

## Intra-Service Section 7 Biological Evaluation Form – Region 4

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**I. Service Program and Geographic Area or Station Name:** Caribbean Ecological Services Field Office

**II. Flexible Funding Program:** N/A

**III. Location:**

The action area includes the current range of the *Mitracarpus polycladus* (No common name) in the United States Caribbean: Puerto Rico.

**IV. Species/Critical Habitat:**

Endangered

*Caprimulgus noctitherus* (Puerto Rican nightjar)

*Catesbaea melanocarpa* (No common name)

*Epicrates inornatus* (now known as *Chilabothrus inornatus*) (Puerto Rican boa)

*Eugenia woodburyana* (No common name)

*Ottoschulzia rhodoxylon* (Palo de rosa)

*Trichilia triacantha* (Bariaco)

*Varronia rupicola* (No common name) and designated critical habitat

Threatened

*Peltophryne lemur* (Puerto Rican crested toad)

**V. Project Description:**

The Service proposed the reclassification of *M. polycladus* from endangered to threatened species with a 4(d) rule on June 23, 2022 (87 FR 37476). The proposed 4(d) rule identified regulations necessary and advisable for the conservation of the species and included prohibited acts, as well as a limited number of exceptions to the prohibited acts. If finalized, the proposed 4(d) rule for *M. polycladus* prohibits the following activities (except in the case of the exceptions listed below), unless otherwise authorized or permitted:

- Importing or exporting of the species;
- Interstate or foreign commerce in the course of commercial activity;
- Sale or offer for sale of the species in interstate or foreign commerce;
- Removal and reduction to possession of the species from areas under federal jurisdiction;

- Malicious damage or destruction of the species on any area under federal jurisdiction; or
- Removal, cutting, digging up, or damage or destruction of the species on any area under federal jurisdiction in knowing violation of any law or regulation of the Territory or in the course of any violation of a Territorial criminal trespass law.

Under the 4(d) rule, if finalized, the exceptions to the prohibitions would include:

- Activities authorized by a permit under 50 CFR 17.72;
- Any qualified employee or agent of a Territorial conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes and acting in the course of official duties, would be able to conduct activities designed to conserve *M. polycladus* that may result in otherwise prohibited activities for plants without additional authorization.
- Seeds of cultivated specimens would not be regulated provided a statement that the seeds are of “cultivated origin” accompanies the seeds or their container.

## **VI. Determination of Effects:**

### **(A) Description of Effects:**

A 4(d) rule may establish prohibitions and exceptions to prohibitions for a threatened species, or result in changes to permit requirements (e.g., under section 10(a)(1)(B)) for what may be considered a violation of the Endangered Species Act of 1973, as amended (Act; 16 USC 1531 et seq.), but would not compel or require any action on the ground to be undertaken at any time. Further, section 4(d) rules cannot and do not absolve federal agencies of their consultation requirements under the Act. Section 7(a)(2) of the Act requires federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. As a result of these provisions in the Act, if a federal action may affect a listed species or its critical habitat, the responsible federal agency (action agency) must enter into consultation with the Service.

#### Listed Species and Critical Habitat

We state in the proposed 4(d) rule that conservation, and research-related activities on *M. polycladus* could result in some disturbance to the listed species mentioned above, and it is possible that an activity excepted under the 4(d) rule may affect a listed species. However, in expecting conservation, research-related activities and education on *M. polycladus* in the 4(d) rule, the Service is not providing approval, funding, or authorization of any future activities. Rather, the Service has simply set forth what take is prohibited or excepted from the prohibitions for the *M. polycladus*; the 4(d) rule provides that these activities are not prohibited under certain circumstances related to *M. polycladus*. Thus, while the 4(d) rule exempts conservation, and research-related activities from the prohibitions under the section 4(d) rule, it is not causative or enabling, nor does it remove the obligation of federal agencies to consult with the Service if their conservation, and research-related activities may affect listed species. Therefore, the 4(d) rule will have no effect on listed species and critical habitat.

Mitracarpus polycladus

Promulgating a 4(d) rule that prohibits activities that warrant further examination and provides exceptions to these prohibitions for actions that are beneficial for the restoration and recovery of the *M. polycladus* (e.g., conservation, research, monitoring, restoration, and recovery activities on *M. polycladus*) or result in de minimus take (e.g., habitat management and improvement) will not jeopardize the continued existence of the *M. polycladus*.

**(B) Determination:** Determine the anticipated effects of the proposed project on species and critical habitat lists in item IV. Check all applicable boxes and list the species (or attach a list) associated with each determination.

**Determination**

*No Effect:* This determination is appropriate when the proposed project will not directly or indirectly affect (neither negatively nor beneficially) individuals of listed/proposed/candidate species or designated/proposed critical habitat of such species. **No concurrence from CESFO required.**

\_\_\_\_\_ **X** \_\_\_\_\_

**All species and critical habitat identified in section IV, except *Mitracarpus polycladus*.**

*May Affect but Not Likely to Adversely Affect:* This determination is appropriate when the proposed project is likely to cause insignificant, discountable, or wholly beneficial effects, to individuals of listed species and/or designated critical habitat. **Concurrence from CESFO required.**

\_\_\_\_\_ **X** \_\_\_\_\_

*May Affect but Likely to Adversely Affect:* This determination is appropriate when the proposed project is likely to adversely affect individuals of listed species and/or designated critical habitat.

**Formal consultation with CESFO required.**

\_\_\_\_\_

*May Affect but Not Likely to Jeopardize candidate or proposed species or adversely modify proposed critical habitat:* This determination is appropriate when the proposed project may affect, but is not expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat.

**Concurrence from CESFO optional.**

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*Likely to Jeopardize candidate or proposed species/adversely modify critical habitat:* This determination is appropriate when the proposed project is reasonably expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Concurrence from CESFO required.**

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Signature: \_\_\_\_\_  
[Supervisor at originating station]

Date \_\_\_\_\_

