

## 50 CFR Part 17

RIN 1018-AC28

37-94

**Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for *Gesneria pauciflora*****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine *Gesneria pauciflora* (no common name) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This small shrub is endemic to Puerto Rico, where only two populations are known to exist in the western mountains in the municipalities of Maricao and Sabana Grande. The species is threatened by the potential for natural disasters and modification of its highly restricted habitat. This proposal, if made final, would extend the Act's protection and recovery provisions to *Gesneria pauciflora*.

**DATES:** Comments from all interested parties must be received by April 19, 1994. Public hearing requests must be received by April 4, 1994.

**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, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Silander at the Caribbean Field Office address (809/851-7297).

**SUPPLEMENTARY INFORMATION:****Background**

*Gesneria pauciflora* is a small shrub currently known from only two populations in the western mountains of Puerto Rico. It was discovered by the German botanical collector Paul Sintenis on December 3, 1884, at "Indiera Fria" in Maricao, Puerto Rico. Numerous other botanists collected the plant from this same location throughout the years. A second population was discovered recently in the municipality of Sabana Grande, near the headwaters of the Seco River. Population estimates are difficult due to the plant's habit of growing in dense mats; however, the largest population has been estimated at approximately 1,000 individuals and the second at 50 (Proctor 1991; CPC 1992).

*Gesneria pauciflora* is a small gregarious shrub that may reach 30 centimeters in height with stems 8 millimeters in diameter. Stems may be erect or decumbent and the bark is smooth, gray-brown, and glabrous. The leaves are alternate, and the terete or flattened petioles are from 2 to 7 millimeters long. Leaf blades are shaped like a narrow trowel, 2.8 to 9.2 centimeters long and .9 to 2.3 centimeters wide, membranous, dark green and glossy above, and pilose along the prominent veins. The margin is subentire toward the cuneate base and serrate to sublobate above. The inflorescences are one to few-flowered and the peduncles from 6.1 to 15.3 centimeters long and slightly curved. The pedicels are 1 to 2 centimeters long, reddish-brown, and pilose to glabrescent. The corolla is tubular, curved, 2 to 2.3 centimeters long, 4 millimeters wide at the base, narrowing to 3 millimeters but widening to 5 millimeters at the middle and again narrowing to 4 millimeters at the mouth. The 5-lobed corolla is yellow to yellow-orange and densely pilose outside but glabrous inside. The fruit is a capsule, approximately 4 millimeters long and wide, gray-brown, glabrescent, with 5 to 10 not prominent ridges (Proctor 1991).

At both known localities the species is found growing in rocky stream beds on wet serpentine rock, where water is constantly seeping. Both localities are found within the Maricao Commonwealth Forest, managed by the Puerto Rico Department of Natural Resources. The largest population is located in an area of steep unstable slopes and may be threatened by landslides and flood damage. Forest management practices such as trail construction may adversely affect the species. The Center for Plant Conservation (1992) assigned *Gesneria pauciflora* a priority 1 ranking, indicating that the plant possibly could go extinct in the wild within the next 5 years.

*Gesneria pauciflora* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened by the Service as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices of review. The species was designated as a category 1 species (species for which the Service has

substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notices of review published on February 21, 1990, and September 30, 1993.

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. Beginning in October 1983, and in each October thereafter, the Service found that listing *Gesneria pauciflora* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year 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 (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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gesneria pauciflora* Urban are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Gesneria pauciflora* is known from only two locations in western Puerto Rico. Although both populations are found within the Maricao Commonwealth Forest, a management plan for the Forest has not been prepared. Activities within the Forest may increase the potential for erosion of the steep unstable slopes where the species occurs. Management practices such as trail construction may directly affect the species.

B. *Overutilization for Commercial, recreational, scientific, or educational purposes.* Although an attractive plant, taking for these purposes has not been a documented factor in the decline of this species.

**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 has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Gesneria pauciflora* is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

**E. Other natural or manmade factors affecting its continued existence.** One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Landslides, floods and storm damage are natural occurrences which may affect these steep, unstable slopes.

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 *Gesneria pauciflora* as threatened. Two populations are currently known, the largest one of which may contain as many as 1,000 individuals; both occur on land managed by the Commonwealth. Although extremely limited in distribution, the species does not appear to be in imminent danger of becoming extinct. Therefore, threatened rather than 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 propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's 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: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of

critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for this species due to the potential for taking and vandalism. The number of individuals of *Gesneria pauciflora* is so small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

#### 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, and 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 certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer 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 subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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 *Gesneria pauciflora*, as discussed above. Federal involvement may occur through the use of federal funds (U.S. Department of Agriculture) for forest management practices.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. The 1988 amendments do not reflect this protection for threatened plants, although section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits for *Gesneria pauciflora* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. 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 *Gesneria pauciflora*;
  - (2) The location of any additional populations of *Gesneria pauciflora*, 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 these species; and
  - (4) Current or planned activities in the subject areas and their possible impacts of *Gesneria pauciflora*.
- Final promulgation of the regulation of *Gesneria pauciflora* 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 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, Boquerón, 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).

**References 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.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Center for Plant Conservation, Missouri Botanical Garden, St. Louis, Missouri.

Proctor, G.R. 1991. Status report on *Gesneria pauciflora* Urban. In Puerto Rican Plant Species of Special Concern: Status and Recommendations. Publicacion Cientifica Miscelanea No. 2, Department of Natural Resources, San Juan, Puerto Rico.

**Author**

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

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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. Section 17.12(h) is amended by adding the following, in alphabetical order under "Gesneriaceae—*Gesneria* family," to the list of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**  
\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Gesneriaceae— <i>Gesneria</i> family:						
<i>Gesneria pauciflora</i>	None	U.S.A. (PR)	T		NA	NA

Date: February 10, 1994.  
**Mollie H. Beattie,**  
 Director, Fish and Wildlife Service.  
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