

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove certain limitations on individual compensation costs for contractor personnel, as a result of changes made to the Federal Acquisition Regulation in Federal Acquisition Circular 97-04 on February 23, 1998.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 97-D320.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 231 to remove certain limitations on individual compensation costs for contractor personnel. Section 31.205-6, paragraph (p), of the Federal Acquisition Regulation, as amended by Item XIII of Federal Acquisition Circular 97-04 (63 FR 9066, February 23, 1998), contains the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97-D320 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205-6 [Amended]

2. Section 231.205-6 is amended by removing paragraphs (a)(2)(i)(A) through (a)(2)(ii)(B).

231.303 [Amended]

3. Section 231.303 is amended by removing paragraph (3), and by redesignating paragraph (4) as paragraph (3).

231.603 [Amended]

4. Section 231.603 is amended by removing paragraph (1), and by removing the paragraph (2) designation.

231.703 [Amended]

5. Section 231.703 is amended by removing paragraph (1), and by removing the paragraph (2) designation.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE83

Endangered and Threatened Wildlife and Plants; Proposed Reclassification From Endangered to Threatened Status for the Mariana Fruit Bat From Guam, and Proposed Threatened Status for the Mariana Fruit Bat From the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes reclassification from endangered to threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mariana fruit bat (*Pteropus mariannus mariannus*) from Guam, and threatened status pursuant to the Act for the Mariana fruit bat from the Commonwealth of the Northern Mariana Islands (CNMI). This subspecies is restricted to the Mariana archipelago, comprised of the Territory of Guam and the CNMI. The Mariana fruit bat is listed as endangered on Guam, and the populations on the southern islands of the CNMI (Aguijan, Tinian, and Saipan) are candidates for listing. Recent evidence suggests that inter-island movement between Guam and other islands throughout the archipelago is not a rare event; hence,

the Mariana fruit bats on Guam are no longer believed to represent a population distinct from those in the CNMI. Similarly, the populations of Aguijan, Tinian, and Saipan are not believed to be distinct from one another or from populations on other islands in the archipelago. Therefore, for the purposes of this proposed rule, all Mariana fruit bats in the Mariana Island archipelago are considered to represent one population. Mariana fruit bats are known from all of the islands of the Mariana archipelago, and throughout this range they are threatened by illegal hunting, degradation and loss of habitat from feral animals and through the development of forested areas, the potential for extinction of subpopulations from naturally occurring events such as typhoons, and predation by the brown tree snake. This proposal, if made final, would implement the protection provisions provided by the Act.

DATES: Comments from all interested parties must be received by May 26, 1998. Public hearing requests must be received by May 11, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to Brooks Harper, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor-Endangered Species, Pacific Islands Office, at the above address (telephone 808/541-3441, FAX 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

The Mariana Islands archipelago consists of the 15-island Commonwealth of the Northern Mariana Islands (CNMI) and the Territory of Guam. Both are within the jurisdiction of the United States. This archipelago extends 466 miles (750 kilometers (km)) from 13°14'N, 144°45'W and 20°3'N, 144°54'W and is approximately 932 miles (1,500 km) east of the Philippine Islands. The ten northern islands are volcanic, while the five southern islands are uplifted coral limestone plateaus with volcanic outcrops. Mariana fruit bats have historically inhabited all of these islands. The largest southern islands (Guam, Rota, Tinian, and Saipan) are occupied by approximately 160,000 people.

The northern islands (north of Saipan) are either unoccupied or support just a few families. The climate is tropical, with daily mean temperatures of 75 to 90° Fahrenheit (24 to 32° Celsius), high humidity, and average annual rainfall of 78 to 103 inches (in) (200 to 260 centimeters (cm)). Typhoons may strike the Mariana Islands during any month of the year, but are most frequent between July and October.

The Mariana fruit bat is a medium-sized fruit bat in the family Pteropidae weighing 330 to 577 grams (0.66 to 1.15 pounds) and has a forearm length ranging from 13.4 to 15.6 cm (5.3 to 6.1 in); males are slightly larger than females. The underside (abdomen) is colored black to brown, with gray hair interspersed, creating a grizzled appearance. The shoulders (mantel) and sides of the neck are usually bright golden brown, but may be paler in some individuals. The head varies from brown to dark brown. The well-formed and rounded ears and the large eyes give a canine-like appearance; members of the pteropid bat family are often referred to as flying foxes.

The taxonomic status of fruit bats in Micronesia and the western Pacific is not clearly understood, nor is there a consensus regarding the taxonomic classification of island or island group populations. Andersen (1912), one of the first to examine Pacific Pteropids, recognized several species in the genus *Pteropus*, including *mariannus*, *pelewensis*, *yapensis*, *ualanus*, *lochooensis*, *vanikorensis*, *tonganus*, and *geddiei*. Subsequently, Kuroda (1938) combined several of these, and recognized seven subspecies under *Pteropus mariannus* including *mariannus*, *pelewensis*, *yapensis*, *ulanus*, *ulthiensis*, *paganensis* and *lochooensis*, but Corbet and Hill (1980) recognized *mariannus*, *pelewensis*, *yapensis*, *ulanus*, and *lochooensis* as distinct species. In contrast, Honacki *et al.* (1982) included those five species under *Pteropus mariannus*. Nowak and Paradiso (1983) elevated *yapensis*, *pelewensis*, and *ualanus* to species. Corbet and Hill (1986, 1991) reversed their previous classification (Corbet and Hill 1980), following instead Honacki *et al.* (1982), and also placed those bats under *Pteropus mariannus*. Nowak (1991) elevated several populations to species level, listing *pelewensis*, *yapensis*, *ualanus*, *mariannus*, *vanikorensis*, and *tonganus* as distinct species. Pierson and Rainey (1992) largely followed Kuroda (1938), recognizing seven subspecies under *Pteropus mariannus*. Similarly, Koopman (1993) includes those bats under *Pteropus mariannus*, electing not

to elevate them to the specific level. Flannery (1995) was oddly inconsistent, considering *mariannus*, *lochooensis*, *paganensis*, and *ulthiensis* as subspecies, but elevating *pelewensis*, *ualanus*, and *yapensis* to full species. Finally Nowak (1994) again presented his earlier treatment found in Nowak (1991), elevating five island or island group populations to the species level.

In general, the taxonomic revisions proposed since Andersen (1912) have not been based on any rigorous examination of specimens of the taxa in question and, often, these changes are presented without comment or justification. Ultimately, the taxonomic revisions presented above represent the professional opinions of the authors, and serve to illustrate the considerable uncertainty regarding the taxonomic status of many of the western Pacific bat species.

Following the taxonomic treatments of Koopman (1993) and Pierson and Rainey (1992), *Pteropus mariannus* (Desmarest 1822) is a widely dispersed species occurring north of the equator in portions of Micronesia north to the Japanese Ryukyu Islands, and is represented by seven subspecies. Two of these are restricted to the Mariana Islands—the Mariana fruit bat (*Pteropus mariannus mariannus*), and the Pagan fruit bat (*Pteropus mariannus paganensis*). These two subspecies, together with two other bat species, the little Mariana fruit bat (*Pteropus tokudae*), federally listed as endangered on Guam on August 27, 1984 (49 FR 33881), but now thought to be extinct, and the sheath-tailed bat (*Emballonura semicaudata*), a candidate for Federal listing on September 19, 1997 (62 FR 49398), in the CNMI, are the only non-marine mammals native to the Mariana Islands.

The taxonomic status of the Pagan fruit bat is not fully resolved. Yamashina (1932) collected three males and one female from the islands of Pagan and Alamagan in 1931, and stated that “This species, as compared to the *Pteropus mariannus mariannus* that inhabit Guam, is distinctly darker in coloration, having brownish wings.” He made no further comparisons, and thus this subspecific distinction is based on an equivocal interpretation of the coloration of four specimens. He also considered a “species” of bat “which falls in between this new species (*paganensis*) and that which inhabits Guam” to occur on Saipan and Rota. However, it is currently accepted that the bats on Rota, Tinian, Aguijan (= Aguijan), Saipan, and Guam are referable to *Pteropus mariannus mariannus*. The subspecific status of

bats found on the islands between Saipan and Alamagan (Farallon de Mendinilla, Anatahan, Sariguan, and Guguan), and north of Pagan (Agrihan, Asuncion, Maug, and Uracus) is not known, and bat populations on these islands have not been assigned to subspecies.

The slight morphological differences used to distinguish *Pteropus mariannus paganensis* from *Pteropus mariannus mariannus* is attributable to natural variation that occurs not only between islands, but within individual island populations (T. Lemke, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1986; D. Worthington, USFWS Honolulu, pers. obs.). Thus, the Pagan fruit bat is probably not distinct from the Mariana fruit bat (Pierson and Rainey 1992; G. Wiles, Guam Division of Aquatic and Wildlife Resources, pers. comm. 1997; Worthington and Taisacan 1996), particularly in light of the strong evidence that suggests that movement between islands is not a rare event (Wiles and Glass 1990). Until this taxonomic question is resolved, and given the high degree of similarity between these subspecies, it makes little biological sense to consider *Pteropus mariannus paganensis* as distinct from *Pteropus mariannus mariannus*. Similarly, the unassigned bats found north of Saipan are most appropriately referable to *Pteropus mariannus mariannus*.

The status of the Mariana fruit bat prior to the 20th century is unknown. In 1920, the sight of fruit bats was considered to be “not * * * uncommon” on Guam (Crampton 1921). By 1931, Coultas (1931) stated that bats were uncommon on Guam, possibly due to the introduction of firearms. Woodside (1958) estimated the Guam population to number 3,000. This number had dropped to between 200 and 750 animals by 1995, in part due to the introduction of the brown tree snake (*Boiga irregularis*) (Wiles 1996, Wiles *et al.* 1995). G. Wiles (pers. comm. 1997) observed between 300 and 350 bats on Guam during March 1997. Bat subpopulations on Aguijan, Saipan, and Tinian were not surveyed prior to the 1970's. Subsequent observations suggest that these subpopulations have been small, with only 25 to 125 bats observed on each island (Lemke 1984, Wiles 1996, Worthington and Taisacan 1996). In 1995, between 100 and 125 bats were believed present on Aguijan (Wiles 1996). A colony of approximately 35 bats was seen on Saipan in 1995, the largest colony seen there in a decade (Worthington and Taisacan 1996). Recent observations on Tinian indicate that although fruit bats are occasionally

seen, their residence status is uncertain (Marshall *et al.* 1995). On Rota, bat numbers have declined from an estimated 2,400 animals before Typhoon Roy in 1988 to just under 1,000 in 1996 (Worthington and Taisacan 1996). The Rota population is apparently stable, but poaching continues to be a serious problem (Worthington and Taisacan 1996). The bats from Rota are believed to move among the southern islands, and this population is considered to be critical to the long-term stability of fruit bats in the Mariana Islands (Wiles and Glass 1990).

The relatively isolated northern islands have not been surveyed as frequently as the southern islands. In 1983, a minimum of 7,450 bats were documented during an expedition to the islands north of Saipan (Anonymous 1984, Wiles *et al.* 1989). Rice and Taisacan (1993) reported that between 1988 and 1992, bats were seen commonly on all northern islands except Farallon de Medinilla, Maug, and Uracus, although bats are known to occur on these islands. Observations during these years were incidental and Rice and Taisacan (1993) suggested no changes be made to the 1983 estimates. A survey of Anatahan in 1995 found approximately 2,000 animals (Marshall *et al.* 1995), and T. Sutterfield (U.S. Navy, Hawaii, *in litt.* 1997) observed two fruit bats roosting in low shrubs on Farallon de Mendinilla in December 1996.

The Mariana fruit bat is highly colonial, forming colonies of a few to over 800 animals (Pierson and Rainey 1992, Wiles 1987a, Worthington and Taisacan 1995). The bats group themselves into harems (one male and two to 15 females) or bachelor groups (predominately males), or reside as single males on the edge of the colony (Wiles 1987a). On Guam, the sex ratio in a single colony was observed to vary from 37.5 to 72.7 males per 100 females (Wiles 1982).

Reproduction is believed to occur throughout the year in *Pteropus mariannus yapensis* on Yap (Falanruw 1988) and in *Pteropus mariannus mariannus* on Guam (Wiles 1987a). Mating and the presence of nursing young have been observed year-round on Guam (Perez 1972, Wiles 1983) with no apparent peak in births (Wiles 1987a). Glass and Taisacan (1988) suggested a similar pattern on Rota, but also indicated that a peak birthing season may occur during May and June, as has been observed in other pteropodid bats (Pierson and Rainey 1992). Female bats of this family generally have one young per year (Pierson and Rainey 1992), and

observations on Guam between July 1982 and May 1985 found 262 female bats each with a single young (USFWS 1990). This reproductive rate, very low for a mammal of this size, results in a slow recovery rate when populations are reduced in numbers (Pierson and Rainey 1992). Length of gestation and age of sexual maturity is unknown for the Mariana fruit bat, but other related bats have a gestation period of approximately 4.6 to 6.3 months (Pierson and Rainey 1992). Female Mariana fruit bats on Guam may be able to breed as soon as 6 to 18 months of age (USFWS 1990), but sexual maturity in pteropodid bats usually does not occur until the bats are 18 to 24 months old (Pierson and Rainey 1992).

Native forest is the primary habitat required by the Mariana fruit bat, although some introduced plant species can provide roosting and feeding resources. Fruit bats are important in tropical forests because they naturally disperse plant seeds and thereby help maintain forest diversity and contribute to plant recovery after typhoons and other catastrophic events (Cox *et al.* 1992). Mariana fruit bats forage and roost primarily in native forest, and occasionally in coconut groves and strand vegetation (Wiles 1987b, Worthington and Taisacan 1996). Wiles (1987b) described six bat roost sites on Guam, all within native limestone forest. Major roost trees included *Ficus* sp. and *Neisosperma oppositifolia*. On Rota, fruit bats used primary and secondary limestone forest for roosting and foraging (Glass and Taisacan 1988). At least nine tree species were used for roosting including *Elaeocarpus sphaericus*, *Macaranga thompsonii*, *Guamia speciosa*, *Hernandia* sp., *Artocarpus mariannensis*, *Ficus prolixia*, *Barringtonia asiatica*, *Randia cochinchinensis*, and introduced *Theobroma cacao* (Glass and Taisacan 1988). A small bat colony also was observed roosting in *Casuarina equisetifolia* on Aguijan Island (Worthington and Taisacan 1996). At least 22 plant species are used as food sources by the Mariana fruit bat. Food items include the fruits of 17 species of plants, especially native *Artocarpus mariannensis*, *Artocarpus altilis*, *Cycas circinalis*, *Ficus* spp., *Pandanus tectorius*, *Terminalia catappa*, and introduced *Carica papaya*; the flowers of seven plants, including native *Ceiba pentandra*, *Erythrina variegata*, and introduced *Cocos nucifera*; and leaf stems and twig tips of *Artocarpus* spp. (USFWS 1990, Wiles 1987a).

Most of the known fruit bat roost sites in the Mariana Islands are located on public lands. On Guam, the remaining

roost and nearly all fruit bat foraging habitat is found on U.S. military and Government of Guam lands. There is no U.S. Government-owned land in the CNMI; all public lands are administered by the CNMI government. Saipan has little public land that is not leased and developed, but a few areas still support native forest that are occasionally used by fruit bats. Tinian has large tracts of public land that contain small stands of native forest suitable for bats, and a large portion of public land on the northern end of the island is under lease to the U.S. Department of the Navy (Navy) for military activities. All of the land on Aguijan is publicly owned. Approximately 60 percent of the land on Rota is publicly owned, although much of this has been leased to private individuals. The primary roosting areas on Rota are on public lands; however, some private lands still retain native limestone forest that can support bats. The northern islands are mostly public lands, with some land developed as small homestead lots. Farallon de Mendinilla is currently leased to the Navy as a bombardment range.

The movement of bats among the islands is an aspect of their biology that is critical to conservation. The August 27, 1984, Federal listing (49 FR 33881) of fruit bats resident on Guam was based on the assumption that these bats formed a separate population segment distinct from the bats found in the CNMI. Recently, biologists in the Mariana Islands have gathered evidence indicating that movement of bats among the Mariana Islands links these colonies as a single population. Wiles and Glass (1990) indicated that bats fly between the islands of Guam and Rota, and the ephemeral nature of bat colonies on the islands of Tinian and Aguijan, which are close to one another and to Saipan, makes it likely that inter-island travel also occurs between these islands (Worthington and Taisacan 1996). Information on the movement of bats in the northern islands is limited, but inter-island transit among these islands and to the southern islands probably occurs annually (Wiles *et al.* 1989, Worthington and Taisacan 1996, G. Wiles, pers. comm. 1997). For the purposes of conservation, individual island subpopulations of fruit bats in the Mariana Islands should be considered as one contiguous population (Lemke 1986, USFWS 1990, Wiles and Glass 1990, Worthington and Taisacan 1996).

Previous Federal Action

A status review of the Mariana fruit bat was initiated on May 18, 1979 (44 FR 29128). On August 27, 1984, the

Service listed the Guam population of Mariana fruit bats as endangered (49 FR 33881). On March 4, 1986, the Service received a petition dated February 24, 1986, from Dr. Thomas O. Lemke, that requested determination of endangered status for all remaining subpopulations of the Mariana fruit bat.

The Service published a 90-day finding on the petition on January 21, 1987 (52 FR 2239), announcing that substantial information to list the Mariana fruit bat as endangered had been presented in the petition and that the requested action may be warranted. On July 7, 1988, the Service published a 12-month finding in the **Federal Register** (53 FR 25511) announcing that the petitioned action request for a determination of endangered status with respect to Mariana fruit bat populations resident on the islands of Aguijan, Tinian, and Saipan was warranted but precluded by other pending listing proposals of higher priority. The Service also determined in this finding that listing was not warranted for fruit bats resident on Rota, Asuncion, Guguan, and the other northern islands, because these colonies were adequately protected by existing hunting restrictions or by the inaccessibility of the locations of the colonies by hunters (53 FR 25513). However, new information compiled since the publication of the finding on July 7, 1988, indicates that listing is now warranted for the Mariana fruit bats resident in the CNMI, and that reclassification from endangered to threatened is warranted for the fruit bats on Guam. The new information concerning threats, populations, distribution and movement, and taxonomy has been incorporated into this proposed rule. This proposed rule constitutes the final 12-month finding on the petition to list the Mariana fruit bat.

Fruit bats found on Aguijan, Tinian, and Saipan are currently identified as candidates for listing in the notice of review for animal and plant taxa published in the **Federal Register** on September 19, 1997 (62 FR 49401).

On October 22, 1987, *Pteropus mariannus* was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Continuing declines in bat populations resulted in the reclassification of *Pteropus mariannus* to Appendix I of CITES on January 18, 1990 (54 FR 51432).

The processing of this proposed rule conforms with the Service's fiscal year (FY) 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a

Federal Register notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond FY 1997 until such time as new guidance is published. The FY 1997 guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104-6), and (2) the restoration of significant funding for listing through enactment of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority to resolving the listing status of outstanding proposed listings (Tier 2). A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered (Tier 3). The lowest priority is given to processing critical habitat determinations, delistings, and other reclassifications (Tier 4). The guidance also states that “effective April 1, 1997, the Service will concurrently undertake all of the activities included in Tiers 1, 2, and 3” (61 FR 64480).

Processing of this proposed rule is a Tier 3 activity. The proposed rule effects a downlisting of the Mariana fruit bat on Guam, which action, taken by itself, would be a Tier 4 activity. However, based on the new information discussed above, the Service believes it is biologically inappropriate to consider fruit bats on each island as distinct populations, and the Service believes that the fruit bats in the Mariana Islands should be managed as one population. In addition, the Service can effect the downlisting of the Mariana fruit bat on Guam with little or no additional time and expense in conjunction with proposing the entire range of the species for listing as threatened, while a separate action to downlist the species with respect to Guam at some future date would require the expenditure of additional resources. Therefore, in the interests of (1) efficiency in allocating its scarce resources and (2) biological and management consistency, the Service will include the downlisting of the Mariana fruit bat on Guam as a part of this Tier 3 activity. This treatment is consistent with the purpose of the current listing priority guidance. See 61 FR 64479 (discussing inclusion of withdrawals of proposed rules in Tier

2). Furthermore, the downlisting will not reduce the protection afforded under the Act to Mariana fruit bats on Guam.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mariana fruit bat (*Pteropus mariannus mariannus*) (=Mariana flying fox) in the Mariana Islands are listed below.

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

Prior to 1500 B.C., the Mariana Islands were mostly forested (Fosberg 1960). Following that date, human occupation by the indigenous Chamorro and subsequent administration under Spain, Germany, Japan, and the United States have resulted in a continual degradation of fruit bat habitat on all of the southern Mariana Islands and some of the northern islands.

During the Japanese occupation, extensive removal of native forests for the development of sugar cane was greatly accelerated on the southern islands. These fields covered almost all of Tinian and much of Aguijan, Saipan, and Rota (Fosberg 1960). During and after World War II, military activities resulted in dramatic reductions in fruit bat habitat on Guam, Tinian, and Saipan. During this period, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) (Fosberg 1960). Tangantangan grows as low to moderate stature, single-species stands with no substantial understory. Native forest cannot take root and grow where this alien tree has become established (Craig 1993), preventing regeneration of fruit bat habitat.

On Guam, human land development and feral animals have altered most of the native vegetation of the island. Probably no more than 30 percent of Guam's land area is covered by native limestone and ravine forest, with federally owned lands in northern Guam representing the largest contiguous areas. Other Federal, Government of Guam, and some private lands also possess forested areas that represent adequate habitat for bats (G. Wiles, pers. comm. 1997). Due to the

anthropogenic impacts discussed previously, most of Saipan's native forest has been replaced by mixed second growth forests, savanna grasslands, and dense thickets of tangantangan (Falanruw *et al.* 1989). By 1982, vegetation mapping revealed that just five percent of native forest remained on Saipan and Tinian (Engbring *et al.* 1986). This remaining forest continues to be threatened by possible development. Although 47 percent of the native forest persists on Aguijan (Engbring *et al.* 1986), this habitat is threatened by feral goats. Rota experienced extensive agricultural development by the Japanese prior to World War II, but was not invaded by allied forces during World War II. The absence of an invasion, combined with rugged topography, resulted in the persistence of stands of native forest. Today, Rota retains less than 60 percent of its native forest (Falanruw *et al.* 1989). One 18-hole golf resort has been completed on Rota and plans for additional large-scale development, together with smaller developments, continue to threaten the remaining limestone forest with fragmentation and degradation. Throughout the Mariana Islands, goats, pigs, cattle, and deer have caused severe damage to forest vegetation by browsing directly on plants, causing erosion (Kessler 1997, Marshall *et al.* 1995), and retarding forest growth and regeneration (Lemke 1992b). Thus, all of these islands retain only a fraction of their historical forested habitat, and this remaining habitat is threatened by the fragmentation and degradation associated with development and feral animals.

The northern islands escaped the development that has occurred in the southern islands. However, historic introduction of feral goats, pigs, and cattle to Sarigan, Pagan, Agrihan, and Anatahan, continues to cause significant degradation of forest habitat on these islands (Kessler 1997). On Anatahan, Marshall *et al.* (1995) indicated that uncontrolled feral goats could eliminate native forest within 50 years. The current severe damage on Anatahan has apparently been rapid, as T. Lemke (*in litt.* 1995) did not note significant erosion or large numbers of goats in the early 1980's.

Military training activities in areas used by fruit bats could significantly impact their habitat. The use of Farallon de Mendinilla by U.S. armed forces as a bombardment range retards the vegetation regeneration, increases erosion that impedes regeneration of vegetation, and causes wildfires that destroy habitat. Together, these effects

limit available fruit bat habitat on this island.

B. Over Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Mariana fruit bats have been used as food since humans first arrived on the islands (Lemke 1992a), and their consumption represents a significant cultural tradition. Social events and cultural status in the Mariana Islands are often enhanced by a variety of foods, and fruit bat is highly prized. Because of their scarcity, bats are often reserved for the elderly and other respected guests, and one bat may be shared among several people (Lemke 1992a).

Traditionally, fruit bats were captured with limited success using nets, traps, thorny branches on poles, or stone projectiles (Lemke 1992a). Today, bats are mostly taken with shotguns fired at roosting and feeding sites or along flyways. One shotgun blast may kill several bats, and a successful raid can glean up to 50 bats (Lemke 1992a, Wiles 1987b). Hunting at nursery colonies can also result in abandonment and direct mortality of infant bats (Lemke 1992a).

From 1975 to 1981, prior to listing the Mariana fruit bats as endangered on Guam (49 FR 33881), approximately 15,800 fruit bats were shipped to Guam from Rota and Saipan for human consumption (Wiles and Payne 1986). During the last two decades, thousands of fruit bats have been shipped annually into the Mariana Islands from other Pacific islands for human consumption. Most of these shipments were the Palau fruit bat (*Pteropus mariannus pelwensis*) from the Republic of Palau. Currently, a single fruit bat can sell for over US\$50.00 in the CNMI (Worthington and Taisacan 1996).

Poaching continues to be one of the most important factors in the decline of the Mariana fruit bat (Glass and Taisacan 1988, Lemke 1992b, Marshall *et al.* 1995, USFWS 1990, Worthington and Taisacan 1996). Reports of poaching on Rota occur almost monthly (S. Taisacan, CNMI Division of Fish and Wildlife, pers. comm. 1997a, 1997b). In 1987, between three and eight bats were reported poached from a small colony on Saipan (Glass and Taisacan 1988). Following Typhoon Roy in 1988, defoliation and other damage caused by the storm forced bats on Rota to forage during the day in areas close to human habitation (Lemke 1992b). Poachers took advantage of this situation and extensive illegal hunting occurred, reducing the total Rota population by more than half (A. Palacios, CNMI Division of Fish and Wildlife, *in litt.* 1990). Continued poaching probably

prevents the fruit bats on Rota from increasing in number to pre-storm abundance (Worthington and Taisacan 1996). Poaching of fruit bats on the northern islands is also occasionally reported, and is believed to be an increasingly significant problem in the CNMI (Worthington and Taisacan 1996).

C. Disease or Predation

The brown tree snake, which has caused the extinction of several bird species on Guam (Savidge 1987), is probably responsible for the lack of recruitment in the single remaining Mariana fruit bat colony on that island (Pierson and Rainey 1992, Wiles 1987a). Although only two cases of snake predation on Guam bats have been reported (Wiles 1983), the brown tree snake is considered capable of preying on young bats at their roosts (USFWS 1990). Wiles (1987b) and Wiles *et al.* (1995) suggested that snakes will prey on young bats that have become too large to be carried by their mothers and are left at the roosts at night. In 1982, 46.6 percent of all juvenile Mariana fruit bats counted in northern Guam were judged to be in this size class, but between 1984 and 1986, after brown tree snakes had spread into the area, no bats of this size class were observed (USFWS 1990).

Brown tree snakes were accidentally introduced to Guam between 1945 and 1952, probably hidden in ship cargo (Rodda *et al.* 1992). By 1986 the snake had reached the extreme northern end of the island (Savidge 1987), and was probably present throughout the island. Because of a variety of historical and ecological factors associated with the snake, and due to Guam's location and role as a major transportation hub in the Pacific, there is a high probability that human activities will disperse brown tree snakes from Guam to other Pacific islands (Fritts 1988). Reports of snakes found in the CNMI, especially on the island of Saipan, have increased since 1986 (Brown Tree Snake Control Plan 1996). Between 1986 and 1995, at least 46 snake sightings have been reported in the CNMI (Vogt and Marshall 1996). Brown tree snakes have been regularly sighted on Saipan (31 sightings since 1986) and occasionally on Tinian (4 sightings in 1995). Five brown tree snakes have been captured on Saipan (S. Vogt, CNMI DFW pers. comm. 1997, Vogt and Marshall 1996). The frequency of snake sightings reported from 1986 through 1997 indicates that a brown tree snake population may now be established on Saipan (Brown Tree Snake Control Plan 1996). Vogt and Marshall (1996) argue that Saipan, Tinian, and Rota will eventually mirror

the ecological and economic disaster that has occurred on Guam, including the decimation of fruit bat colonies, if snakes are not eradicated or better controlled.

D. The Inadequacy of Existing Regulatory Mechanisms

Prompted by a severe decline in fruit bat numbers, the CNMI legislature in 1977 passed a moratorium on the taking of fruit bats on all islands (Pub. L. 5-21, September 1977). Although this moratorium has been annually reauthorized until 1996, no agency possessed enforcement authority until the CNMI Division of Fish and Wildlife was created in 1981 (Lemke 1992a). Even though this agency has legal enforcement authority, implementation of the hunting ban has been difficult, and few investigations or convictions have taken place (Lemke 1992a). The CNMI prohibition against hunting of fruit bats was not continued in 1996 (R. Folta, CNMI Department of Land and Natural Resources, *in litt.* 1996). The bats are listed as threatened or endangered (the CNMI makes no specific distinction between the threatened and endangered categories) by the CNMI government on Rota, Saipan, Tinian, and Aguijan (CNMI 1991), but receive no such protection on the islands north of Saipan. Additionally, no regulations prohibit the taking of these threatened or endangered species (K. Garlick, USFWS, Guam, *in litt.* 1997) and protection of these bats is greatly lacking (Worthington and Taisacan 1996; A. Palacios *in litt.* 1990). The Mariana fruit bat is also listed as an endangered species by the Government of Guam (Wiles 1982). On Guam, the bat receives significant protection from hunting, primarily because its primary colony has resided on U.S. Department of the Air Force (Air Force) lands, where access is limited, since 1980.

On October 22, 1987, *Pteropus mariannus* was included in Appendix II of CITES. Continuing declines in bat populations resulted in the reclassification of *Pteropus mariannus* to Appendix I of CITES on January 18, 1990, as well as the listing of all other species of *Pteropus* under Appendix II of CITES (except those species already listed under Appendix I or with earlier dates under Appendix II), in an effort to provide a basis for the control of shipments and as a stimulus to exporting countries to manage their bat populations. All subspecies of *Pteropus mariannus* are now protected under CITES and listed under Appendix I of that Convention (50 CFR part 23).

CITES is a treaty established to prevent trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

The Republic of Palau became subject to the CITES restrictions for trade with the Mariana Islands when it established its independence from the United States in October 1994. However, fruit bats from Palau, Pohnpei, and the Philippine Islands are reportedly smuggled into the Mariana Islands on a regular basis (E. Hester, USFWS, Hawaii, pers. comm. 1997; Stinson *et al.* 1992; Wiles 1992; Worthington and Taisacan 1996). Experts remain concerned that the demand for fruit bats will remain high and poaching pressure on Rota and the northern islands may increase (Wiles 1996, Worthington and Taisacan 1995).

Current activities that may help stabilize and protect the population of this bat on the southern islands include a Habitat Conservation Plan (HCP) for the island of Rota. This plan is being developed with the cooperation of the CNMI government and the local Rota residents, and with technical assistance from the U.S. Fish and Wildlife Service Pacific Islands Office. Initiated largely to assist in the conservation of the Mariana crow (*Corvus kubaryi*), most of the land included in the HCP is limestone forest used by bats for foraging and roosting. Historic bat roosting areas are also included in the Sabana Conservation Area, part of a conservation effort designed by the CNMI government meant to limit development in this upper elevation area. Preservation of these forested areas is essential for the long term stability of fruit bat populations.

The Guam National Wildlife Refuge (Refuge) was created on October 1, 1993, with additional lands incorporated in 1994 by cooperative agreements between the Service, the Air Force and the Navy. The establishment and management of the Refuge on Navy and Air Force lands provides a commitment by the Navy, Air Force, and Service for a "coordinated program centered on the protection of endangered and threatened species and other native flora and fauna* * *" Enactment of such a program by these agencies will contribute to the continued survival and

recovery of the Mariana fruit bat on Guam, as important foraging and roosting habitat is found within the Refuge boundaries.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Military training activities in areas used by fruit bats could significantly disrupt the behavior of these bats. On Guam, military aircraft traffic near the primary roosting site creates a potential for the abandonment of this roost (Morton 1996). In general, military training activities including live-fire exercises and aircraft overflights, in or near areas on any of the islands that support fruit bats, are likely to disrupt fruit bat behavior and may result in mortalities.

The small number of Mariana fruit bats remaining on Guam, Saipan and Aguijan place these colonies at risk of extinction from naturally occurring events and environmental factors. Typhoons in particular, could eliminate one or more of these colonies. Typhoons can drastically reduce or alter forested areas that constitute fruit bat habitat. In 1988, super Typhoon Roy defoliated or altered almost all of the forested areas on Rota (Fancy and Snetsinger 1996). Another typhoon that hit the northern island of Maug in 1981 also had similar devastating effects on fruit bat habitat (Lemke 1992b). Vegetation changes associated with such storms can eliminate fruit bat forest habitat, change tree species composition to less desirable species, and knock down important food resources (Lemke 1992b). Following Typhoon Roy, defoliation and other damage caused by the storm forced the bats on Rota to forage during the day in areas close to human habitation (Lemke 1992b). Poachers on Rota illegally hunted the bats, reducing their numbers by more than half (A. Palacios, *in litt.* 1990). There is no evidence that direct mortality caused by the storm was significant (Lemke 1992b). Future storms that cause bats to alter their normal behavior patterns could lead to similar episodes of illegal hunting, further reducing the remaining population of Mariana fruit bats (Worthington and Taisacan 1996).

Currently, the Mariana fruit bat on Guam is listed as endangered (49 FR 33881), and fruit bats in the CNMI on the islands of Aguijan, Tinian, and Saipan are identified as candidates for listing as threatened or endangered (62 FR 49401). At the time the Guam population was listed, fruit bats on the various islands in the Marianas were believed to represent separate, discrete populations of *Pteropus mariannus*

mariannus. Since the listing of the Mariana fruit bat on Guam in 1984, additional information pertaining to the biology of the Mariana fruit bat has become available, particularly with regard to the movement of bats between islands. Inter-island movement of the Mariana fruit bat between the islands of the Mariana archipelago is not a rare event. Based on this information, the Service believes it is biologically inappropriate to consider fruit bats on each island as distinct populations, and the Service believes that the fruit bats in the Mariana Islands should be managed as one population.

Only a "species" may be listed as threatened or endangered under the Act. This term is defined under section 3 of the Act to include any subspecies of fish or wildlife and any distinct population segment of any species of fish and wildlife that interbreeds when mature. Service policy regarding the recognition of distinct vertebrate populations, published in the **Federal Register** on February 7, 1996 (FR 61 4722), precludes treating non-distinct vertebrate populations differently with regard to listing status. The Service believes that the Mariana fruit bats in the CNMI and Guam represent one population, but recognizes that the survival of these bats on Guam continues to be threatened by a variety of factors. However, when viewed in the context of representing a portion of the entire Mariana fruit bat population in the Mariana Islands, rather than as a distinct population as previously thought, reclassification from endangered to threatened is appropriate and biologically justified. Therefore, proposing to list the entire population of *Pteropus mariannus mariannus* as threatened throughout its range, including bats in both the CNMI and Guam, retains an appropriate level of protection for this bat on Guam while increasing overall protection to the Mariana fruit bat throughout the Mariana Islands.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the proposed action is to list the Mariana fruit bat as threatened on all islands in the CNMI, and reclassify the Mariana fruit bat as threatened on Guam. The loss of native forest continues to be a significant threat to the survival of this species. Few bats occur on Saipan, Tinian, and Aguijan. Although a significant number of bats persist on Rota, recent information has shown them to be at risk from illegal hunting

and loss of forest habitat. The brown tree snake continues to prevent recruitment of bats on Guam, and the possible future introduction of the brown tree snake into the CNMI could also greatly reduce or eliminate the Mariana fruit bats on Rota and other islands. The bats on Rota are probably the source of bats seen on Guam, Saipan, Tinian, and Aguijan, making this subpopulation particularly important for the survival and recovery of the Mariana fruit bat in the southern Mariana Islands. Feral goats continue to seriously degrade fruit bat forest habitat on many of the northern islands. Although the remoteness of the northern islands affords some protection for the bats, it also offers poaching opportunities in the absence of wildlife law enforcement personnel. Thus, throughout the CNMI and Guam, this species is threatened by habitat degradation from human disturbance, animal damage, and typhoons; direct exploitation in the form of hunting; and the direct impacts from and the threat of the arrival of the brown tree snake. The likelihood of regular inter-island movement between the islands of the Mariana archipelago warrants that the Mariana fruit bats in the Mariana Island archipelago be viewed as and managed as one population. While not in immediate danger of extinction, the Mariana fruit bat from the CNMI and Guam is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Critical habitat is not being proposed for this species, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate

critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Mariana fruit bat at this time. Service regulations (50 CFR 424.12 (a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation of critical habitat may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must ensure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat).

The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat from illegal hunting of the Mariana fruit bat and contribute to its decline. As discussed under Factor B in the "Summary of Factors Affecting the Species", the Mariana fruit bat is extremely vulnerable to illegal hunting, which contributes to the decline of this species. Poaching continues to be one of the most significant factors in the decline of the Mariana fruit bat (Glass and Taisacan 1988, Lemke 1992b, Marshall *et al.* 1995, USFWS 1990, Worthington and Taisacan 1996). Reports of poaching on Rota occur almost monthly (S. Taisacan, pers. comm. 1997a, 1997b). Poaching is also known to occur on the northern islands and represents a significant threat to bats on these islands (Worthington and Taisacan 1996).

That bats occupy the islands north of Saipan is generally known, but specific roost locations are not widely known. On Rota, bat roosting areas have been noted on unpublished maps, but specific roost sites within these areas have not been mapped. The specific

location of the only roost on Guam is not widely known by the public. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, may increase the degree of threat from illegal hunting of the Mariana fruit bat by identifying roosting sites where bats are most susceptible to illegal hunting, and contribute to the decline of this species.

With the increased publicity of this species if listing as threatened is finalized, a higher incidence of illegal hunting may occur, particularly on the islands north of Saipan. Publication of precise maps and descriptions of critical habitat in the **Federal Register** may expose bats on these islands to more frequent illegal hunting, thus resulting in the further decline of the species. Publication of critical habitat descriptions and maps would ultimately make the Mariana fruit bat more vulnerable and increase enforcement problems.

Further, there would be little benefit to the species from a critical habitat designation covering habitat and roosts on private, Government of Guam, or CNMI lands even if in the future there is additional Federal involvement through permitting or funding, such as through the Federal Highway Administration or the Federal Emergency Management Agency. Designating critical habitat would not create a management plan for the bat or establish numerical population goals for long-term survival of the species nor directly affect areas not designated as critical habitat. Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements (e.g., Fish and Wildlife Coordination Act (FWCA) and the Endangered Species Act) are already in place.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Any future Federal action that may affect the species will be subject to section 7 consultation to ensure that it does not jeopardize the continued existence of the species. Implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of"

in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

In addition, the only bat roost on Guam is located on military lands incorporated into the Guam National Wildlife Refuge by cooperative agreements between the Service, the Air Force, and the Navy. The establishment and management of the Refuge overlay on Navy and Air Force lands provides a commitment by the Navy, Air Force, and Service to protect endangered and threatened species. Among other provisions, the cooperative agreements establishing the overlay refuge provide for the development of a species management plan, including actions to benefit the Mariana fruit bat. These agreements also establish procedures for coordination and consultation between the military and the Service, and include a requirement that the military agency coordinate with the Service before undertaking any activities that may affect lands identified as providing essential habitat for the Mariana fruit bat. Implementation of the refuge overlay agreements will contribute to the continued survival and recovery of the Mariana fruit bat.

In the CNMI, the military leases land on Tinian and Farallon de Mendinilla, and is aware of the presence of the Mariana fruit bat on both of these islands (U.S. Navy 1997; T. Sutterfield U.S. Navy, Hawaii, *in litt.* 1997). On Tinian, the Navy's Natural Resources Management Plan for the military lease area recommends actions that will, in part, enhance fruit bat habitat (U.S. Navy 1997); the Service has provided comments to the Navy regarding this plan (USFWS *in litt.* 1997).

Therefore, there would be no benefit from critical habitat designation for roosts or habitat on military land as they

are currently aware of the bat's occurrence and their actions would be subject to the refuge overlay agreements on Guam and section 7 consultation for any activity it authorized, funded, or carried out. The designation of critical habitat would not increase their commitment or management efforts. Protection of Mariana fruit bats on these lands, as well as military leased land in the CNMI, will most effectively be addressed through the recovery process and the consultation process of section 7.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit this species by alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing roosts of Mariana fruit bats are either currently known by the military and the CNMI and Guam governments, or the appropriate landowners will be notified prior to publication of the proposed rule. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination process.

The Service believes that the minimal benefit of designating critical habitat would be far outweighed by the increased threats to the species that would result from identification of critical habitat. All parties and principal landowners involved in the recovery of the Mariana fruit bat will be notified of the location and importance of protecting this species and its habitat prior to publication of the proposed rule. Protection of this habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from illegal hunting and is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages

and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with states and mandates that recovery plans be developed for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed animals 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 to 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 formal consultation with the Service. Parts of Guam, Tinian, Rota, and Farallon de Mendinilla are used as, or are under consideration for use as, training areas by U.S. armed forces. Federally supported activities that could affect the Mariana fruit bat or its habitat in the future include, but are not limited to, the following—helicopter over-flights at or near roosting areas, bombardment of areas where bats are known to occur, and other military activities such as troop movements, road and firebreak construction, or live-fire exercises that disrupt normal fruit bat biology or habitat. Conservation of this bat may be consistent with most ongoing operations at these sites, but the proposed listing of the species in the CNMI could result in some restrictions on military use of the land.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect—or attempt any of these) any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Pursuant to section 10 of the Act and 50 CFR 17.32, permits may be issued to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.32.

It is the policy of the Service, 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 constitute 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. Activities involving the Mariana fruit bat that the Service believes will not likely be considered a violation of section 9 include, but are not limited to, scientific or recreational activities within forested areas that support colonies of fruit bats, but exclusive of the specific sites known to support these colonies.

Activities that the Service believes could potentially harm the Mariana fruit bat resulting in "take", or which otherwise could be considered a violation of section 9 include, but are not limited to, the following:

- (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 bats, such as the introduction of the predatory brown tree snake to islands that support bat colonies;
- (3) Activities that disturb bats from roost sites and feeding areas;
- (4) Unauthorized destruction or alteration of forested areas that are required by the bats for foraging, roosting, breeding, or rearing young;
- (5) Engaging in the unauthorized import or export of these bats or in interstate and foreign commerce (commerce across State lines and international boundaries).

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232-4181 (telephone 503/231-2063; FAX 503/231-6243).

Effects of the Rule

This proposed rule would revise § 17.11(h) to reclassify the Guam "population" of *Pteropus mariannus* from endangered to threatened to reflect the Service's conclusion that this subspecies consists of only one population. This single population, including individuals on Guam, is not in imminent danger of extinction throughout a significant portion of its range. *Pteropus mariannus* is considered, however, likely to become endangered within the foreseeable future, and this proposed rule would revise § 17.11(h) to list the Mariana fruit bat as threatened throughout its range. Reclassification of the Mariana fruit bat on Guam to threatened does not alter the protection under the Act currently afforded to individuals of that species on Guam.

The Mariana fruit bat is listed as threatened or endangered (the CNMI makes no specific distinction between the threatened and endangered categories) by the CNMI government on Rota, Saipan, Tinian, and Aguijan (CNMI 1991), but receives no such protection on the islands north of Saipan; additionally, no regulations prohibit the taking of fruit bats in the CNMI. The Mariana fruit bat is listed as endangered on Guam by the Government of Guam, and take is prohibited (Wiles 1982).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Parts of Guam, Tinian, Rota, and Farallon de Mendinilla are used as, or are under consideration for use as,

training areas by U.S. armed forces. Federally supported activities that could affect the Mariana fruit bat or its habitat in the future include, but are not limited to helicopter over-flights at or near roosting areas, bombardment of areas where bats are known to occur, other military activities such as troop movements, road and firebreak construction, or live-fire exercises that disrupt normal fruit bat biology or habitat. Conservation of this bat may be consistent with most ongoing operations at these sites, but the proposed listing of the species could result in some restrictions on military use of the land. These agencies have been involved in recovery and section 7 consultation activities for this species since it was listed as endangered on Guam in 1984, and they are likely to remain involved. Recovery activities are not expected to diminish as the primary objective of the recovery strategy is delisting of the species.

This reclassification is not an irreversible commitment on the part of the Service. Reclassifying *Pteropus mariannus mariannus* to endangered would be possible should changes occur in management, habitat, or other factors that alter the the present threats to the recovery and survival of the species.

Public Comments Solicited

The Service intends 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 subspecies and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

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

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

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Impact Statements and Environmental Assessments, 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the OMB under 44 U.S.C. 3501 *et seq.*

References Cited

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

Author: The author of this proposed rule is David Worthington, 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 recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes 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. In § 17.11 (h), revise the table entry for “Bat, Mariana fruit” under MAMMALS is revised 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						
MAMMALS							
*	*	*	*	*	*		*
Bat, Mariana fruit (=Mariana flying fox).	<i>Pteropus mariannus mariannus</i> .	Western Pacific Ocean—U.S.A. (GU, MP).	Entire	T	156,___	NA	NA
*	*	*	*	*	*		*

Dated: March 17, 1998.
Jamie Rappaport Clark,
 Director, Fish and Wildlife Service.
 [FR Doc. 98–7836 Filed 3–25–98; 8:45 am]
 BILLING CODE 4310–55–U