

**PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS**

■ Accordingly, the interim final rule with comment period amending 45 CFR part 61, which was published on June 17, 2004 in the **Federal Register** at 69 FR 33866–33869 is adopted as a final rule without change.

Dated: August 23, 2004.

**Lewis Morris,**

*Chief Counsel to the Inspector General.*

Approved: September 15, 2004.

**Tommy G. Thompson,**

*Secretary.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018–A114

**Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Tinian Monarch From the Federal List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service, remove the Tinian monarch (*Monarcha takatsukasae*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on thorough review of all available information, which indicates that this species has increased in number or is stable, and that the primary listing factor, loss of habitat, has been ameliorated.

The Tinian monarch (monarch) is a forest bird endemic to the island of Tinian in the Mariana archipelago in the western Pacific Ocean. The monarch was listed as endangered on June 2, 1970 (35 FR 8491), because its population was thought to be critically low due to the destruction of native forests by pre-World War II (WW II) agricultural practices, and by military activities during WWII. We conducted forest bird surveys on Tinian in 1982, which resulted in a population estimate of 39,338 monarchs. Based on the results of this survey, the monarch was downlisted to threatened on April 6, 1987 (52 FR 10890). A study of monarch

breeding biology in 1994 and 1995 resulted in a population estimate of approximately 52,904 birds. In 1996, a replication of the 1982 surveys yielded a population estimate of 55,721 birds. The 1996 survey also found a significant increase in forest density since 1982, indicating an improvement in monarch habitat quality. This final rule removes the Tinian monarch from the Federal List of Endangered and Threatened Wildlife, thereby removing all protections provided by the Act.

**DATES:** This rule is effective September 21, 2004.

**ADDRESSES:** The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850.

**FOR FURTHER INFORMATION CONTACT:** Eric VanderWert, Pacific Islands Fish and Wildlife Office, at the above address (telephone 808/792–9400; facsimile 808/792–9581).

**SUPPLEMENTARY INFORMATION:**

**Background**

Tinian is a small [101 square kilometers (38 square miles)] island in the Commonwealth of the Northern Mariana Islands (CNMI), and is located three islands to the north of Guam. The human population of Tinian was estimated at 3,540 during a census in 2000. The majority of residents live in the island's only town of San Jose at the southwestern edge of the island. The northern 71 percent of the island is leased to the U.S. Department of Defense (USDOD) for defense purposes. The remaining 29 percent of the island is divided between leased public property (67 percent), privately owned property (26 percent), and other public property (7 percent) (Deborah Fleming, CNMI Division of Public Lands, pers. comm. 1999). Approximately 10 percent of the island is devoted to agriculture, while another 30 to 50 percent is used for cattle grazing (Engbring *et al.* 1986; Belt-Collins 1994).

The monarch, or Chuchurican Tinian in Chamorro, was described by Takatsukasa and Yamashina (1931). It is a small (15 centimeters [6 inches]) forest bird in the monarch flycatcher family (Monarchidae), and has light rufous underparts, olive-brown upperparts, dark brown wings and tail, white wing bars, and a white rump and undertail coverts (Baker 1951). The monarch currently is found only on the island of Tinian, but examination of museum specimens by Peters (1996) suggested a

now extirpated population may have occurred on the island of Saipan, just north of Tinian. The monarch also was reported from the tiny island of Agiguan just south of Tinian in the early 1950's, but some authorities discount this report as an error (Engbring *et al.* 1986).

Heavy disturbance of Tinian's native forests began in the 18th century when the Spaniards used Tinian as a supply island for Guam, and maintained large herds of cattle and other ungulates on the island (Fosberg 1960). In 1926, a Japanese company leased the entire island and cleared additional forested lands for sugarcane production (Belt-Collins 1994). During WW II, the sugarcane plantations and most remaining native vegetation were destroyed by military campaigns and military construction (Baker 1946). After the war, the USDOD may have seeded the island with tangantangan (*Leucaena leucocephala*), a rapidly growing tree that is not native to the Marianas, to slow erosion (U.S. Fish and Wildlife Service [USFWS] 1995; 1996).

Currently, the vegetation on Tinian is highly disturbed, with tangantangan thickets being the most abundant habitat type (Fosberg 1960; Engbring *et al.* 1986; Falanruw *et al.* 1989). Engbring *et al.* (1986) estimated that 38 percent of Tinian was dominated by tangantangan, while Falanruw *et al.* (1989) estimated that 54 percent of the island was covered in secondary vegetation, which included tangantangan thickets. Only 5 to 7 percent of the island is estimated to support native forest, which is restricted to steep limestone escarpments (Engbring *et al.* 1986; Falanruw *et al.* 1989).

The monarch inhabits a variety of forest types on Tinian, including native limestone forest dominated by figs (*Ficus* species [spp.]) *Elaeocarpus joga*, *Mammea odorata*, *Guamia mariannae*, *Cynometra ramiflora*, *Aglaia mariannensis*, *Premna obtusifolia*, *Pisonia grandis*, *Ochrosia mariannensis*, *Neisosperma oppositifolia*, *Intsia bijuga*, *Melanolepis multiglandulosa*, *Eugenia* spp., *Pandanus* spp., *Artocarpus* spp., and *Hernandia* spp.; secondary vegetation consisting primarily of the non-natives *Acacia confusa*, *Albizia lebbbeck*, *Casuarina equisetifolia*, *Cocos nucifera*, and *Delonix regia*, with some native species mixed in; and nearly pure stands of introduced tangantangan (Engbring *et al.* 1986; USFWS 1996).

The monarch was listed as endangered in 1970 (35 FR 8491) under the authority of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc). The monarch's status remained as endangered under the Act. The decision to list the monarch as

endangered was based on a report by Gleize (1945) of 40 to 50 monarchs on Tinian after WW II (52 FR 10890), but it is not clear if this report represented the number of birds seen, or an estimate of the total population on the entire island. Pratt *et al.* (1979) suggested that this estimate represented only the number of birds Gleize observed in a specific, small part of the island. Downs (1946) reported that monarchs were restricted in distribution to distinct locations on the island, while Marshall (1949) considered the monarch to be abundant. In the late 1970's, Pratt *et al.* (1979) estimated monarchs to number in the tens of thousands and to prefer tangantangan thickets. In May 1982, we conducted forest bird surveys of the Mariana islands, during which the monarch was found to be the second most abundant bird species on Tinian, with a population estimated at 39,338 birds and distributed throughout the island in all forest types (Engbring *et al.* 1986). Engbring *et al.* (1986) recommended reassessment of the monarch's endangered status, which led to the reclassification of the monarch from endangered to threatened in 1987 (52 FR 10890).

We conducted a life history study of the monarch in 1994 and 1995 (USFWS 1996). This study showed that monarchs forage and nest in native limestone forest, secondary forest, and tangantangan forest, but found some evidence indicating native limestone forest may be higher quality habitat for monarchs than secondary and tangantangan forests. Monarch home ranges were four to five times smaller in native limestone forest [1,221 square meters (1,460 square yards)] than in secondary forest [5,126 square meters (5,608 square yards)] and tangantangan forests [6,385 square meters (7,636 square yards)], and population densities were higher in native limestone forest [30.7 birds per hectare (12.4 birds per acre)] than in secondary forest [7.7 birds per hectare (3.1 birds per acre)] or tangantangan forest [6.0 birds per hectare (2.4 birds per acre)]. Native tree species may have been preferred for nesting, and nesting success may have been higher in native limestone forest than in secondary and tangantangan forests, but additional information is required to confirm these patterns. Based on the results of that study, the island wide monarch population was estimated to be approximately 52,904 birds, and a recommendation was made to reassess the threatened status of the monarch (USFWS 1996).

We conducted a second survey of the avifauna on Tinian in August and September 1996. The 1996 survey

estimated the monarch population at 55,721 birds (Lusk *et al.* 2000), which was significantly higher than the estimate of 39,338 birds found by Engbring *et al.* (1986). The 1996 survey also found that vegetation density had increased significantly in all forest types since 1982, which may have been related to a decrease in grazing pressure (Lusk *et al.* 2000). Lusk *et al.* (2000) hypothesized that the increase in the monarch's population was related to increases in density of vegetation in both native and introduced forest habitats.

#### Previous Federal Actions

The monarch was listed as endangered in 1970 (35 FR 8491) under the authority of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc). The monarch's status remained as endangered under the Act. The primary reasons for listing the monarch were presumed small population size (52 FR 10890) and the removal or destruction of forest by agricultural practices and military activities before and during WW II (50 FR 45632). However, no actual surveys of the monarch's status had been conducted at the time of listing. Subsequently, in 1982, we conducted a survey on Tinian and found an apparent increase both in monarch numbers and extent of suitable forest habitat since estimates made in the 1940s (Engbring *et al.* 1986). On November 1, 1985, we published in the **Federal Register** a proposed rule to delist the monarch (50 FR 45632). Comments received on the 1985 proposed delisting rule were mainly concerned with two potential threats that may impact the species: (1) The accidental introduction of a psyllid insect that was defoliating one of the major shrub components of monarch habitat; and, (2) the possibility of brown tree snakes becoming established on Tinian. Therefore, based on the information in the comments received, we instead chose to downlist the monarch, and a final rule reclassifying the monarch from endangered to threatened was published in the **Federal Register** on April 6, 1987 (52 FR 10890). In that final rule we also determined that it was not prudent to designate critical habitat for the monarch at that time. There is no recovery plan specifying delisting criteria for the monarch.

We received a petition dated February 3, 1997, from the National Wilderness Institute (NWI) to delist the monarch pursuant to the Act. We also received a similar petition dated December 6, 1997, from Juan C. Tenorio & Associates, Inc. (Tenorio). As explained in our 1996

Petition Management Guidance (Service 1996), subsequent petitions are treated separately only when they are greater in scope or broaden the area of review of the first petition. The Tenorio petition provided no additional or new information than what was already provided in the NWI petition and will, therefore, be treated as a comment on the first petition received.

On February 22, 1999, we published in the **Federal Register** a notice of petition finding and a proposed rule to remove the monarch from the Federal List of Endangered and Threatened Wildlife (64 FR 8533). That proposal was based primarily on information from recent population surveys and demographic research, which showed increases in monarch numbers and habitat quality. The proposed rule addressed the information provided in the petitions and, therefore, constituted the 12-month finding for both the NWI and Tenorio petitions.

#### Summary of Comments and Recommendations

In the proposed rule published on February 22, 1999 (64 FR 8533), we requested interested parties to submit comments or factual reports or information relevant to delisting the monarch. We contacted Federal and Commonwealth government agencies, scientific organizations, and other interested parties and requested their comments. We published newspaper notices in the Marianas Variety (Saipan, CNMI) and the Pacific Daily News (Guam), inviting general public comment. No public hearings were requested and none were held. The public comment period closed on April 23, 1999.

Also, in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited peer review of the proposed rule from three appropriate and independent experts on the taxonomy, population, ecology, and conservation of the monarch. We received one response, and the reviewer supported the delisting proposal.

We received two letters of comment during the comment period, one of which was from a scientific peer reviewer. Both letters supported delisting the monarch, but they also raised four issues regarding the proposed delisting. These issues and our responses to them are presented below. Although CNMI government agencies were contacted, they did not comment directly on the proposed rule. However, we know that CNMI concurs with our decision to delist the monarch

because, in 2002, the Northern Marianas Commonwealth Legislature adopted a Joint House Resolution requesting that the Service finalize the proposed rule to delist the Tinian monarch.

*Issue 1:* One letter expressed concern that, although the decision to delist the monarch is biologically sound and appropriate, the decision was based on a single report on the life history of the monarch that has not been published in a peer-reviewed scientific journal.

*Our Response:* The delisting decision is based on two life history studies, both of which are described in the proposed rule and are considered in our five-factor analysis. Since publication of the proposed rule, the results of one study have been published in the peer-reviewed scientific journal *Micronesica*, which is published by the University of Guam (Lusk *et al.* 2000). This study was an island wide survey of forest birds and evaluation of forest density on Tinian, and produced a population estimate of 55,721 monarchs. The second study, to which the comment letter referred, was our unpublished report that investigated habitat use and nesting biology of the monarch, and which provided a population estimate as a secondary finding (USFWS 1996).

*Issue 2:* The surveys in 1982 and 1996 were conducted during different seasons, and the apparent increase in monarch numbers could have been caused by this difference in survey methods.

*Our Response:* It is possible that differences in the timing of surveys affected the resulting population estimates, and that the increase in monarch numbers may not be as large as it appeared. However, all evidence indicates that since 1982 the monarch population has been at least stable, if not increasing, and that the population is relatively large. After consideration of the possible error introduced by the difference in survey methods, we maintain that the decision to delist the monarch is biologically sound.

*Issue 3:* Accidental introduction of the brown tree snake (*Boiga irregularis*) to Tinian is a continual potential threat to the monarch, and if an incipient population of brown tree snakes is discovered on Tinian, then the monarch and all other birds on Tinian would again be in clear danger of extinction.

*Our Response:* We fully agree that establishment of the brown tree snake on Tinian would threaten the monarch and other species on Tinian. The brown tree snake climbs exceptionally well and forages opportunistically on a wide variety of vertebrates, including birds and their eggs, reptiles, and mammals (Rodda *et al.* 1999a). On Guam,

predation by the brown tree snake decimated the avifauna, causing the local extirpation or complete extinction of 10 of the 13 native forest bird species on the island (Savidge 1987; Conry 1988; Rodda *et al.* 1999a). It has few competitors and no known predators in the Marianas, and can reach population densities of up to 80 to 120 snakes per hectare (32 to 48 snakes per acre) (Rodda *et al.* 1999b). Declines in bird populations on Guam occurred extremely rapidly once the brown tree snake became established (Savidge 1987, Wiles *et al.* 2003).

While there have been reports of possible brown tree snakes on Tinian, the brown tree snake is not known to be established on Tinian, and the monarch is not known to be affected by brown tree snake predation. Nevertheless, we recognize that effective methods for interdiction, monitoring, and control of incipient populations of brown tree snakes must be implemented on all islands in the Marianas, including Tinian. Moreover, implementation of brown tree snake interdiction is not dependent on the listing status of the Tinian monarch.

On Tinian, where there are no native snakes, there have been at least seven reports of snakes some of which probably were brown tree snakes (Hawley 2002; Halbre Rogers pers. comm. 2003). Brown tree snakes potentially could reach Tinian from Guam, where the snake is established, or from Saipan, which is now thought to have an incipient population of brown tree snakes (Hawley 2002). Several measures have been taken on Guam, Saipan, and Tinian in an attempt to decrease the possibility of brown tree snakes spreading among the Mariana Islands. The U.S. Department of the Interior Office of Insular Affairs (OIA), U.S. Department of Defense (DOD), U.S. Department of Agriculture Wildlife Services (USDA), the Service, the Government of Guam, the CNMI, and the State of Hawaii are working together regionally to control brown tree snakes, particularly around transport centers (OIA 1999). The OIA and DOD have and continue to actively fund research into methods of controlling snakes on Guam, in part to reduce the threat of introduction to other Pacific islands (OIA 1999). Both the CNMI Division of Fish and Wildlife (DFW) and Guam Department of Aquatic and Wildlife Resources conduct brown tree snake public awareness educational campaigns consisting of school presentations, news releases, workshops, and poster/pamphlet distribution (Perry *et al.* 1996), and the CNMI maintains a snake reporting

hotline (28-SNAKE; N. Hawley, pers. comm. 2003). In 1996, the CNMI became a signatory of the Memorandum of Agreement (MOA) between the governments of Hawaii, Guam, and the CNMI, and individual Federal Government agencies concerned with brown tree snake eradication and control (USDOI *et al.* 1993; USDOI *et al.* 1996). This MOA commits the CNMI to a proactive brown tree snake program and allows the CNMI to apply for funding from the allotment of money appropriated by the U.S. Congress each year for brown tree snake control (OIA 1999).

On Guam, high-risk cargo leaving by air and sea currently undergoes inspection for brown tree snakes by dog teams from USDA Wildlife Services, under contract from the DOD and OIA. Inspections on Guam are as effective as possible using existing techniques; however, inspections are voluntary, compliance by shippers with quarantine procedures is variable, and USDA Wildlife Services has no regulatory authority to require inspections.

All construction companies operating in the CNMI must have a snake control plan, and the Governor of the CNMI signed a directive for the Ports Authority and related agencies to work with the CNMI DFW to develop effective snake interdiction strategies (OIA 1999). The CNMI also conducts training for its DFW and Quarantine personnel with the U.S. Geological Survey Biological Resources Discipline and USDA Wildlife Services on Guam at least two to three times per year (Vogt 1998).

On Saipan, the CNMI Quarantine Division operates a sniffer dog program that consists of two handlers and two dogs that check incoming cargo for brown tree snakes. The efficacy of these inspections needs verification, however, and the level of staffing is inadequate for the volume of goods shipped via air and sea. Outgoing cargo on Saipan currently does not undergo any inspection for brown tree snakes. Construction was completed recently on a brown tree snake barrier and quarantine area designed to facilitate inspection of high-risk cargo at the commercial port on Saipan (N. Hawley, pers. comm. 2004). The 3000-square-meter (32,400-square-foot) area within the barrier will be monitored for brown tree snakes with dogs and traps. Although the efficacy of this barrier has not yet been tested, it was designed and is expected to enhance brown tree snake interdiction.

On Tinian, a dog and handler have been used to inspect incoming cargo, but as on Saipan, the efficacy of these

inspections has not been verified. In June of 2004, the Service obligated funds to construct a brown tree snake barrier and quarantine yard at the commercial port on Tinian. We expect the barrier will be completed in 12 to 18 months. This barrier will be similar to the barrier on Saipan, and will facilitate inspection of high-risk cargo and is expected to enhance brown tree snake interdiction.

In 2004, section 101 of the Sikes Improvement Act of 1997 (Sikes Act, 16 U.S.C. 670a) was amended by adding subsection (g), sometimes termed the "invasives pilot project for Guam," which states that the Secretary of Defense shall, to the maximum extent practicable and conducive to military readiness, incorporate in Integrated Natural Resource Management Plans (INRMP) for military installations on Guam the management, control, and eradication of invasive species that are not native to the ecosystem of the military installation, and the introduction of which may cause harm to military readiness, the environment, or human health and safety, and that the Secretary of Defense shall carry out this subsection in consultation with the Secretary of the Interior. Although this amendment does not apply to the INRMP for military training in the CNMI, commitment by the military on Guam to incorporate brown tree snake management, control, and eradication measures will benefit islands in the CNMI. The Navy (M. Kaku., in litt., 2004) has also reaffirmed their commitment to continuing brown tree snake interdiction in the CNMI in general, and Tinian specifically; "Military cargo originating on Guam undergoes brown tree snake inspection prior to loading and again when off-loaded on Tinian. During the past decade of DoD and USDA WS cooperation in brown tree snake control and interdiction, there has been no reported brown tree snakes found in military cargo shipped from Guam to the CNMI. Our existing control and interdiction efforts are working to significantly reduce the probability of the accidental introduction of the brown tree snake in military cargo from Guam to CNMI."

Therefore, based on all of the brown tree snake interdiction and control efforts described above, we believe that current evidence does not suggest the Tinian monarch is threatened or endangered with extinction due to predation by the brown tree snake.

*Issue 4:* The relative inaccessibility of the remaining native limestone forest on Tinian does not protect it from the

effects of nearby agricultural or golf course development.

*Our Response:* Although future development in areas containing the remaining limestone forest cannot be completely ruled out, we consider it very unlikely. The remaining limestone forest on Tinian is intact, and was not cleared before or during WWII because of its inaccessibility. The expense of developing the steep, rugged area containing limestone forest for agricultural or resort purposes, while perhaps not absolutely prohibitive, remains a substantial discouragement to development.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. We may delist a species according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened; and/or (3) The original scientific data used at the time the species was classified were in error.

After a thorough review of all available information, we have determined that none of the five factors addressed in section 4(a)(1) of the Act is currently affecting the monarch, such that the species is no longer endangered (in danger of extinction throughout all or a significant portion of its range) or threatened (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). These factors, and their application to the monarch, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At the time of listing, the numbers of the monarch were thought to be critically low due to the destruction of native forests by pre-WWII agricultural practices and war-time military activities (50 FR 45632). Since the classification of the monarch as endangered in 1970, surveys and studies in 1982, 1994 and 1995, and 1996 have shown the abundance and distribution of the monarch to be stable or increasing (Engbring *et al.* 1986; USFWS 1996;

Lusk *et al.* 2000). These surveys also indicate that the amount of forest habitat on Tinian has increased substantially since WWII (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000), and that forest density increased from 1982 to 1996 (Lusk *et al.* 2000). The monarch currently inhabits approximately 62 percent of the land area on Tinian, of which approximately 93 percent is secondary and tangantangan vegetation and 7 percent is native limestone forest (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000). Although native limestone forest may provide higher quality habitat for the monarch, secondary vegetation and tangantangan thickets also provide useful breeding and foraging habitat (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000). The range and habitat quality of the monarch thus have increased since WWII, and have remained stable or possibly increased since the species was reclassified as threatened in 1987. Monitoring and evaluation of land use and development on Tinian will be part of the post-delisting monitoring program for this species.

Tinian has a total surface area of approximately 10,172 hectares (25,135 acres) (Falanruw *et al.* 1989). In 1983, the U.S. Navy entered into a 50-year lease agreement with the CNMI for 6,211 contiguous hectares (15,347 acres) of land in northern Tinian, or 71 percent of the island, for training and defense purposes, with an option to renew the lease for another 50 years (CNMI *et al.* 1983; CNMI and USA 1994, USDOD 2003). The land leased to the Navy encompasses roughly 75 percent of the current monarch habitat on the island, but contains only about 30 percent of the total remaining native limestone forest, and therefore supports about 70 percent of the total monarch population.

Approximately one-half of the lands under Navy lease are designated as Exclusive Military Use Area (DOD 1998). Activities in the Exclusive Military Use Area, which were outlined in the June 1998 Draft Environmental Impact Statement for Military Training in the Marianas (DOD 1998) and the Pre-final Integrated Natural Resource Management Plan for the CNMI (DOD 2003), include large-scale maneuvers such as Tandem Thrust, which involve U.S. Navy, Marines, Army, and Air Force units; strategic airlifting and dropping of personnel using fixed-wing aircraft; night vision, close quarter battle, and rapid runway repair training; amphibious beach assault; and urban environment and hostage rescue training. Large-scale activities will occur a maximum of three times per year, for

up to three weeks each time. Training for individuals may occur daily, weekly, or monthly. Other land uses in the Exclusive Military Use Area include construction of a small logistics-support base camp and security gates, and operation of the Voice of America radio relay station. These activities may involve clearing of forest in limited areas, but in a letter to our Pacific Islands Fish and Wildlife Office dated January 28, 2004, the U.S. Navy stated it "has no foreseeable need to adversely modify habitat on Tinian, in fact the natural forest habitat is essential to the types of non-intrusive military training" conducted on Tinian. In addition, parts of the Exclusive Military Use Area, generally those containing native limestone forest, are designated as "no wildlife disturbance," and land uses within the military lease area are subject to agreements protecting endangered species, wetlands, cultural and historical resources, and human health (USDOD 2003). We issued a biological opinion on military training in the Marianas that specified reasonable and prudent measures for minimizing the incidental take of listed species, including the monarch (USFWS 1999). These measures included avoiding troop movements within monarch nesting habitat during the peak nesting months, and limiting troop movements through monarch habitat at night to minimize nest disturbance.

Navy-leased lands outside the Exclusive Military Use Area, known as the Lease Back Area, are used primarily for agriculture and grazing (Belt-Collins 1994, USDOD 2003). Land use within the Lease Back Area is restricted for security reasons, and the permitted uses are unlikely to change. Continued use of the Lease Back Area for agriculture and grazing is not likely to significantly affect the monarch population. Some agricultural development may occur in this area, which may involve some clearing, but is not expected to occur on a large scale because water is limited and there is no irrigation system. The number of cattle grazing on the island has declined by approximately 60 percent over the last two decades, and this reduced grazing pressure appears to have led to an increase in forest density (Lusk *et al.* 2000). Other uses in the Lease Back Area could include construction of small permanent structures, most likely in the form of houses built close to agricultural or grazing areas.

The Sikes Act requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP, which integrates

implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP provides an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species, a statement of goals and priorities, a detailed description of management actions to provide for these ecological needs, and a monitoring and adaptive management plan. The INRMP for military training in the Marianas includes several projects designed to increase the amount of forest on Tinian and that will enhance and monitor habitat suitable for the Tinian monarch (DOD 2003, p. 106). These projects include: (1) reforestation on military leased lands using native tree species; (2) planting native forest understory species to improve habitat for threatened and endangered species and enhance biodiversity; (3) a vegetation survey that will map, describe, and verify the vegetation communities on military leased lands; and (4) establishment of long-term natural resource monitoring plots on military leased lands.

On September 23, 1999, the CNMI and the U.S. Navy entered into an agreement to preserve 379 hectares of land (936 acres) south of the Exclusive Military Use Area as a conservation area for the protection of endangered and threatened wildlife, particularly the Tinian monarch (USA and CNMI 1999). This was in accordance with the Environmental Assessment and Biological Assessment for Airport Improvements at Tinian International Airport (Tenorio and Associates 1998b). The agreement will be in effect for the maximum time period allowable (50 years) under section 803 of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94-241; 90 Stat. 263), with the option of the U.S. Government to renew this lease for all or part of the property in the CNMI for an additional term of 50 years, if so desired, at the end of the first term.

Delisting the monarch could result in non-adherence by the Navy to our biological opinion's reasonable and prudent measures designed to minimize impacts of training on the monarch. However, due to the monarch's relative abundance and its wide distribution on the island, these actions are not expected to have a significant effect on the monarch population. Moreover, other measures designed to protect natural resources on Navy lands, including the "no wildlife disturbance" areas, the 1994 Airport Mitigation Area,

and projects in the INRMP designed to enhance and monitor forest habitat, are not dependent on the status of the monarch. Land uses on Navy leased land thus are not expected to change significantly in the foreseeable future.

Portions of the remaining forest in privately owned areas on Tinian may be developed in the future for agriculture, commercial purposes, and housing for a growing human population. A 400-room hotel-casino was recently completed on Tinian and two more are in the planning stages; a total of five are permitted for the island (Tenorio and Associates 1998a). However, even if additional development occurs, it is unlikely that forest clearing will approach the level that occurred before and during WWII, which resulted in the clearing of approximately 95 percent of Tinian's native forest, because approximately 71 percent of the remaining land on Tinian is covered by Navy lease until 2033. In addition, data from Engbring *et al.* (1986) and Lusk *et al.* (2000) indicates that the amount and density of forest on Tinian has recently increased.

In addition, when we proposed the species for delisting in 1985, it was thought that the accidental introduction of a psyllid insect might be a threat to the monarch's habitat. It is now known that this psyllid has not had a negative impact, and it is no longer thought to be a threat to the monarch's habitat.

Therefore, the best available evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to habitat destruction.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* The monarch is a small song bird and is not known to be threatened by or sought for commercial, recreational, scientific, or educational purposes. Vandalism is not considered a threat to the species. Therefore, current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to overutilization for commercial, recreational, scientific, or educational purposes.

*C. Disease or predation.* Neither disease nor predation is known to affect the monarch. The monarch likely experiences some predation from both native and alien species, but not to an extent that currently causes it to be threatened with extinction. The monarch has been stable or perhaps has increased in number over the past two decades, indicating predators are not having a serious negative impact on the monarch population. Predators known to occur on Tinian that may prey on monarch adults or nests include alien

species such as the Asian house rat (*Rattus tanezumi*), Polynesian rat (*R. exulans*), feral cat (*Felis catus*), and monitor lizard (*Varanus indicus*), and native species such as the collared kingfisher (*Halcyon chloris*) and Micronesian starling (*Aplonis opaca*). As discussed above under our response to Issue 3, the brown tree snake is not known to be established on Tinian and we believe that the risk from this potential threat has been significantly reduced by the current interdiction efforts. Therefore, current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to disease or predation.

*D. The inadequacy of existing regulatory mechanisms.* The monarch is included on the CNMI's list of threatened and endangered species, although no local regulations have been promulgated to specifically protect species on this list. The monarch will also continue to receive legal protection under CNMI Public Law 2–51, which states that it is illegal to kill, capture, or harass wildlife including forest birds (except doves, which can be hunted with a license), waterfowl, shorebirds, seabirds, and marine mammals, and their eggs or offspring. There are few, if any, enforcement problems involving the monarch because it is not harvested for commercial, recreational, or other purposes.

Perhaps more important than regulations specifically protecting the monarch are laws that protect the overall integrity of the island ecosystem, such as quarantine laws. Quarantine regulations have been promulgated and are enforced by the CNMI government at airports and ports of entry. The USDOD is self-regulatory and enforces its own quarantine regulations. The INRMP for military training in the CNMI, as described above, provides for the protection and management of natural resources on military lands, not limited to listed species.

CNMI laws that protect the environment and provide indirect benefit to the monarch include the Coastal Resource Management Act (Public Law 3–47), which was enacted February 11, 1983. This law established the Coastal Resources Management Office, Coastal Advisory Council, and the Appeals Board to encourage land-use master planning, develop zoning and building code legislation, and promote the wise development of coastal resources. The CNMI Environmental Protection Act (Pub. L. 2–23) of October 8, 1982, established the Division of Environmental Quality, in part to maintain optimal levels of air, land, and water quality to protect and

preserve the public health and general welfare. The Soil and Water Conservation Act (Pub. L. 4–44) of May 1, 1985, created the Soil and Water Conservation Program within the Department of Natural Resources to promote soil and water conservation by preventing erosion. Finally, the Fish, Game, and Endangered Species Act (Pub. L. 2–51) of October 19, 1981, established the CNMI DFW to provide for the conservation of fish, game, and endangered species of plants and animals.

Because all of the CNMI regulations will be in place regardless of the monarch's Federal listing status, especially the quarantine regulations, and they will therefore protect the species after it is delisted, we believe current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to the inadequacy of existing regulatory mechanisms.

*E. Other natural or manmade factors affecting its continued existence.* Species like the monarch that are endemic to single small islands are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a single population by random demographic fluctuations and localized catastrophes such as typhoons and disease outbreaks. However, the monarch evolved in an environment where typhoons are a natural occurrence, and its population has persisted on Tinian despite periodic habitat loss and alteration by typhoons. When considered on their own, the natural processes associated with the habitat alteration caused by typhoons do not affect the monarch to such a degree that it is threatened or endangered with extinction in the foreseeable future. These natural processes can exacerbate the threat from other anthropogenic factors, such as habitat loss or predation, which decrease the distribution or abundance of a species. Currently, the monarch is relatively numerous and widespread in suitable habitat on much of the island. Although the monarch can be considered vulnerable to extinction because it is found on only one small island that regularly experiences typhoons, the persistence of the species on that island throughout its evolutionary history indicates that typhoons and limited distribution alone do not suggest that the Tinian monarch is threatened or endangered with extinction due to other natural or manmade factors.

In summary, analysis of the five factors described in section 4(a)(1) of the Act shows that the species no longer meets the definition of threatened or

endangered. Surveys in 1982 and 1996 indicate the number of monarchs has at least remained stable and possibly increased substantially since it was downlisted in 1987. The quantity of forest habitat available to the monarch has increased since WWII, and the quality of forest habitat has improved since 1982. The psyllid insect that was once thought to be a potential threat to monarch habitat in 1987 is now known not to be a threat. Neither predation nor disease is known to be affecting the monarch. The monarch is found on only one small island that regularly experiences typhoons, but it evolved and has persisted on the island under those conditions. The monarch's risk of extinction does not meet the definition of threatened or endangered. We are, therefore, removing the monarch from the Federal List of Endangered and Threatened Wildlife; thus, removing threatened status for the monarch.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting could cost government agencies staff time and monies on conducting formal section 7 consultation on actions that may affect a species no longer in need of protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the monarch.

#### Effects of the Rule

This final rule revises § 17.11(h) to remove the Tinian monarch from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, no longer apply to this species. Federal agencies will no longer be required to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the monarch. There is no critical habitat designated for this species.

The monarch is protected by the CNMI Government (Pub. L. 2–51; 2 CMC 5108). Removal of the monarch from the Federal List of Endangered and Threatened Wildlife does not alter or supersede its protection by the CNMI Government.

#### Post-Delisting Monitoring

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires us to implement a system, in cooperation with the States, to monitor for not less than 5 years the status of all species that

have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a species delisted, due to recovery, remains secure from risk of extinction after it no longer has the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also will seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

We intend to monitor the status of the monarch, in cooperation with the CNMI, through periodic surveys of the distribution and abundance of the monarch, monitoring of development and land clearing on Tinian, assessment of impacts of military training on the USDOD-leased lands, and monitoring of the potential introduction of brown tree snakes to the island. We are developing a PDM plan for the monarch, and once completed, we will publish in the **Federal Register** a notice of availability of the proposed PDM plan soliciting public comments and review.

#### Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Tinian monarch will be collected primarily by the Commonwealth of the Northern

Marianas, the U.S. Navy, and the Service. We do not anticipate a need to request data or other information from the public to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

#### National Environmental Policy Act

We have determined that preparation of an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Fish and Wildlife Office (*see ADDRESSES* section).

#### Author

The primary authors of this final rule are Eric A. VanderWerf, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see ADDRESSES* section), and Michael Lusk, formerly with the Service's Pacific Islands Fish and Wildlife Office.

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

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

#### Regulation Promulgation

■ For the reasons set out in the preamble, we hereby 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.

#### § 17.11 [Amended]

■ 2. Section 17.11(h) is amended by removing the entry for "Monarch, Tinian (old world flycatcher)" under "BIRDS" from the List of Endangered and Threatened Wildlife.

Dated: August 20, 2004.

**Marshall P. Jones, Jr.,**

*Deputy Director, Fish and Wildlife Service.*

[FR Doc. 04–20700 Filed 9–20–04; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 031104274–4011–02; I.D. 091404I]

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Fishery for *Illex* Squid

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS announces that the directed fishery for *Illex* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, September 21, 2004. Vessels issued a Federal permit to harvest *Illex* squid may not retain or land more than 10,000 lb (4.54 mt) of *Illex* squid per trip for the remainder of the year (through December 31, 2004). This action is necessary to prevent the fishery from exceeding its yearly quota and allow for effective management of this stock.

**DATES:** Effective 0001 hours, September 21, 2004, through 2400 hours, December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail don.frei@noaa.gov.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the *Illex* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2004 specification of DAH for *Illex* squid was set at 24,000 mt (69 FR 4861, February 2, 2004). Section 648.22 requires NMFS to close the directed *Illex* squid fishery in the EEZ when 95 percent of the total annual DAH is