session following the FDIC open session beginning at 2:00 p.m. on Tuesday, January 15, 1991 to consider the following matter:

Summary Agenda:

No Cases

Discussion Agenda:

A. *Memorandum re:* Revisions to the RTC's Standard Asset Management and Disposition Agreement (SAMDA).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: January 9, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–927 Filed 1–10–91; 1:15 pm]

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federal register

Monday
January 14, 1991

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots, and Certain Other Species Beginning in the 1991–1992 Hunting Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot For The Taking of Waterfowl, Coots, and Certain Other Species Beginning In the 1991-92 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this rule proposes to conclude the implementation program that began in 1986 to phase-in nationwide the requirement to use nontoxic shot for all taking of waterfowl, coots and certain other species by the 1991–92 hunting season.

DATES: Comments on this proposal will be accepted until February 13, 1991.

ADDRESSES: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240 (703/358–1773).

SUPPLEMENTARY INFORMATION: This rule would implement the final year of the 5-year component of the strategy to phase in a nontoxic shot requirement for waterfowl hunting nationwide by the 1991–92 season, as set out by the preferred alternative of the Final Supplementary Environmental Impact Statement (SEIS) on the Use of Lead Shot For Hunting Migratory Birds in the United States. This SEIS was published in June of 1986 (FES 86–16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of Interior's responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 701 *et seq.;* 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Department of Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rules for the 1987-88, 1988-89, 1989-90 and 1990–91 waterfowl hunting seasons published in the *Federal Register* on Tuesday, July 21, 1987 (52 FR 27352), Tuesday, June 28, 1988 (53 FR 24284), Thursday, April 13, 1989 (54 FR 14814) and Thursday, August 16, 1990 (55 FR 33626), respectively.

The remaining counties scheduled to convert in their entireties to nontoxic shot use in the 1991–92 waterfowl season are those counties having had an average annual waterfowl harvest of 5 or less per square mile over the 10-year period 1971–80, as referenced by Carney *et al.* 1983 (Distribution of waterfowl species harvested in States and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.-Wildl. No. 254, Washington, DC 20240.). Counties converting in the last year of implementation are not listed in appendix N of the SEIS, as they were for previous years.

In addition, the public is reminded in this document that 50 CFR sections: 20.101, (Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands); 20.102, (Seasons, limits and shooting hours for Alaska); and 20.105, (Seasons, limits and shooting hours for waterfowl, coots and gallinules), have provisions for nontoxic shot use that take effect in the 1991–92 waterfowl hunting season. Hunters in Puerto Rico and the Virgin Islands will be required to use nontoxic shot for hunting waterfowl, coots and certain other species (as applicable). The State of Alaska will convert statewide to nontoxic shot use for waterfowl hunting. Section 20.105 of 50 CFR provides that "* * * areas of the United States outside the State boundaries, i.e., the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.21(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991–92 season." All of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1991–92 hunting season.

In summary, this rule proposes to amend § 20.108 of 50 CFR to expand the existing nontoxic shot requirement for the 1991–92 waterfowl hunting season nationwide.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there could be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Fish and Wildlife Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the ESA, a "section 7" biological consultation was carried out on the potential impacts of the provisions of this rule on bald eagles. The "section 7" biological opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" biological opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this proposed rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 50

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 would continue to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. Section 20.108 would be revised to read as follows:

§ 20.108 Nontoxic shot zones.

Beginning September 1, 1991, the contiguous 48 United States, and the States of Alaska and Hawaii, the Territories of Puerto Rico and the Virgin Islands, and the territorial waters of the United States, are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species. "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bags and concurrent seasons.

Dated: December 11, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–810 Filed 1–11–91; 8:45 am]

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federal register

Monday
January 14, 1991

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Species of Remya, Isodendrion Hosakae (Aupaka), Florida Salt Marsh Vole; Threatened Status for the Yellow-blotched Map Turtle, and Endangered Status for the Indu River Dolphin; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Species of Remya, a Genus of Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the three species of the genus *Remya*, a genus of plants endemic to the islands of Kauai and Maui, Hawaiian Islands, to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). Predation by grazing and browsing feral and domesticated animals, degradation of habitat through trampling and rooting by these animals, and competition from naturalized exotic species of plants are the greatest immediate threats to the survival of these species. This rule implements the protection provided by the Act for the three species of this genus.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest F. Kosaka, Field Office Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Remya, a genus in the aster family (Asteraceae), comprises three species and is endemic to the Hawaiian Islands. The genus was described in 1876 by George Bentham in Bentham and Hooker's *Genera plantarum* (Bentham 1876), and was named in honor of Ezechiel Jules Remy, a French naturalist and ethnobotanist who visited Hawaii twice during an extended trip around the world from 1851 to 1863.

The members of this genus are small perennial shrubs, about 90 centimeters (cm) (3 feet) tall, with many slender, sprawling or scandent to weakly erect branches. The branches are glabrous in *R. montgomeryi*, but covered with a fine tan fuzz near their tips in the other two species. The leaves are narrow, up to about 15 cm (6 inches (in)) long, and are bunched at the ends of the branches. The leaves are coarsely toothed along the edges, and are green on the upper surface. The lower surface is greed in *R. montgomeryi*, while in the other two species it is covered with a dense mat of fine white hairs. The flowers are small, about 0.7 cm (0.3 in) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1990).

Remya grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 meters (2,800 to 4,100 feet) in elevation. *Remya kauaiensis* and *R. mauiensis* are found primarily in mixed mesophytic forests, or the remnants of such forests. *Remya montgomeryi* and one known population of *R. kauaiensis* grow on the steep cliffs below the rim of Kalalau Valley, which although at the edge of a mesic forest, receives considerably more moisture than do the other populations of the genus (Herbst 1988).

Until 1985, there were two known species of *Remya, R. kauaiensis* and *R. mauiensis*, both described in 1888 (Hillebrand 1888). *Remya kauaiensis*, which is endemic to the island of Kauai, can be distinguished from the Maui Island species, *R. mauiensis*, by characters of the leaf: the leaf blade of *R. kauaiensis* is 2 to 3 times longer than wide, has a cuneate base, and a petiole (stem of leaf) 1.3 to 2.3 cm (0.5 to 0.9 in) long. The leaf blade of *Remya mauiensis* is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in) long. Apparently neither species has been common during historical times, and they rarely have been collected.

Remya kauaiensis was first collected prior to 1871 by Valdemar Knudsen at "Waimea" on Kauai. Knudsen sent the specimen to William Hillebrand, a Honolulu physician, who described it as a new species. It was next collected more than 80 years later, in 1952, by Otto Degener in Kokee State Park, Kauai. The species was considered extinct until 1983 when it was rediscovered by Galen Kawakami, a forester on Kauai who discovered two small populations also in the Kokee area. Two addition small populations were discovered in the same general area in 1985, and a third just below the rim of Kalalau Valley in 1986 by Timothy Flynn of the National Tropical Botanical Garden. In 1988 a sixth population was found in the Kokee area by the Hawaii Heritage Program. A seventh population was discovered in the Kokee area in 1990 by Steven Perlman of the Hawaii Plant Conservation Center.

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It also was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. More recently, a small population has been found in an adjacent gulch.

Remya montgomeryi was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai, and presently is known only from that population (Wagner *et al.* 1990). It was described as a new species in 1987 (Wagner and Herbst 1987), and can be distinguished from the other two species of the genus by its glabrous branch tips and undersides of its leaves. All known populations of the three species of this genus grow on State-owned land.

Because of the sprawling habit of the members of this genus, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, estimates have been made. *Remya Kauaiensis* is known from seven populations in the Kokee area of Kauai. The populations range from fewer than 10 to fewer than 100 plants each, with an estimated total of fewer than 200 individuals, distributed within a total area of less than 1 hectare (ha) (2 acres (ac)) (Hawaii Plant Conservation Center (HPCC) 1990; T. Flynn, Assistant Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990; S. Perlman, Plant Collector, HPCC, Lawai, Kauai, pers. comm., 1990). *Remya mauiensis* is known from two small populations occupying less than one ha (two ac) on adjacent ridges on West Maui; there appear to be seven plants in one population and two in the other (Robert Hobdy, Forester, State Division of Forestry and Wildlife, Wailuku, Maui, pers. comm., 1990). *Remya montgomeryi* is known from a single population on the rim of Kalalau Valley, Kauai; its exact size is unknown, but it consists of fewer than 50 plants (S. Montgomery, Bishop Museum, pers. comm., 1990) within an area of 0.2 ha (0.5 ac) (T. Flynn, pers. comm., 1990).

Stochastic extinction by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations threatens these species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to the members of this genus is the loss and degradation of

their habitat due to the introduction of alien plants and animals.

Federal government action on members of this genus began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this document, *R. kauaiensis* was included as extinct or probably extinct, and *R. mauiensis* was treated as endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that 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 *R. kauaiensis* and *R. mauiensis*, to be endangered pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). 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) withdrawing 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 82479) including *R. mauiensis* as a category 1 candidate (taxa for which data in the Service's possession indicated a listing proposal is warranted), and *R. kauaiensis* as a category 1* candidate, meaning that a listing proposal was warranted but that the species possibly was extinct. In the September 27, 1985 (50 FR 39525) notice of review, both species were considered category 1 candidate species. *Remya montgomeryi* was not included in any of the notices of review because it was not published as a new species until 1987.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *R. mauiensis* and *R. kauaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. The October 2, 1989, proposal of the three species of *Remya* to be endangered (54 FR 40447) constituted the final 12-month finding for these species.

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule 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 inviting public comment was published in "The Garden Island" on October 23, 1989, and in the "Maui News" on October 22, 1989.

Seven letters of comment were received, including one from another Federal agency, two from State agencies, and four from environmental groups. The Federal agency and one of the State letters acknowledged receipt of copies of the proposed rule, but had no comments, and the four environmental groups expressed support for the proposal. The State Department of Land and Natural Resources supported listing *R. mauiensis*, but did not state a position on the other two species. The Department suggested that there may be additional populations of one or both of the two Kauai species. The Service contacted two field botanists active on the island of Kauai; neither were aware of any *Remya* populations not included in this final rule. While all potential habitat has not been searched for these species, the results of botanical exploration of the region to date demonstrate that these species are quite uncommon. One environmental group cited several population estimates that differ from those in this final rule. The population estimates in this document are the most current and most reliable. Two of the environmental groups encouraged the Service to designate critical habitat for these species. Critical habitat is not being designated at this time as such a designation would result in no known benefit and may be detrimental to the species. Publishing a detailed description and map of these species' habitats would stimulate public interest and make the species more vulnerable to vandalism and taking by collectors of rare plants or by curiosity seekers. Also, as the plants grow mostly on steep slopes, visits to the area by individuals wishing to see or photograph a rare plant could result in severe erosion problems.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the three species of *Remya* should be classified as endangered species. Procedures found at section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement 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 *Remya kauaiensis* Hillebr., *Remya mauiensis* Hillebr. (Maui remya), and *Remya montgomeryi* W.L. Wagner & Herbst are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native plant communities and habitats of the Hawaiian ecosystem have steadily degraded since man's comparatively recent arrival in the islands, primarily as a result of the introduction of alien species of plants and animals. The widespread destruction of Hawaii's native flora by domestic and feral animal predation and trampling is well documented (Cuddihy and Stone 1990) and they specifically threaten the survival of these species as well. It is clear that habitat well suited for *Remya* and likely within its former range has been destroyed or degraded by cattle, goats, pigs, and, in the case of *R. kauaiensis*, deer, and that most of the extant populations of *Remya* are now found growing only in areas relatively inaccessible to these animals. Browsing and grazing by feral and domesticated animals have impacted the *Remya* species and their habitat through outright destruction of the plants and

secondarily from accidental erosion that results from the loss of vegetation through trampling and rooting. Predation on the plants and the concomitant habitat disturbance has favored the invasion and spread of numerous more aggressive, exotic species that may compete for space, light, water, or nutrients. Such exotic species have replaced *Remya* throughout its presumed former habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact the species. As most of the plants are growing on very steep slopes, disturbance of the soil or destruction of groundcover plants due to people visiting the area would increase the potential for severe erosion and open the area to invading exotic species.

C. *Disease or predation.* Predation is considered to be a major cause of the plants' demise and current precarious condition. Domestic and feral animals such as cattle, goats, pigs, and deer have caused much damage and destruction of the plants and their habitat both through direct predation on the plants and through habitat disturbance that favors the introduction and spread of exotic, competing species of non-native plants. The State Division of Forestry and Wildlife has fenced one population of *R. mauiensis* to protect it from cattle. Although the population of *Remya* within the exclosure has declined, the fence is bound to be beneficial to the species over the long term.

D. *The inadequacy of existing regulatory mechanisms.* All known individuals of the species grow on State-owned land and most are found within a State park, forest reserve, or plant sanctuary. Current State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, these regulations are difficult to enforce due to limited funding and personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states that "[a]ny species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *." Therefore, any species listed by the Federal government automatically receives the additional protection provided by the State Endangered Species Act. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities can be made available under section 6 of the Act (State Cooperative Agreements). Also, the Federal Act would offer additional protection to these species, as it is now a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Listing under the Act would initiate increased State protection and augment State and private conservation measures for these plants by providing for habitat protection through recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the extant populations, which range from 2 to less than 100 individuals each, and their restricted distributions, are considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could easily destroy a significant percentage of the known extant individuals. As many of the remnant populations, especially of *R. mauiensis* and *R. kauaiensis*, occur in fireprone areas which are dry much of the year, they are at risk of extinction by accidental or intentionally set brush fires.

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 the three species of the genus *Remya* as endangered. Only 10 populations with a total of less than about 250 individuals remain in the wild, and these face threats of browsing and grazing by feral and domestic animals, competition from exotic species of plants, and general habitat degradation. Because the three species (comprising the entire genus) are each in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. Also, as the plants grow mostly on steep slopes, visits to the area by individuals wishing to see or photograph rare plants could result in severe erosion problems, posing an additional threat to the species. All involved parties and the major landowners have been notified of the general location and importance of protecting habitat of these species. Protection of these species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

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 activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The 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. Since the *Remya* species are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. 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) of the Act 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 involvement is known or anticipated that would affect *Remya* species as all known sites for these plants are on State-owned land.

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 plants. With respect to the species of *Remya*, 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 with respect to any endangered or threatened plant, for any person subject to the jurisdiction of the United States to import or export, transport in interstate of foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction, or remove, cut, dig up, or damage or destroy listed plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. 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 plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (phone 703/358–2104 or FTS 921–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to 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

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Author

The primary author of this final rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

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

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
* * * * * * *						
Remya kauaiensis	None	U.S.A. (HI)	E	413	NA	NA
Remya mauiensis	Maui remya	U.S.A. (HI)	E	413	NA	NA
Remya montgomeryi	None	U.S.A. (HI)	E	413	NA	NA
* * * * * * *						

Dated: December 7, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–784 Filed 1–11–91; 8:45 am]

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50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Isodendrion Hosakae (Aupaka), a Hawaiian Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a Hawaiian plant, *Isodendrion hosakae* (aupaka), to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). This species grows on three privately-owned cinder cones in the Waikoloa area of the South Kohala District, Hawaii. The destruction of the plant or the degradation of its habitat by grazing domestic cattle, and the potential for fires during the dry season are the greatest immediate threats to the survival of this species. This rule implements the protection provided by the Act for this plant.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Isodendrion hosakae was first collected by Edward Y. Hosaka on November 4, 1948, near the summit of an unnamed cinder cone, Waikoloa, Hawaii. He made another collection from the same locality three months later. In 1952, Harold St. John published a revision of the genus in which he named the new species in honor of its discoverer (St. John 1952). The species was not seen again until 1980 when it was rediscovered on a cinder cone in the Waikoloa area. The species subsequently was found on two other cinder cones during surveys made in 1981 and 1982. Today the population is estimated at about 275 individuals growing on 3 privately-owned cinder cones in the Waikoloa area of Hawaii Island. The three known populations are situated within a radius of 1.5 miles (2.4 kilometers) and occupy a total area estimated to be less than 2 acres (0.8 hectares).

Isodendrion hosakae, a member of the violet family (Violaceae), is a small, erect shrub about 18 to 30 inches (46 to 76 centimeters [cm]) tall. It has narrow, lance-shaped leaves about an inch (2.5 cm) long; the upper portion of the stem is nearly concealed by the persistent leaf stipules. The flowers are about ½ inch (1.3 cm) long and are yellowish-green to whitish in color. The fruit is a capsule, elliptical in shape, about ⅜ inch (1 cm) long and ¼ inch (0.6 cm) wide (Nagata 1982). A combination of characters distinguish *I. hosakae* from the other species in the genus: the pubescent midrib of the sepals and stipules, the pilose greenish-yellow to whitish fragrant flowers whose lower petal is 1.4 to 1.8 cm long, and the narrowly elliptic glossy green terminally acute leaves. *Isodendrion hosakae* occurs on the summits or on the northeast-facing slopes of extinct cinder cones between 2800 and 3600 feet (850 and 1095 meters) (Nagata 1982). Generally, the sites are exposed to wind and fog. Fog may contribute substantially to the total amount of moisture available to the plants. Open grassland and scrub is the primary vegetation type for the area (Nagata 1982). Evidence suggests that this species has always been highly restricted in distribution and number. *Isodendrion,* a genus of four species in the violet family, is endemic to the Hawaiian Islands.

Probably the greatest immediate threat to the continued survival of this plant is predation and habitat disturbance by domestic cattle. The potential of destruction by range fires during the dry season also is a major threat. The low number of individuals is also considered a potential threat through a reduction in reproductive vigor. A cooperative effort between Federal and State agencies and the private landowner is needed to protect the remaining plants and to provide for the conservation of the species.

The Secretary of the Smithsonian Institution, as directed by section 12 of the 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 Service published a notice in the **Federal Register** (40 FR 27823) accepting the 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 *Isodendrion hosakae,* which at that time was considered extinct. As a result of that 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 *Isodendrion hosakae,* 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 *Isodendrion hosakae* as a Category 1 candidate, meaning that the Service had substantial information indicating that preparation of a listing proposal is warranted.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Isodendrion hosakae* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, a further finding was made that listing of *Isodendrion hosakae* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. The October 10, 1989, proposal of *Isodendrion hosakae* to be endangered (54 FR 41470) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the October 10, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development