

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Banara vanderbiltii*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Banara vanderbiltii* (Palo de Ramon) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Banara vanderbiltii* is endemic to semievergreen forests of the karst region of northern Puerto Rico, where a single population of six plants survives. The species is endangered by deforestation for limestone quarrying and yam cultivation. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act of *Banara vanderbiltii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field

Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the Caribbean Field Office address (809/851-3637) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/221-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:**Background**

Banara vanderbiltii was discovered by Amos Arthur Heller in 1899, and named in honor of Cornelius Vanderbilt, who financed his collections in Puerto Rico. The first specimens were collected at Catano and Martin Pena, near the present metropolitan area of San Juan, but the species has not been found at these locations since that time. *Banara vanderbiltii* was not collected again until the 1950's, when two trees were found in the limestone hills west of Bayamon. These trees were subsequently destroyed when the area was cleared to plant yams, and the species was thought to be extinct. However, further investigation of the same general area yielded five young plants (Vivaldi and Woodbury 1981). More recently, a sixth plant was found at this site.

Banara vanderbiltii is an evergreen shrub or small tree reaching 30 feet (10 meters) in height and 5 inches (12

centimeters) in diameter. The leaves are arranged alternately in a single plane, have a dentate margin, and are densely pubescent on both sides. The species is restricted to a single locality in the semievergreen forests of the limestone karst region of northern Puerto Rico, between Vega Baja and Bayamon. Expansion of human habitation in the San Juan area has been responsible for the destruction of other known populations, and the sole remaining population is threatened by continued development of adjacent areas. Nothing is known of the species' regenerative capacity; thus it is not clear whether the existing population is capable of maintaining or increasing its size.

Banara vanderbiltii was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). In August 1979, the Service contracted with Dr. Jose L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plants considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey recommended that *Banara vanderbiltii* be proposed for listing as an endangered species. *Banara vanderbiltii* was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the Federal Register (45 FR 82479) dated December 15, 1980, as a Category-1* species (those species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or

threatened species; asterisks indicate the possible extinction of a species). The asterisk was dropped and *Banara vanderbiltii* was maintained in Category 1 in the 1983 update (November 28, 1983; 43 FR 53640) of the 1980 notice and in the 1985 revised notice (September 27, 1985; 50 FR 39526).

In a notice published in the *Federal Register* on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, October 13, 1984, and October 13, 1985, that listing *Banara vanderbiltii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes the next required finding in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) 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 *Banara vanderbiltii* Urban (Palo de Ramon) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat or direct destruction of plants through deforestation appear to be the most serious threats to *Banara vanderbiltii*. The species has been extirpated by deforestation from all but one of the sites where it has been known to exist. The remaining plants occupy a site of less than 165 square feet (16 square meters) in extent inside a stand of remnant forest, and are less than 660 feet (200 meters) from a major highway. Further clearing, modification of the forest edge, or encroachment by exotic plant species could lead to reduced survivorship or extinction of *Banara vanderbiltii*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species, but could become so in the future. The species occurs near inhabited areas, and could be removed or destroyed incidentally or deliberately.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists.

E. *Other natural or manmade factors affecting its continued existence.* *Banara vanderbiltii* is known to occur only as a single small, compact population. The species' restriction to specialized habitat, small geographically limited range, and population size of only 6 plants intensifies any adverse effects upon the population or habitat of this plant. The species' regenerative requirements are unknown. The fruits of this species were only recently discovered by Service personnel, and the frequency or viability of fruit and seed production are unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Banara vanderbiltii* as endangered. Since there are few individuals remaining and a continuing risk of damage to the plant and/or its habitat, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be 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 this species at this time. As discussed under threat factor "B" above, *Banara vanderbiltii* may be threatened by collecting, an activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction. Publication of a critical habitat location would increase the risk of taking or vandalism. The small size of the population exacerbates this risk. Thus, determination of critical habitat for *Banara vanderbiltii* would not be prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or

threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 such a 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. No critical habitat is being proposed for *Banara vanderbiltii*, as discussed above, and Federal involvement is possible only where habitat or plants may be affected by actions of the Federal Highway Administration. In the event that the highway in the immediate vicinity of this population is widened or realigned, proper protection and management planning will be needed to protect *Banara vanderbiltii*. Designers and work crews would need to be alerted so that the plants are considered and the habitat of *Banara vanderbiltii* left unchanged.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species.

With respect to *Banara vanderbiltii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would 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, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is unknown in cultivation and is uncommon in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available. It is likely that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of 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 *Banara vanderbiltii*;
- (2) The location of any additional populations of *Banara vanderbiltii* 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 and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Banara vanderbiltii*.

Final promulgation of the regulation on *Banara vanderbiltii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an 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 Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. *Endangered and Threatened Plants of the United States*. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.
 Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Banara vanderbiltii* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Mayaguez, P.R. 35 pp.

Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-3637).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Flacourtiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Flacourtiaceae—Flacourtia family.						
<i>Banara vanderbiltii</i>	Palo de Ramon	U.S.A. (PR)	E		NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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