

designated paragraphs (b) through (e) as follows:

**§ 219.501 Pre-employment tests.**

(a)(1) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service shall implement pre-employment alcohol testing beginning on January 1, 1995.

(2) Each Class II railroad shall implement pre-employment alcohol testing beginning on July 1, 1995.

(3) Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement pre-employment alcohol testing beginning on January 1, 1996.

(4) In the case of a railroad commencing operations after January 1, 1996, the railroad shall implement pre-employment alcohol testing not later than the expiration of 60 days from approval by the Administrator of the railroad's random testing programs.

(b) Prior to the first time a covered employee performs covered service for a railroad, the employee shall undergo testing for alcohol and drugs. No railroad shall allow a covered employee to perform covered service, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration of less than .04 and has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement shall apply to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service. If the test result of a final applicant for pre-employment indicates an alcohol content of .02 or greater, the provisions of paragraph (b) of this section shall apply.

(c) No final applicant for employment tested under the provisions of this part who is found to have an alcohol concentration of .02 or greater but less than .04 shall perform safety-sensitive functions for a railroad, nor shall a railroad permit the applicant to perform safety-sensitive functions, until the applicant's alcohol concentration measures less than .02.

(d) Tests shall be accomplished through breath analysis and analysis of urine samples. The conduct of breath alcohol testing and urine drug testing under this subpart is governed by Subpart H of this part and Part 40 of Subtitle A of this title.

(e) As used in Subpart H with respect to a test required under this subpart, the term *covered employee* includes an applicant for pre-employment testing

only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

Issued in Washington, D.C. on November 17, 1994.

**Jolene M. Molitoris,**  
Administrator, Federal Railroad  
Administration.

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BILLING CODE 4910-06-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC04

#### Endangered and Threatened Wildlife and Plants; Two Puerto Rican Trees Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines *Eugenia haematocarpa* (uvillo) and *Pleodendron macranthum* (chupacallos) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Both species are small trees endemic to Puerto Rico. They are variously threatened by habitat destruction and modification, forest management practices, hurricane damage, restricted distribution, and possible collection. This final rule implements Federal protection and recovery provisions for these species as provided by the Act.

**EFFECTIVE DATE:** December 27, 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 the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345-3301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eugenio Santiago-Valentín 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

*Eugenia haematocarpa* was first collected in 1939 from Barrio Maizales in the municipality of Naguabo by Leslie R. Holdridge but was named in 1963, 24 years later, by Henri Alain

Liogier (Little et al. 1974; Proctor, pers. comm.). Since then, subsequent collections have been made from the El Verde area of the Luquillo mountains, and it was also recently discovered (in 1990) from a privately-owned property located adjacent to the Carite Commonwealth Forest.

*Eugenia haematocarpa* is a small tree, 6 meters (20 feet) tall and 12-13 centimeters (4.8-5.2 inches) in diameter. The elliptic leathery leaves are 13-18 centimeters (5.2-7.2 inches) long, 6-8 centimeters (2.4-3.2 inches) wide, almost stalkless, hairless, dull dark green on the upper surface, and light green beneath. Blades contain many slender, slightly raised side veins, forming a prominent network. The flowers are produced on trunks, with slender, nearly equal stalks. Flowers have a four-lobed rounded calyx, 1 millimeter (.04 inch) long; four rounded light pink petals 3 millimeters (.12 inch) long; and numerous stamens. The fruit is a dark red, round berry 2.3-2.9 centimeters (.9-1.1 inch) in diameter, containing a 1.6 centimeter (.6 inch) diameter seed.

*Eugenia haematocarpa* is known from five localities in the wet montane forests of the Sierra de Luquillo and Sierra de Cayey. Less than 50 plants are known from four populations within the Caribbean National Forest, managed by the U.S. Forest Service. A population of approximately 15 plants occurs on private property adjacent to the Carite Commonwealth Forest in the Sierra de Cayey. The populations within the Caribbean National Forest may be affected by forest management practices. The population on private land may be affected by clearing of the vegetation. All the localities where the species occurs were impacted by Hurricane Hugo in 1989. The fact that the species produces edible fruits could make it an attractive one for collecting.

*Pleodendron macranthum* was discovered by the French botanist August Plée in 1822-1823 and was first described by Baillon under the genus *Cinnamodendron*. In 1889 vanTieghem placed the species in the current genus, which honors its first collector (Vivaldi et al. 1981.)

*Pleodendron macranthum* is an evergreen tree reaching 10 meters (33 feet) in height, with leathery, alternate, simple leaves about 8.5-12.5 centimeters (3.5-5.0 inches) long and 4.5-5.0 centimeters (1.7-2 inches) wide. The blades are elliptic with the upper surface dark shiny green and the midvein sunken. The lower surface is pale green with a prominent mid vein and with fine, parallel side veins. The leaf stalks are about 7 millimeters (.25

inch) long. The whitish bisexual flowers are solitary and axillary, 2 centimeters (.8 inch) wide and with a 2.5 centimeter (1 inch) long flower stalk. The cup-shaped calyx is persistent in the fruit, and the corolla contains 12 petals. The aromatic purplish black fruit measures 2 centimeters (.8 inch) in diameter and contains many seeds.

No observation or collection of the species was made for more than 40 years (Vivaldi et al. 1981). The species was rediscovered some years ago, and is at present known from fewer than 50 individuals in 7 localities of the subtropical wet and the subtropical montane wet forests of northern and eastern Puerto Rico. Three localities are within the Caribbean National Forest and four within the Rio Abajo Commonwealth Forest. All the known sites may be impacted by forest management practices. The Caribbean National Forest was severely impacted by Hurricane Hugo in 1989.

#### Previous Federal Action

*Eugenia haematocarpa* and *Pleodendron macranthum* are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources. They are also considered rare plants by the Center for Plant Conservation (Center for Plant Conservation 1992). *Eugenia haematocarpa* and *Pleodendron macranthum* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilippis 1978). *Eugenia haematocarpa* and *Pleodendron macranthum* were 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 1990 notice, both species were designated as category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened).

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 made annual findings that listing *Eugenia haematocarpa* and *Pleodendron macranthum* 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. A proposed rule to list *Eugenia haematocarpa*, *Pleodendron macranthum* and one other species, published on September 24, 1993 (58 FR 49960), constituted the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

The proposal to list *Eugenia haematocarpa* and *Pleodendron macranthum* also included the proposed listing of *Coccoloba rugosa* as threatened. After the proposed rule comment period had closed, the Service received information from a private consulting firm indicating the discovery of additional populations of *Coccoloba rugosa* and questioning the appropriateness of protecting the species under the Act. The Service has not been able to fully verify the new population data and will need additional time to conduct further surveys. This will likely take several months and cannot be completed in time for the usual 12-month deadline established by the Act for completing action on a proposed rule. The Act provides for a 6-month extension if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to a final determination on a proposed listing. The Service finds there is substantial disagreement with regard to the population status of *Coccoloba rugosa* and, therefore, is extending the deadline for a final decision on this species. A notice to extend the deadline is published in the proposed rule section of today's Federal Register.

#### Summary of Comments and Recommendations

In the September 24, 1993, 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 October 10, 1993. Three letters of comment were received, one supported the listing, the other two provided information but did not indicate either support or opposition.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information

available, the Service has determined that *Eugenia haematocarpa* and *Pleodendron macranthum* should be classified as endangered species. Procedures found at Section 4(a)(1) of the Act and regulation's (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. 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 *Eugenia haematocarpa* Alain and *Pleodendron macranthum* (Baill.) v. Tiegh are as follows:

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

One of the five known populations of *Eugenia haematocarpa* in the Sierra de Cayey is located on private land and may be impacted by clearing of the vegetation. Although four of the five populations of *Eugenia haematocarpa* and all the known populations of *Pleodendron macranthum* are found on Federal and Commonwealth forest lands, the two species may be affected by forest management practices.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these tree species. However, these species may be very attractive for collectors due to their rarity.

#### 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, *Eugenia haematocarpa* and *Pleodendron macranthum* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for research funding.

#### 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 number and distribution, which makes the risk of extinction extremely high. Hurricane Hugo in 1989 dramatically affected the

forests of eastern Puerto Rico. Both *E. haematocarpa* and *P. macranthum* are known from such a small number of individuals that loss of genetic variation may be a factor in their future survival.

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 *Eugenia haematocarpa* and *Pleodendron macranthum* as endangered. *Eugenia haematocarpa* and *Pleodendron macranthum* both occur at only a few localities and there are fewer than 75 individuals of each species. Due to their low numbers and limited distribution, any adverse impact is likely to have a serious effect on their survival. The precarious status of *Eugenia haematocarpa* and *Pleodendron macranthum* makes extinction a distinct possibility and warrants their classification as endangered species. 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. 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 exists: (i) The species is threatened by taking or other human activity, and identification of 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. Designation of critical habitat for the species would not be prudent for both reasons.

The number of individuals of *Eugenia haematocarpa* and *Pleodendron macranthum* 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, which are difficult to enforce against and only partially regulated by the Act. Additionally, no Federal activity is anticipated as being likely to affect these species except possibly on U.S. Forest Service lands and lands owned by the U.S. Army and U.S. Navy.

Critical habitat also would not provide 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. In the case of *E. haematocarpa* and *P. macranthum*, the only known suitable habitat is where these species currently occur. Because of the highly limited distribution of the species, 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 believes that any 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' habitats. Should Federal involvement occur, habitat protection will be addressed through the section 7 consultation process, utilizing the 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 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. Federal involvement is anticipated for populations of *Eugenia haematocarpa* and *Pleodendron macranthum* located in the Caribbean National Forest.

The Act and its implementing regulations 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, 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 or endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove and reduce the species to possession 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 (Public Law 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 to the prohibitions apply to agents of the Service and the 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 plants under certain circumstances. It is anticipated that few permits for these species will ever be sought or issued, since the species are not known to be in cultivation for commercial trade and are uncommon in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed or ongoing activities. Of the seven known localities of *Pleodendron macranthum* all are located on public lands and of the five known localities of *Eugenia haematocarpa* all but one are located on public lands. Collection, damage or destruction of these species on Federal

lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in violation of Commonwealth law. Section 15.01(b) of the Commonwealth "Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico," states: "It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico." The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Office (see ADDRESSES section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345-3301 (phone 404/679-7096, facsimile 404/679-7081).

**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, Inc., Washington D.C. xv + 403 pp.  
 Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.  
 Little, E.L., R.O. Woodbury and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands. Second volume. U.S. Department of Agriculture handbook no. 449. Washington, D.C. 1024 pp.  
 Vivaldi, J.L., and R.O. Woodbury. 1981. Status Report on *Pleodendron macranthum* (Baill.) van Tieghem. Unpublished report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 38 pp.

**Author**

The primary author of this final rule is Mr. Eugenio Santiago-Valentin, 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; U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

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

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Eugenia haematocarpa</i>	Uvillo	U.S.A. (PR)	Myrtaceae	E	564	NA	NA
<i>Pleodendron macranthum</i>	Chupacallos	U.S.A. (PR)	Canellaceae	E	564	NA	NA

Dated: September 14, 1994.  
**Mollie H. Beattie,**  
 Director, Fish and Wildlife Service.  
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**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 625**  
**Docket No. [940262-4321; I.D. 111894B]**  
**Summer Flounder Fishery**  
**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Notification of commercial quota increase and commercial quota availability.

**SUMMARY:** NMFS issues this document to announce an increase in the commercial quota for the 1994 summer flounder fishery. The intent of this document is to comply with an Opinion and Order issued by District Court Judge Robert Doumar, directing NMFS to reset the quota equal to 19.05 million lb (8.6 million kg). This document advises the public that a quota adjustment has been made and informs the public of revisions to state quotas necessitated by this adjustment. As a result of this action, vessels issued a Federal fisheries permit for the summer flounder fishery may resume landing summer flounder