

Authority: 49 U.S.C. 30103, 30111 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 1, 1996.

Barry Felrice,

Associate Administrator for Safety
Performance Standards.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB88

Endangered and Threatened Wildlife and Plants; Final Rule To Delist *Bidens cuneata* (cuneate bidens), a Hawaiian Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines to remove a plant, *Bidens cuneata* (cuneate bidens), from the List of Endangered Plants. This action is based on a review of the best available scientific and commercial data, which indicate that this plant is not a discrete taxonomic entity and therefore does not meet the definition of a species as defined by the Endangered Species Act of 1973, as amended (Act). Extensive studies associated with a recent revision of the Hawaiian members of the genus have concluded that *Bidens cuneata* is an outlying population of *Bidens molokaiensis*, which is common along the windward cliffs of the island of Molokai.

EFFECTIVE DATE: February 6, 1996.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

The type specimen for *Bidens cuneata* was collected on Diamond Head, Oahu, by William A. Bryan on December 6, 1903, and was formally described by Earl E. Sherff in 1920 (Sherff 1920, Takeuchi 1980). Subsequent to its initial

discovery, there were no further collections or observations of the species, leading botanists to believe that it could have gone extinct. In 1955, the species was rediscovered in the area where it was collected originally (Takeuchi 1980).

Hybrids of the Hawaiian *Bidens* species can readily be induced experimentally and result in highly fertile progeny, indicating a general lack of genetic barriers within the group. Based upon experimental crosses in the Hawaiian members of the genus, Gillette and Lim (1970) concluded that *Bidens cuneata* was a natural hybrid between *Bidens mauiensis*, native to the island of Maui, and *Bidens molokaiensis*, which is restricted to Molokai Island; however, few botanists accepted this conclusion. Citing the occurrence of natural and experimental hybrids, Gillette (1975) later contended that the 41 species of Hawaiian *Bidens* placed by Sherff in section *Campylotheca* should be considered a single species. Recent systematic studies of the genus (including additional experimental hybridizations) culminated in a revision of the Hawaiian members of the genus (Ganders and Nagata 1990). In this publication, *Bidens cuneata* was considered conspecific with *Bidens molokaiensis*, a common species found along the northern side of Molokai Island. *Bidens molokaiensis* occurs between sea level and 150 meters (500 feet) in elevation along the seashores, sea cliffs, talus slopes, and fields of northern Molokai from Hoolehua to Kaonihu, a distance of about 37 kilometers (23 miles) or about two-thirds the length of the island.

Previous Federal Action

Federal action on *Bidens cuneata* 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 that document *Bidens cuneata* was considered to be endangered. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act), and giving notice of its intention to review the status of the plant species 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 endangered status pursuant to section 4 of the Act

for approximately 1,700 vascular plant species, including *Bidens cuneata*. The list of 1,700 plant species 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 response 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 two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

Bidens cuneata was proposed for listing as an endangered species on August 23, 1982 (47 FR 36675). The public comment period ended on November 22, 1982. The final rule listing *Bidens cuneata* as an endangered species was published in the Federal Register on February 17, 1984 (49 FR 6099). On July 7, 1993, the Service published in the Federal Register (57 FR 47028) a proposal to delist *Bidens cuneata*. This proposal was based primarily on information from current taxonomic literature, which is the best scientific and commercial information available. The Service now determines *Bidens cuneata* should be delisted with the publication of this rule.

Summary of Comments and Recommendations

In the July 7, 1993, proposed rule (57 FR 47028) 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 "Honolulu Advertiser" on August 6, 1993. The public comment period ended on September 7, 1993. No comments were received.

Summary of Factors Affecting the Species

The Act and its implementing regulations, 50 CFR 424.11, require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their

application to *Bidens cuneata* Sherff (cuneate bidens) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Bidens cuneata* has been determined to be no more than an outlying population of *Bidens molokaiensis*, a common species native to the northern part of Molokai. *Bidens molokaiensis* is not significantly threatened with destruction, modification, or curtailment of its habitat throughout a significant portion of its range. The final rule (49 FR 6099) designating *Bidens cuneata* as an endangered species identified habitat degradation, possible reduction of reproductive success due to a decline of native pollinating insects, and potential fire hazards as threats contributing to the endangerment of that species. If *Bidens cuneata* were a valid taxon and met the definition of a species as described by the Act, then these factors would be relevant. However, since the entity shows no genetic integrity independent of *Bidens molokaiensis*, it cannot be scientifically defended as either a species or subspecies.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Such overutilization is not known to be a factor for *Bidens molokaiensis*, which includes *Bidens cuneata*.

C. *Disease or predation.* Disease or predation is not a threat to *Bidens molokaiensis*, which includes *Bidens cuneata*.

D. *The inadequacy of existing regulatory mechanisms.* Federal listing of a species as endangered or threatened automatically invokes listing under Hawaii State law, which prohibits taking of endangered plants in the state and encourages conservation by State agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. This final rule may remove the protection of the State laws that this population presently enjoys as a federally listed species. It also requires the reevaluation of *Bidens cuneata* in the context of its status in State land use planning documents. However, since *Bidens molokaiensis* is a common species, this is not expected to have a detrimental effect.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the best current scientific information demonstrates that *Bidens cuneata* does not represent a valid taxonomic entity and, therefore, does not meet the definition of species as defined in section 3(15) of the Act.

In accordance with 5 U.S.C. 553(d), the Service has 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 would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the 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 *Bidens cuneata*.

Effects of Rule

The action to delist *Bidens cuneata* results in the removal of this species from the List of Endangered and Threatened Plants. Federal agencies are no longer required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Bidens cuneata*. There is no designated critical habitat for this species. Federal restrictions on taking this species no longer apply. There are no specific preservation or management programs for the species to be terminated.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, 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

- Ganders, F.R., and K.M. Nagata. 1990. *Bidens*: in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press, Honolulu. Bishop Mus. Spec. Publ. 83:267-283.
- Gillette, G.W. 1975. The diversity and history of Polynesian *Bidens*, section *Campylotheca*. Univ. Hawaii Harold L. Lyon Arbor. Lecture 6:1-32.
- Gillette, G.W., and E.K.S. Lim. 1970. An experimental study of the genus *Bidens* (Asteraceae) in the Hawaiian Islands. Univ. Calif. Publ. Bot. 56:1-63.
- Sherff, E.E. 1920. Studies in the genus *Bidens*. V. Bot. Gaz. 70:89-109.
- Takeuchi, W. 1980. Unpublished status survey of *Bidens cuneata* Sherff. U.S. Fish and Wildlife Service, Honolulu, 29 pp.

Author

The author of this final rule is Marie M. Brueggemann, Pacific Islands Ecoregion (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

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

§ 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry "*Bidens cuneata*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Plants.

Dated: November 3, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

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