

SUMMARY: The Service determines *Hibiscadelphus distans* (Kauai hau kuahiwi) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended (Act). Only ten individuals of this endemic tree remain in the wild, occurring in the State-owned Pu'u Ka Pele Forest Reserve, on the island of Kauai, Hawaii. Imminent threats to this species and its habitat exist from feral goat browsing, fire, competition with exotic species, and human disturbance. This determination that *Hibiscadelphus distans* is an endangered species implements the protection provided under the Act.

DATE: The effective date of this rule is May 29, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Hibiscadelphus distans was discovered by L. Earl Bishop and Derral Herbst in 1972 and was described by them as a new species the following year (Bishop and Herbst 1973). It likely was more abundant and more widely distributed at one time, but today only ten individuals are known to exist. It occurs on State-owned land within the Pu'u Ka Pele Forest Reserve, Koai'e Valley, Waimea Canyon, island and county of Kauai, Hawaii.

This species is a small tree, up to 5.5 meters (18 feet) tall, with green, heart-shaped leaves and smooth bark. Its flowers are approximately 2.5 centimeters (1 inch) long and are greenish yellow, turning maroon with age. The plants live within an area of approximately 0.02 hectares (2,000 square feet) on a steep rock bluff at an elevation of about 300 meters (1,000 feet). This area is a remnant of a native, open, dryland forest and receives approximately 150 centimeters (60 inches) of rain annually. The area's yearly mean temperature ranges from 18.5 to 25.7 degrees Centigrade (65 to 78 degrees Fahrenheit). Associated species include *Sapindus oahuensis* (lonomea), *Erythrina sandwicensis* (wiliwili), *Diospyros ferrea* (lama), and *Melia azedarach* (chinaberry). The ground cover is sparse and consists chiefly of exotic grasses and forbs (Herbst 1978).

Although goats are not known to browse on the present plant population, browsing by an existing large feral goat population probably was responsible for the species' decline and could threaten the continued existence of the remaining plants. Other threats come from fire, competition with exotic species, and human disturbance. A cooperative effort between Federal and State agencies is needed to protect the remaining plants and to provide for species' recovery.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973 (Act), prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including *Hibiscadelphus distans*. As a result of this review, on June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Hibiscadelphus distans*, to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), including *Hibiscadelphus distans*. On October 13, 1983, and October 12, 1984, findings were made that listing *Hibiscadelphus distans* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. A proposal, constituting a final finding that the petitioned action was warranted, was published on July 16, 1985 (50 FR 28873), based on information available in 1976 and gathered after that time and summarized in a detailed status report prepared by the Service (Herbst 1978). The Service now

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Hibiscadelphus Distans* (Kauai Hau Kuahiwi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

determines *Hibiscadelphus distans* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the July 16, 1985, proposed rule (50 FR 28873) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in *The Garden Island* on August 16, 1985, and in the *Honolulu Star Bulletin* and the *Honolulu Advertiser* on August 21, 1985. Four letters of comment were received and are discussed below. A public hearing was requested and held in Lihue, Kauai, Hawaii on November 7, 1985. The comment period was reopened following the public hearing, closing again December 9, 1985 (50 FR 42196). One person testified at the hearing; his testimony is included in the following summary.

Comments were received from the Governor of the State of Hawaii, the Western Regional Office of the National Audubon Society, and a Professor of Botany at the University of Hawaii. Testimony at the public hearing was presented by the Administrator of the Division of Forestry and Wildlife of the State Department of Land and Natural Resources. All comments and testimony supported the listing of *Hibiscadelphus distans* as an endangered species. The Governor further stated that the trees had been identified in the State Threatened and Endangered Species Plan as among the ten highest Kauai district priorities for protection, and that the State intends to request funding to fence the plants. The University Professor expressed reservations over the Service's failure to propose designation of critical habitat for this species. The Service continues to believe that threats of collecting and vandalism would be exacerbated by such designation and that designation of critical habitat is therefore not prudent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hibiscadelphus distans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C.

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 *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Hibiscadelphus distans* is subject to disturbance from several sources. Large herds of feral goats browse within the canyon and have destroyed surrounding vegetation. Goats may also dislodge stones from the ledges above the species, potentially damaging the trees and destroying seedlings (Herbst 1978). The presence of large goat herds results from specific game-management practices aimed at maintaining high goat population levels for hunting.

Human disturbance also presents a serious threat to the species. A hiking trail passes below the ledge where *Hibiscadelphus distans* is found, and activity by hikers straying off this path may impact the species by dislodging stones and increasing erosion of the friable soil. Trees may suffer additional damage by being used as "hand-holds" by hikers scaling the steep embankment.

The habitat disturbances created by people and feral goats have favored the introduction and spread of exotic vegetation. Today, small pockets of native plants can be found, but much of the canyon has been taken over by exotic species. Competition with exotic species and environmental changes brought about by changes in the vegetation have had a serious impact on many of the area's native species of plants and animals.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The area where *Hibiscadelphus distans* exists is easily accessible to people and has already experienced incidents of unauthorized collecting and vandalism. When the Hawaii State Department of Forestry and Wildlife labeled other native plants along the trail system adjacent to the species' habitat, many of the labeled plants were dug up or damaged by people using the trail. Removal of or damage to any of the few remaining individuals of *Hibiscadelphus distans* could seriously jeopardize the chances of the species' survival.

C. *Disease or Predation.* Browsing by feral goats upon *Hibiscadelphus distans* is probably responsible for the species'

remaining plants apparently are free from browsing pressure, the situation still precarious. Should this pressure increase, through either environmental changes or game management practices, goats may be driven into areas they usually avoid, imperiling the few remaining trees.

D. *The inadequacy of existing regulatory mechanisms.* *Hibiscadelphus distans* is found in an area within the State-owned Pu'u Ka Pele Forest Reserve. State regulations prohibit removal, destruction, or damage of plants found on State forest land. However, these regulations are difficult to enforce due to limited personnel. Endangered Species Act will offer additional protection to this species.

E. *Other natural or man-made factors affecting its continued existence.* The small extant population (10 individuals) remaining makes *Hibiscadelphus distans* vulnerable to any catastrophic natural or man-caused, that may occur in the area. Reduction of the gene pool genetic variability, resulting from a small population size, could have detrimental effects on the continued existence of the species. The presence of a trail rest shelter with a small fire near this lone population adds a potential threat of destruction by fire during the dry season.

The Service has carefully assessed the best scientific and commercial information available regarding the present, and future threats faced by species in determining to make this final. Based on this evaluation, the preferred action is to list *Hibiscadelphus distans* as endangered. Only 10 individuals remain in the wild and these face threats from feral goats, fire, competition with exotic species and human disturbance. Given these circumstances, the determination of endangered status seems warranted. The following "Critical Habitat" section discusses the reasons for which critical habitat is not being designated at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Hibiscadelphus distans* at this time. As discussed under Factors in the "Summary of Factors Affecting the Species," this species is potentially subject to taking and vandalism. Other native plants along a trail near the

experienced incidents of unauthorized taking and vandalism. Publication of a critical habitat description in the **Federal Register** would subject the few remaining individuals of *H. distans* to an increased risk of taking and vandalism. Since the plant is only known to occur on State land, and the State of Hawaii is aware of its status, the value of critical habitat as a notification to Federal agencies would not be great enough to offset the potential risk, and thus no net benefit would accrue to the species from the designation of critical habitat.

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, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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 Federal activities are known or expected to affect *Hibiscadelphus distans*.

The Act and its implementing regulations, found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. All trade 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 endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State 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. Due to the numerous threats to *H. distans* and its depleted state in the wild, it may be necessary to propagate this species in nurseries. Several specimens are presently found in cultivation and seeds have been sent to Dr. P. Fryxell at Texas A&M University. Requests for trade permits for scientific purposes and for enhancing the propagation of the species, allowed under § 17.62, may result if an artificial propagation plan is pursued. Otherwise, it is anticipated that few trade permits would ever be sought or issued, since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

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

- Bishop, L.E., and D. Herbst. 1973. A new *Hibiscadelphus* (Malvaceae) from Kauai. *Brittonia* 25:290-293.
- Herbst, D. 1978. Unpublished status survey of *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwai). U.S. Fish and Wildlife Service. 21 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Hawaii 96850 (808/546-7530 or FTS 546-7530).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
<i>Hibiscadelphus distans</i>	Kauai hau kuahwi	U.S.A. (HI)	E	225	NA	NA

Dated: April 7, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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