

Wetmore, A. 1922. Bird remains from the caves of Porto Rico. Bull. Amer. Mus. Nat. Hist. 46:297-333.  
 Wetmore, A. 1927. The Birds of Porto Rico and the Virgin Islands. Scientific Survey of Puerto Rico and the Virgin Islands. Vol. IX. New York Academy of Sciences, New York, U.S.A.  
 Wiley, J.W., and G.P. Bauer. 1985. Caribbean National Forest, Puerto Rico. American Birds 39:12-18.

**Author**

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O.

Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

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

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

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

**Part 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "BIRDS," to the List of Endangered and Threatened Wildlife, to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds:							
Hawk, Puerto Rican broad-winged.	<i>Buteo platypterus brunnescens.</i>	U.S.A. (PR) .....	Entire .....	E	550	NA	NA
Hawk, Puerto Rican sharp-shinned.	<i>Accipiter striatus venator.</i>	U.S.A. (PR) .....	Entire .....	E	550	NA	NA

Dated: August 26, 1994.  
**Mollie H. Beattie,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 94-22369 Filed 9-8-94; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

50 CFR Part 17  
 RIN 1018-AC17

190-94

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Puerto Rican Plants**

**AGENCY:** Fish and Wildlife Service, Interior.  
**ACTION:** Final rule.

**SUMMARY:** The Service determines *Mitracarpus maxwelliae* (no common name), *Mitracarpus polycladus* (no common name), and *Eugenia woodburyana* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *M. maxwelliae*, a small shrub, and *E. woodburyana*, a small evergreen tree, are endemic to southwestern Puerto Rico. *M. polycladus* is a small shrub found in the same general area of Puerto Rico as the

other two species, but it also has been reported from one other island, Saba, in the Lesser Antilles. These species are variously threatened by road construction, recreational activities, wildfires, and land clearing associated with development for agriculture and other purposes. This final rule provides *M. maxwelliae*, *M. polycladus* and *E. woodburyana* with the Federal protection and recovery provisions afforded by the Act for listed species.  
**EFFECTIVE DATE:** October 11, 1994.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/679-7096).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Mitracarpus maxwelliae* was discovered on March 8, 1925, by Nathaniel L. Britton on a limestone hill in the municipality of Guánica, Puerto Rico. The site was later rediscovered by

Alain Liogier in 1982 and again by George R. Proctor and Miguel Canals in 1987. The species has never been found at any other location but the type locality. At this locality, it is found along an unpaved road, growing on dry exposed gravel. Approximately 1,443 plants, including mature flowering individuals and seedlings, were counted within an area of about 7,500 square meters (697 square feet) (Proctor 1991a).

*Mitracarpus maxwelliae* is a low, densely-branching, moundlike shrub which may reach approximately 20 centimeters (8 inches (in)) in height. The somewhat woody branches are striate and sharply 4-angled. The leaves are opposite, sessile, linear or linear-lanceolate, densely scabrous, and from 1 to 3 centimeters (.4 to 1 in) long and 2 to 5 millimeters (.01 to .2 in) wide. The flower heads are terminal, dense, subglobose, and from .8 to 1.3 centimeters (.3 to .5 in) in diameter. The corolla is white, narrowly funnelform, minutely glandular-papillose, 5 to 6 millimeters (.20 to .23 in) long. The capsule is about 1.5 millimeters (.06 in) in diameter, opening by a transverse circular split at about the middle. The seeds are ellipsoid, brownish-black, and 1.2 millimeters (.05 in) long and .8 millimeter (.03 in) wide.

*Mitracarpus polycladus* was first discovered growing on coastal rocks near Caña Gorda, Guánica, Puerto Rico,

in 1886 by Paul Sintenis. It was also located on the island of Saba in the lesser Antilles by the Dutch botanist Bolding (note: the table entry for the proposed rule did not include Saba in the historic range; the table is corrected for this final rule). Today it continues to be known from only these two locations, where it grows in crevices and soil pockets of coastal rocks in arid areas. Exact numbers of individuals have been difficult to estimate due to extreme drought conditions in recent years (Proctor 1991b).

*Mitracarpus polycladus* is a suffrutescent perennial. It is branched near the base, and the erect or spreading stems may reach up to 45 centimeters (18 in) in height. The branches are 4-angled and glabrous. Leaves are opposite, linear to linear-lanceolate, 2 to 4.5 centimeters (.9 to 1.8 in) long, .3 to .5 centimeters (.12 to .20 in) wide, glabrous and often with an inrolled margin and decurrent base. The inflorescence is terminal and capitate, 8 to 13 millimeters (.31 to .51 in) in diameter, many flowered and subtended by 3 bract-like leaves. The corolla is white, about 5 millimeters (.20 in) long, with ovate leaves. The seed capsule is 1.5 millimeter (.06 in) in diameter, splitting open transversely below the middle, and contains black seeds.

*Eugenia woodburyana*, a small evergreen tree, is endemic to Puerto Rico and currently known from only the Sierra Bermeja in the municipalities of Cabo Rojo and Lajas and from the Guánica Commonwealth Forest in Guánica, all in southwestern Puerto Rico. An additional individual has been reported from the Cabo Rojo National Wildlife Refuge, in Cabo Rojo, adjacent to the Sierra Bermeja. Approximately 45 individuals are known from these three locations. The species was only recently discovered and described by Alain Liogier (Liogier 1980).

*Eugenia woodburyana* may reach 6 meters (20.0 feet) in height. The leaves are opposite, obovate, pilose on both sides, glandular-punctate below, and from 1.5 to 2 centimeters (.6 to .8 in) long and 1 to 1.5 (.4 to .6 in) centimeters wide. The inflorescence is axillary, 2 to 5 flowered and with a peduncle 1 to 3 millimeters (.04 to .12 in) long. The calyx is 4-lobed and the petals are white, 4 millimeters (.12 in) long and 3.5 millimeters (.14 in) wide. The striking fruit is red upon maturity, 8-winged and 2 centimeters (.8 in) in diameter.

#### Previous Federal Action

*Mitracarpus maxwelliae* and *Mitracarpus polycladus* were recommended for Federal listing in a

report prepared by the Smithsonian Institution as directed by section 12 of the Endangered Species Act of 1973. The report was presented to Congress in 1975 as House Document No. 94-51. The species were subsequently 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) notice of review. In the February 21, 1990, notice, *M. maxwelliae* was designated as a category 1 species (a species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and *M. polycladus* as a category 2 species (taxa for which there is some evidence of vulnerability, but for which there was not enough data to support listing). *Eugenia woodburyana* was included as a category 2 candidate for listing in the September 30, 1993, plant notice of review. It has been included in the Center for Plant Conservation's Report on Rare Plants in Puerto Rico (Center for Plant Conservation 1992) as a taxa which may become extinct within the next 10 years. All three species are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources (Department of Natural Resources 1993).

Based on status surveys reports completed in 1991, and in conjunction with other recent field work, the Service recently reclassified *Mitracarpus polycladus* and *Eugenia woodburyana* as category 1 candidates.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Mitracarpus maxwelliae* and *M. polycladus*, because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1992, the Service has found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *M. maxwelliae*, *M. polycladus* and *Eugenia woodburyana*, published on January 3, 1994 (59 FR 44), constituted the final 1-year finding for the *Mitracarpus* species in

accordance with Section 4(b)(3)(B)(ii) of the Act.

#### Summary of Comments and Recommendations

In the January 3, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the "San Juan Star" on January 22, 1994, and in "El Día" on January 24, 1994. Two letters of comment were received, neither of which opposed the listing. The Puerto Rico Department of Natural and Environmental Resources supported the listing and provided additional information on threats to the species in the Sierra Bermeja. A public hearing was neither requested nor held.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Mitracarpus maxwelliae*, *M. polycladus* and *Eugenia woodburyana* should be classified as endangered species. Procedures found at 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 were followed. 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 *Mitracarpus maxwelliae* Britton & Wilson, *Mitracarpus polycladus* Urban and *Eugenia woodburyana* Alain are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the Sierra Bermeja, *Eugenia woodburyana* is found on privately owned land subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban development. Off road vehicles used in these areas may affect seedling recruitment. All three species are also found within the Guánica Commonwealth Forest; however, *Mitracarpus maxwelliae* and *Mitracarpus polycladus* are found along infrequently used roadways where they

may be impacted in the future. Any road improvement, widening, or increase in traffic along these roads would result in the loss of a significant portion of the only known populations. The sites of these two species are near preferred recreational areas, heavily utilized during the summer months.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking plants for these purposes has not been a documented factor in the decline of these species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of these 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, *Mitracarpus maxwelliae*, *Mitracarpus polycladus* and *Eugenia woodburyana* are not yet on the Commonwealth list. Federal listing will provide immediate protection under the Act, and by virtue of an existing Section 6 Cooperative Agreement with the Commonwealth, listing will also assure the addition of these species to the Commonwealth list and enhance funding possibilities for recovery actions.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico, particularly in the coastal roadside areas of Guánica where *Mitracarpus maxwelliae* and *M. polycladus* are found.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Mitracarpus maxwelliae*, *M. polycladus* and *Eugenia woodburyana* as endangered. In U.S. territory, *M. maxwelliae* and *M. polycladus* are known from only one location in the Guánica area of southwestern Puerto Rico. In this area they are threatened by road construction, recreational activities and wildfires. *E. woodburyana* is known from only approximately 45 individuals at three locations in southwestern Puerto Rico. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. Therefore, endangered

rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these 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. Service regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Both situations apply to *Mitracarpus maxwelliae*, *Mitracarpus polycladus* and *Eugenia woodburyana*.

Critical habitat would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of these species and their precarious status, any Federal action that would destroy or have any significant adverse effect on their habitat would likely result in a jeopardy biological opinion under section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

The Service also finds that designation of critical habitat is not prudent for these species due to the potential for taking. The number of individuals of *Mitracarpus maxwelliae*, *Mitracarpus polycladus* and *Eugenia woodburyana* is sufficiently 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 these species' habitat. Protection of these 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, 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 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)(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 these three species, as discussed above.

The only currently known Federal involvement is through the occurrence of *Eugenia woodburyana* on the Cabo Rojo National Wildlife Refuge. Other Federal involvement may occur in the future through the funding of housing (Farmer's Home Administration or Housing and Urban Development) or funding utilized for the management of the Guánica Commonwealth Forest (U.S. Department of Agriculture, Forest Service).

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the

jurisdiction of the United States to import or export any endangered 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 it from areas under Federal jurisdiction and reduce it to possession. 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. Certain exceptions 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 permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Attn: Endangered and Threatened Species Permits, 1875 Century Boulevard, Suite

200, Atlanta, Georgia 30345 (404/697-4000).

**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**

Center for Plant Conservation. 1992. Report on the rare plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.  
 Department of Natural Resources. 1993. Natural Heritage Program status information on *Mitracarpus maxwelliae*, *Mitracarpus polycladus* and *Eugenia woodburyana*. San Juan, Puerto Rico.  
 Liogier, Alain H. 1980. Novitates Antillanae. VIII. Phytologia 47(3):167-198.  
 Proctor, G. R. 1991a. Status report on *Mitracarpus maxwelliae* Britton & Wilson. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.  
 Proctor, G. R. 1991b. Status report on *Mitracarpus polycladus* Urban. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

**Author**

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

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

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

**Proposed Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended 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; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend Section 17.12(h) by adding the following, in alphabetical order, under Myrtaceae and Rubiaceae, 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					
Myrtaceae—Myrtle family:						
<i>Eugenia woodburyana</i> ...	None .....	U.S.A. (PR) .....	E	551	NA	NA
Rubiaceae—Madder family:						
<i>Mitracarpus maxwelliae</i> ..	None .....	U.S.A. (PR) .....	E	551	NA	NA
<i>Mitracarpus polycladus</i> ..	None .....	U.S.A. (PR), Lesser Antilles (Saba).	E	551	NA	NA

Dated: August 26, 1994.  
**Mollie H. Beattie,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 94-22367 Filed 9-8-94; 8:45 am]  
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