingfisher (*Halcyon chloris*), and Micronesian starling abundance increased. These changes in bird abundance may be related to changes in habitat caused by typhoon Roy in 1988.

In making this determination, we have carefully evaluated the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, we are listing 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 from 1982 to 1996. 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; predation by black drongos and rats; and inadequate existing regulatory mechanisms. The small population size and limited distribution make 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 (i) 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 considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, 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.

Section 4 of the Act and implementing regulations (50 CFR 424 part 12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened unless publishing the listing rule more promptly is essential to the conservation of the species. Our implementing regulations (50 CFR 424.12(a)) 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, some benefits may result from designating 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 may not change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat is also likely to result in jeopardy to the species, in some instances a section 7 consultation would be triggered only if critical habitat is designated (e.g., unoccupied habitat). Some educational or informational benefits also may result from designation of critical habitat.

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. * * *" The Rota bridled white-eye has declined by approximately 90% since 1982 and is currently threatened by one

or more of the following: habitat degradation or loss due to development, agricultural activities, and naturally occurring events such as typhoons; predation; and inadequate existing regulatory mechanisms. The small population size and limited distribution make this species particularly vulnerable to extinction from random environmental events. Nearly all of our listing funds are being used to comply with court orders and court-approved settlement agreements to complete listing determinations or petition findings, we were unable to additionally propose critical habitat with the proposal to list this species and the final listing rule. We will develop a proposal to designate critical habitat for the Rota bridled white-eye as soon as funding is available and in accordance with other priority 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 may result in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act authorizes possible land acquisition and cooperation with "States," including the CNMI, and requires that recovery plans be developed for all listed species. Funding is available through section 6 of the Act for the CNMI to conduct recovery activities. We discuss the protection required of Federal agencies and the prohibitions against taking and harm for the Rota bridled white-eye 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 also 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 (a) jeopardize the continued existence of a species proposed for listing or (b) 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 affect the Rota bridled white-eye and may require consultation with us include, but are not limited to, those within the jurisdiction of the U.S. Army Corps of Engineers, Natural Resources Conservation Service, Federal Emergency Management Agency, Federal Aviation Administration, and Federal Highway Administration.

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 is within the known range of the Rota bridled white-eye. Federally supported activities that could affect the Rota bridled white-eye or its habitat in the future include, but are not limited to, low-altitude helicopter maneuvers, road construction and improvements, and radio tower construction within areas occupied by the Rota bridled white-eye.

Listing the Rota bridled white-eye necessitates the development and implementation of a recovery plan for the species. This plan will bring together Federal, Commonwealth, and regional agency efforts for conservation of the species, and will also establish a framework for agencies to coordinate their recovery efforts. It 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 implementing regulations found at 50 CFR 17.21 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 agents of the Service and CNMI conservation agencies.

Permits may be issued to allow people and groups 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 Service's Portland offices (*see ADDRESSES and FOR FURTHER INFORMATION CONTACT* sections).

It is our policy, as published in the *Federal Register* on July 1, 1994 (59 FR 34272), 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 Rota 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 alien species that compete with or prey on bird species, such as the introduction of the predatory brown treesnake to islands that support bird populations; and

(3) Activities that disturb Rota bridled white-eyes and disrupt nesting and foraging, and destruction or alteration of forested areas required by the bridled white-eye for foraging, perching, breeding, or rearing young.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Pacific

Islands Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT* section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232-4181 (503/231-2063; facsimile 503/231-6243).

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).

References Cited

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

Author

The primary author of this final rule is Fred Amidon, Biologist, Pacific Islands Fish and Wildlife Office (*see ADDRESSES* section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For reasons given in the preamble, we 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. Amend “17.11(h) 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	*	*	*	*	*		*
White-eye, Rota bridled.	<i>Zosterops rotensis</i>	Western Pacific Ocean-U.S.A. (Commonwealth of the Northern Mariana Islands).	Entire	E	741	NA	NA
*	*	*	*	*	*		*

Dated: January 12, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04-1297 Filed 1-21-04; 8:45 am]

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