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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the 'Ewa Plains 'akoko (*Euphorbia skottsbergii* var. *kalaeloana*).****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

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**SUMMARY:** The Service proposes to determine the 'Ewa Plains 'akoko (*Euphorbia skottsbergii* Sheriff var. *kalaeloana* Sheriff) to be an Endangered Species. This action is being taken because of extensive past and potential modification of this plant's only known range on the 'Ewa Plains, near Barbers Point, Oahu, Hawaii. The proposal seeks to provide protection to this species under the Endangered Species Act of 1973, as amended.**DATES:** Comments from the public must be received by November 3, 1980. Comments from the Governor of Hawaii must be received by December 1, 1980.

**ADDRESSES:** Interested persons or organizations are requested to submit comments to: Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and material relating to this proposal are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, (703/235-2771).

**SUPPLEMENTARY INFORMATION:** The 'Ewa Plains 'akoko (*Euphorbia skottsbergii* var. *kalaaloana*) is a shrub known only from the 'Ewa Plains of Oahu, Hawaii, in the vicinity of Barbers Point. Another variety of the same species (*Euphorbia skottsbergii* var. *skottsbergii*), which formerly was found closer to the shoreline in the same vicinity, was last seen in 1932 and is presumed extinct. The 'Ewa area has been subject to varying levels of disturbance over the past several hundred years and presently supports predominantly non-native vegetation dominated by kiawe (*Prosopis*) and koa haole (*Leucaena*), with remnant populations of native species. Development of dockside facilities in connection with the construction of a proposed deep-draft harbor poses the principal danger to the existence of this taxon, which is the only known survivor of three plant taxa originally endemic to the 'Ewa Plains.

#### Background

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the U.S. Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the Smithsonian report as a petition under Section 4(c)(2) of the Act. The plants named in this petition were placed under review for addition to the list of Endangered and Threatened plants, and on June 16, 1976, the Director published a proposed rule (41 FR 24523-24572) that would have listed some 1,700 such taxa as Endangered. This proposal was based on the Smithsonian Institution's petition as well as comments and other information received by the Service. *Euphorbia skottsbergii* var. *kalaaloana*

was thought to be extinct at the time of both the petition and the notice of review, and was included in both under that status, but was among the taxa proposed for listing as Endangered in 1976.

The Endangered Species Act Amendments of 1978 subsequently required that any proposal to list a species as Endangered or Threatened be withdrawn unless made final within two years. A period of one year was allowed following passage of the Amendments on November 10, 1978, during which no proposals were to be withdrawn under this provision. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976 proposal that had not been the subject of final action. The present proposal is based on information available at the time of the 1976 proposal and information gathered between that time and the date of the proposal's withdrawal, as well as new information provided under contract by the Department of Botany of the University of Hawaii (Char and Balakrishnan, 1979).

In the June 2, 1977, *Federal Register* (42 FR 32373-32381) the Service published a final rule detailing regulations to protect Endangered and Threatened plant species. These established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain conditions.

#### Summary of Factors Affecting the Species

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (45 FR 13010-13026, to be codified at 50 CFR Part 424) set out the procedures to be followed by the Director in determining whether any species is Endangered or Threatened as defined by the Act. Five general classes of factors are to be considered in making any such determination. These factors as they apply to the status of *Euphorbia skottsbergii* var. *kalaaloana* are:

1. *Present or threatened destruction, modification, or curtailment of habitat or range.*

The precise natural range of this taxon is unknown, but probably did not go beyond the coralline plains of the 'Ewa area. The loss of native habitat within this area began with Polynesian settlement of the islands and has continued down to the present. This has been so thorough that no completely native habitat can be said to be present any longer. Documented loss of the predominantly non-native vegetation in which the *Euphorbia* now occurs, with concomitant loss of a significant number

of *Euphorbia* plants has taken place as lately as 1979.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.*

Does not apply to this species.

(3) *Disease or Predation (including grazing).*

None known.

(4) *Inadequacy of existing regulatory mechanisms.*

This taxon is not presently regulated.

(5) *Other natural or manmade factors affecting continued existence.*

Although the principal factor endangering this taxon is past and potential loss of habitat, it is possible that its reproductive success has been affected by decline of native pollinating insects. Competition from aggressive weedy species that now dominate vegetation in the area has also undoubtedly been a factor in its decline.

#### Critical Habitat

The Act defines Critical Habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of [the] Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of [the] Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Section 4(a)(1) of the Act requires that, to the maximum extent prudent, Critical Habitat be specified for a species at the time it is proposed for listing as Endangered or Threatened.

In the present case, the species proposed for listing as Endangered no longer is found in a native habitat and, although it survives in non-native vegetation, the greatly altered ecosystem in which it occurs cannot reasonably be said to be essential to its conservation. Thus, no Critical Habitat is specified in this proposal.

#### Effect of this Proposal if Adopted as a Final Rule

The Act and implementing regulations published in the *Federal Register* of June 24, 1977 set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. These regulations are found at 50 CFR 17.61, and are summarized below.

With respect to *Euphorbia skottsbergii* var. *kalaaloana* all

prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell this species or offer it for sale in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and Section 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Because *Euphorbia skottsbergii* var. *kalaeloana* is not presently traded commercially or exported, these prohibitions are not likely to have significant effects. Some imports and exports in the course of scientific research may have to be conducted under permit from the Service.

Section 7(a) of the Act also requires that Federal agencies carry out programs for the conservation of Endangered and Threatened species and that they ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species. A procedure is also established whereby particular Federal actions may be exempted from compliance with Sec. 7(a). Provisions for interagency cooperation in complying with Section 7(a) of the Act are codified at 50 CFR 402. The present proposal would, if adopted as a final rule, allow the U.S. Army Corps of Engineers and the U.S. Navy's Barbers Point Naval Air Station to consult formally with the U.S. Fish and Wildlife Service concerning their activities in the Barbers Point area insofar as they might affect the 'Ewa Plains 'akoko, so that plans could be developed to ensure its continued existence. Such plans may include the establishment of new populations of this taxon in protected areas within the 'Ewa Plain as well as protection of existing populations on property presently under Federal control or acquired for this purpose.

The Service will also review the status of this species to determine whether it should be proposed to the Secretariat of the Convention of International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate

appendices to that Convention or whether it should be considered under other appropriate international agreements.

#### National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made prior to the promulgation of a final rule as to whether it is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act.

#### Public Comments Solicited

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of *Euphorbia skottsbergii* var. *kalaeloana*. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat;

#### § 1712. Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
<i>Euphorbiaceae</i> —spurge family:						
<i>Euphorbia skottsbergii</i> var. <i>kalaeloana</i>	'Ewa Plains 'akoko	U.S.A. (HI)	E		NA	NA

Dated: August 21, 1980.

Lynn A. Greenwalt,  
Director, Fish and Wildlife Service.

(FR Doc. 80-25995 Filed 8-29-80; 8:45 am)

BILLING CODE 4310-05-40

(3) Additional information concerning the range and Distribution of this species.

Final promulgation of a rule on *Euphorbia skottsbergii* var. *kalaeloana* will take into consideration comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposed rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

#### Information Sources

U.S. Army Engineer district, Honolulu, Hawaii 1976. Barbers Point Harbor-Design Memorandum No. 1, Plan Formulation.

Char, W. P. and N. Balakrishnan 1979. 'Ewa Plains Botanical Survey. Department of Botany, University of Hawaii at Manoa.

#### Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of Endangered and Threatened plants: