

FR 2895). The effective date of the rule was originally March 17, 2009, with a compliance date of July 15, 2009.

In accordance with the January 20, 2009 memorandum, 74 FR 4435, January 26, 2009, from the Assistant to the President and Chief of Staff, on March 2, 2009 (74 FR 9172), FMCSA sought comment on a proposal to extend the effective date of the final rule for 90 days. FMCSA received five comments to the March 2 notice. All of the commenters supported extending the effective date of the final rule for 90 days, providing for a new comment period, and, if appropriate, reconsidering the final rule based on any new information provided by the comments. Therefore, FMCSA extends the effective date of its January 16, 2009, final rule from March 17, 2009, to June 15, 2009. This will provide us sufficient time to address issues that have been raised about whether the new rule will make it more difficult for us to enforce our requirements concerning safety and access for individuals with disabilities. Although we believe the final rule fully addressed these issues, in light of the Assistant to the President and Chief of Staff's memorandum, we are delaying the effective date of the final rule to allow the Agency the opportunity for further review and consideration of these issues.

#### List of Subjects

##### 49 CFR Part 356

Administrative practice and procedure, Routing, Motor carriers.

##### 49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

##### 49 CFR Part 374

Aged, Blind, Buses, Civil rights, Freight, Individuals with disabilities, Motor carriers, Smoking.

Issued on: March 12, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R1-ES-2008-0016; MO 9221050083-B2]

RIN 1018-AV00

#### Endangered and Threatened Wildlife and Plants; Listing *Phyllostegia hispida* (No Common Name) as Endangered Throughout Its Range

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended (Act), for *Phyllostegia hispida* (no common name), a plant species from the island of Molokai in the Hawaiian Islands. This final rule implements the Federal protections provided by the Act for this species. We have also determined that critical habitat for *P. hispida* is prudent but not determinable at this time.

**DATES:** This rule becomes effective April 16, 2009.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/pacificislands>. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850; telephone, 808-792-9400; facsimile, 808-792-9581.

**FOR FURTHER INFORMATION CONTACT:** Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Phyllostegia hispida* is known only from the island of Molokai, Hawaii, where 24 wild and 214 outplanted individuals currently exist. Molokai is approximately 38 miles (mi) (61 kilometers (km)) long and up to 10 mi (16 km) wide, and encompasses an area of about 260 square (sq) mi (674 sq km) (Foote *et al.* 1972, p. 11; Department of Geography 1998, p. 13). Three shield volcanoes make up most of the land

mass, dividing the island into roughly three geographic segments: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (Department of Geography 1998, pp. 11, 13).

The taller and larger East Molokai Mountain, which makes up eastern Molokai, rises 4,970 feet (ft) (1,514 meters (m)) above sea level on the island's summit at Kamakou and comprises roughly 50 percent of the island's land area (Department of Geography 1998, p. 11; Foote *et al.* 1972, p. 11). *Phyllostegia hispida* is known only from the wet forests of eastern Molokai, at elevations from 2,300 to 4,200 ft (700 to 1,280 m) (Wagner *et al.* 1999, p. 819). The wet forests where *P. hispida* has been recorded are found only on the windward side of East Molokai, which differs topographically from the leeward side. Precipitous cliffs line the northern windward coast, with deep inaccessible valleys dissecting the coastline. The annual rainfall on the windward side ranges from 75 to over 150 inches (in) (200 to over 375 centimeters (cm)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (Foote *et al.* 1972, p. 14).

The native habitats and vegetation of the Hawaiian Islands have undergone extreme alterations because of past and present land use, as well as the intentional or inadvertent introduction of nonnative animal and plant species. Introduced mammals, particularly feral pigs (*Sus scrofa*), have greatly affected native Hawaiian plant communities. Feral pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest threats to forest ecosystems in Hawaii today (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1998, p. 752). Introduced (nonnative) plant species, which now comprise approximately half of the plant taxa in the islands, have come to dominate many Hawaiian ecosystems, and frequently outcompete native plants for space, light, water, and nutrients, as well as alter ecosystem function, rendering habitats unsuitable for native species (Cuddihy and Stone 1990, pp. 73-91; Vitousek *et al.* 1997, p. 6).

The plant *Phyllostegia hispida* has only a few recorded occurrences and until recently was thought to be extinct in the wild. Alterations of the plant's native habitat by feral pigs and nonnative plants have been the primary threats to *P. hispida*, in conjunction

with the threat of predation by feral pigs, competition with nonnative plants, and more recently the negative demographic and genetic consequences of extremely small population size, as well as the consequent vulnerability to extinction through deterministic or stochastic (chance) events.

#### Previous Federal Actions

We first identified *Phyllostegia hispida* as a candidate for listing in the September 19, 1997, Notice of Review of Plant and Animal Taxa that are Candidates or Proposed for Listing as Endangered or Threatened Species (Notice of Review) (62 FR 49397). Candidates are those taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities.

On May 4, 2004, the Center for Biological Diversity petitioned the Service to list 225 species of plants and animals as endangered under the provisions of the Act (16 U.S.C. 1531 *et seq.*), including *Phyllostegia hispida*. In our Notice of Review, dated September 12, 2006 (71 FR 53756), we retained a listing priority number of 2 for this species, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). A listing priority of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of *P. hispida* as a full species. We determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions during the period from May 2, 2005, through August 23, 2006 (71 FR 53756). However, we have since completed those actions. As such, we had available resources to propose to list this species.

On February 19, 2008, we published a proposed rule to list *Phyllostegia hispida* as endangered throughout its range (73 FR 9078). We solicited data and comments from the public on the proposed rule. The comment period opened on February 19, 2008, and closed on April 21, 2008.

#### Species Information

*Phyllostegia hispida* was first described by William Hillebrand in 1870 from a specimen collected from an area that he described as the “heights of Mopulehu” on the island of Molokai (see “Type Description,” Smithsonian Institution and National Tropical Botanical Garden 2008), and is recognized as a distinct taxon in Wagner *et al.* (1999, pp. 817-819). A non-aromatic member of the mint family

(Lamiaceae), *P. hispida* is a loosely spreading, many-branched vine that often forms large, tangled masses. Leaves are thin and flaccid with hispid hairs (rough with firm, stiff hairs) and glands. The leaf margins are irregularly and shallowly lobed. Six to eight white flowers make up each verticillaster (a false whorl, composed of a pair of nearly sessile cymes (a flat-topped or round-topped flower cluster) in the axils of opposite leaves or bracts), and nutlets are approximately 0.1 inches (in) (2.5 millimeters (mm)) long (Wagner *et al.* 1999, pp. 817-819). No life history information is currently available on this species.

The few documented specimens of *Phyllostegia hispida* have typically been found in wet *Metrosideros polymorpha* (ohia)-dominated forest, with most at an elevation between 3,650 and 4,200 ft (1,112 and 1,280 m). Associated native species include *Cheirodendron trigynum* (olapa), *Ilex anomala* (aiaie), *Cibotium glaucum* (hapuu), *Broussaisia argutus* (kanawao), *Rubus hawaiiensis* (akala), *Sadleria cyatheoides* (amau), *Pipturus albidus* (mamaki), *Nertera granadensis* (makole), *Athyrium microphyllum* (no common name), *Elaphoglossum fauriei* (no common name), and bryophytes (Hawaii Biodiversity and Mapping Program (HBMP) 2007).

From 1910 through 1979, a total of 8 occurrences of *Phyllostegia hispida* were recorded from the wet forests of eastern Molokai (HBMP 2007). None of these historical occurrences have been relocated during surveys conducted in the wet forests of east Molokai over the past several years (The Nature Conservancy of Hawaii (TNCH) 1997b, pp. 1-19; Perlman 2006a). In 1996, two adult plants were found in eastern Molokai within TNCH's Kamakou Preserve, one next to the Pepeopae Boardwalk and the other east of Hanalilolilo growing along the fence within the State of Hawaii's Puu Alii Natural Area Reserve (NAR). In 1997, a single *Phyllostegia* individual was discovered on the rim of Pelekunu Valley in the Puu Alii NAR (HBMP 2005; TNCH 1997b, p. 6). There is some uncertainty, however, as to whether this individual was *P. hispida*, as it was identified as *P. manni* by Hawaii Division of Forestry and Wildlife (DOFAW) staff, based upon the size and lobing of its leaves (Hobdy 2006; Lau 2006; Nohara 2006). This individual plant was protected from feral ungulates inside a fenced enclosure. Seeds were collected, and seedlings were produced by DOFAW and outplanted into the enclosure with the wild plant (Nohara 2006).

In November 1996, TNCH erected an enclosure around the Pepeopae Boardwalk individual and began frequent, recurrent weeding and monitoring within the fenced area (TNCH 1997a, p. 2). They also built an enclosure approximately 656 ft (200 m) away for future outplantings of propagated individuals. Plants grown from leaf buds collected from the Pepeopae Boardwalk plant were outplanted into the enclosure in December 1997 (TNCH 1998a, p. 7). They survived through 1998 (TNCH 1998b, Appendix 1, dot 28), but have since been confirmed dead (Aruch 2006; Misaki 2006).

The Pepeopae Boardwalk individual died in 1998 or 1999 (HBMP 2005), and the wild plant and outplantings in Puu Alii NAR, which may possibly have been *Phyllostegia manni* and not *P. hispida* (see above; the question of taxonomic identity was never resolved), died several years ago (Perlman 2005; Wood 2005; Hughes 2006b). The University of Hawaii's Lyon Arboretum has material from the individual that was growing along the Puu Alii fence and from the Pepeopae Boardwalk individual in micropropagation (U.S. Fish and Wildlife Service 2005).

Surveys have been conducted in the wet forests of east Molokai, but no additional *Phyllostegia hispida* plants were found. The species was thought to have been extirpated from the wild until 2005, when two seedlings were found in a Hanalilolilo stream bank in Kamakou Preserve, indicating the possible presence of a mature plant, or plants, somewhere in the vicinity (TNCH 1997b, pp. 1-19; Perlman 2005; Perlman 2006a; Wood 2006). One of the seedlings was collected by a botanist with HBMP and provided to Lyon Arboretum in Honolulu, which in turn provided it to Kalaupapa National Historic Park (KNHP) on Molokai for attempted propagation. That plant has since died (Hughes 2006a; Garnett 2006). The other seedling was collected by a botanist with the National Tropical Botanic Gardens. Cuttings were propagated from this seedling and provided to KNHP (Perlman 2006b). Plants grown from these cuttings have since been outplanted into TNCH's Kamakou Preserve (see below).

*Phyllostegia hispida* was again thought to be extirpated from the wild until a single juvenile plant was discovered in May 2006 within the Puu Alii NAR along the Puu Alii fenceline at 4,100 ft (1,250 m) elevation (Perlman 2006b). Although protected within a 10-ft (3-m) diameter fenced enclosure (Stevens 2006), that individual has died for unknown reasons (Oppenheimer

2007). However, 10 new wild plants were discovered in April 2007: 9 within Kamakou Preserve and 1 within Puu Alii NAR. Four of the individuals found within Kamakou Preserve were seedlings that were closely clustered next to a fenceline. These were protected with temporary fencing; however, two of these individuals are now dead. Two of the remaining eight wild individuals discovered in April 2007 are mature and have fruited and produced seeds. Seeds and cuttings have been removed from these individuals for attempted cultivation (Oppenheimer 2008b). Other than the two remaining seedlings that were protected with temporary fencing, the remainder of the wild individuals are not currently protected within exclosures.

Since April 2007, 15 additional *Phyllostegia hispida* individuals have been found within Kamakou Preserve while conducting *Rubus argutus* (Florida prickly blackberry) control trips (Oppenheimer 2008a,b; Oppenheimer 2008d). Most of the remaining wild individuals, which now number 24, are located on landslides or in windthrow areas (areas in which trees have been uprooted or overthrown by wind) (Oppenheimer 2008b,c).

In addition, several outplantings of cultivated individuals have been completed within TNCH's Kamakou Preserve as of April 2007. Twelve individuals were outplanted into exclosures in April 2007, and 11 of these were still doing well as of April 2008. Another 12 were outplanted in June 2007, all of which remained as of April 2008 (Oppenheimer 2008b). A third outplanting of 6 plants was done in August 2007 (Oppenheimer 2008b), another 124 individuals were outplanted in August 2008 (Oppenheimer 2008d), and 61 more were outplanted in September 2008 (Oppenheimer 2008c), bringing the total number of *Phyllostegia hispida* plants in the wild to 24 naturally occurring and 214 outplanted individuals. One of the wild individuals is located within Puu Alii NAR; all of the remaining individuals are located within Kamakou Preserve.

#### Summary of Comments and Recommendations

In the proposed rule published on February 19, 2008 (73 FR 9078), we requested that all interested parties submit written comments on the proposal by April 21, 2008. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on

the proposal. Newspaper notices inviting general public comment were published in the Honolulu Advertiser and Molokai Advertiser News. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received one written public comment in support of listing *Phyllostegia hispida* with endangered status. In addition, the commenter concurred with our assessment that feral pigs and invasive, nonnative plants are both important and immediate threats to Hawaii's native plants and to *P. hispida* in particular. No further additional information was offered beyond these statements of support; therefore we will not address this comment further here.

#### Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven individuals with scientific expertise that included familiarity with *Phyllostegia hispida* and its habitat, biological needs, and threats. We received written comments from two experts, both of whom agreed with the assessment that *P. hispida* meets the definition of an endangered species. In addition, both experts pointed out that while the continuing invasion of alien plants and feral ungulates undoubtedly poses threats to the species and its habitat, the limited area currently occupied by *P. hispida* has not yet become highly modified by nonnative plants and feral pigs, due to ongoing management by TNCH. The remaining plants are found in a native-dominated plant community within TNCH's Kamakou Preserve where control efforts for both alien plants and feral ungulates are ongoing. Both experts also point out that they believe *P. hispida* may be dependent upon tree-fall openings in the canopy or similar disturbances that provide increased sunlight for germination. Information provided by the peer reviewers has been incorporated into this final rule.

#### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. 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) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial,

recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

#### A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As with virtually every other native plant community in the islands, the wet forests of Molokai where *Phyllostegia hispida* occurs have been affected by introduced (nonnative) feral pigs and introduced (nonnative) plants (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12; HBMP 2007). The poor reproduction and survivorship of *P. hispida* clearly indicate that the current conditions are less than optimal for this species, although we do not yet fully understand the specific mechanisms that are undermining its viability.

#### Feral Pigs

European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Niihau, Oahu, Molokai, Maui, and Hawaii. These introduced feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, feral pigs directly affect native plants by disturbing and destroying vegetative cover, trampling plants and seedlings, and possibly reducing or eliminating plant regeneration by damaging or eating seeds and seedlings (further discussion of predation is under Factor C, below). Feral pigs are a major vector for the establishment and spread of competing invasive, nonnative plant species, by dispersing these plant seeds on their hooves and coats as well as through their digestive tracts, and by fertilizing the disturbed soil through their feces. Feral pigs feed preferentially on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), thereby facilitating the spread of these invasive species, and also contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Aplet *et al.* 1991, p. 56; Smith 1985, pp. 190, 192, 196, 200, 204, 230-231; Stone 1985, pp. 254-255, 262-264; Medeiros *et al.* 1986, pp.

27-28; Scott *et al.* 1986, pp. 360-361; Tomich 1986, pp. 120-126; Cuddihy and Stone 1990, pp. 64-65; Loope *et al.* 1991, pp. 1-21; Wagner *et al.* 1999, p. 52).

Feral pigs are present in the wet forest habitat formerly and currently inhabited by *Phyllostegia hispida* within Puu Alii NAR and Kamakou Preserve, and although control efforts are underway, they continue to degrade the condition of the forest there (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12; HBMP 2007). They are considered a major threat to native species and to the overall health of the watershed in which *P. hispida* occurs (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12). Significant management actions are directed at feral ungulate control in the area where *P. hispida* has been found within Puu Alii NAR and Kamakou Preserve on Molokai, such as large-scale watershed fencing, construction of ungulate exclosures around rare plants, and hunting of feral pigs by both staff and the public (TNCH 1997a, pp. 2-3; TNCH 1998a, pp. 1-2, 7; DOFAW 2000, pp. 3, 12; HBMP 2007). When the individual *P. hispida* was discovered in 1996 next to the boardwalk at Pepeopae, TNCH noted signs of feral pig presence (e.g., droppings, evidence of rooting, wallows) in the vicinity (HPMP 2007) and immediately erected a fenced exclosure around the plant to protect it (TNCH 1997a, pp. 2-3). Similarly, a fenced exclosure was erected around the individual that was discovered within the Puu Alii NAR in 1997 to protect it from feral pigs (Nohara 2006). The juvenile plant discovered within the Puu Alii NAR in 2005 was immediately fenced to protect it from feral pigs (Stevens 2006), as were four of the most recently discovered plants along the fenceline within Kamakou Preserve (Oppenheimer 2007). Most of the wild individuals, however, are not currently protected within exclosures, and despite ongoing control efforts, feral pigs persist in the range of *P. hispida*.

Feral pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1998, pp. 752, 769-770). Feral pigs continue to persist despite control efforts, and fencing protects individual plants only temporarily. Furthermore, the remote and rugged terrain of the islands makes the long-term maintenance of fencing difficult. Because of their high rate of reproduction, more than 40 percent of

the feral pig population must be removed annually before any decline in numbers is observed (Hess *et al.* 2006, p. 39). The most intensive feral pig eradication programs in the Hawaiian Islands have taken years of continuous effort to achieve effective control, even within fenced areas (Hess *et al.* 2006). Even though two peer reviewers have suggested that the habitat currently occupied by *Phyllostegia hispida* on TNCH land has not yet been highly modified by feral pigs, due to the well-documented negative impacts of feral pigs on native Hawaiian plant communities, the known habitat degradation caused by feral pigs in the habitat occupied by *P. hispida*, and the continuing presence of feral pigs in the limited area where *P. hispida* is found, we consider habitat modification and degradation by feral pigs to be an immediate and ongoing threat to this species throughout its range, and we have no indication that this threat is likely to be significantly ameliorated in the near future.

#### Nonnative Plants

Introduced, nonnative plant species are a pervasive threat to the native flora throughout the Hawaiian Islands. Of the current total of nearly 2,000 native and naturalized plant taxa, approximately half are introduced, nonnative species from other parts of the world, and nearly 100 of these are considered invasive pest species (Smith 1985, p. 180). On the Hawaiian Islands and other tropical islands, studies have shown that many of these introduced plant taxa outcompete and displace native plants, and often alter the habitat to the point that it is no longer suitable for the native plant species; these studies include nonnative pest plants found in habitat similar to that of *Phyllostegia hispida* (Smathers and Gardner 1978, pp. 274-275; Smith 1985, pp. 196, 206, 230; Loope and Medeiros 1992, pp. 7-8; Medeiros *et al.* 1992, pp. 30-32; Ellshoff *et al.* 1995, pp. 1-5; Meyer and Florence 1996, pp. 777-780; Medeiros *et al.* 1997, pp. 30-32; Loope *et al.* 2004, pp. 1472-1473). In particular, nonnative pest plants may make habitat less suitable for native plants by modifying availability of light, altering soil-water regimes, modifying nutrient cycling, or altering fire characteristics of native plant communities (Smith 1985, pp. 206, 217, 225, 227-233; Cuddihy and Stone 1990, p. 74).

Although there is no empirical evidence specific to *Phyllostegia hispida* due to the lack of research on the species, scientists familiar with *P. hispida* believe it does not handle either shade or competition well

(Oppenheimer 2007), and nonnative plants are likely to contribute to both of these conditions. Examples of some of the nonnative plants documented in the areas formerly occupied by *P. hispida* include *Axonopus fissifolius* (narrow-leaved carpetgrass), *Clidemia hirta* (Koster's curse), *Erechtites valerianifolia* (fireweed), *Juncus effuses* (Japanese mat rush), *Rubus rosifolius* (thimbleberry), and *Sacciolepis indica* (Glenwood grass). *Rubus rosifolius* and *R. argutus* are scattered throughout the area in which *P. hispida* currently exists, and are targets of control by TNCH staff in the area (Oppenheimer 2008a). Because of demonstrated habitat modification and resource competition by nonnative plant species in habitat similar to the wet forest habitat of *P. hispida*, and the ongoing need for control of invasive nonnative plant species in the area currently occupied by *P. hispida*, we consider habitat modification and degradation by nonnative plants to be an immediate and ongoing threat to this species throughout its range.

To date, successful eradication or control of invasive alien plants has only been achieved on a very small scale, and then usually when control efforts have been initiated in the early stages of establishment (Mack and Lonsdale 2002, p. 166). Many of the invasive, nonnative plants in Hawaii are so widespread and easily dispersed that some researchers question whether eradication is a realistic goal (e.g., Mack and Lonsdale 2002, p. 165). On average, 40 new plant species have been introduced to the Hawaiian Islands every year over the past two centuries (Loope 1998, p. 752). Although managers are attempting to control nonnative plants, resources to support such efforts are often limited (e.g., Holt 1992, p. 527), and invasive nonnative plants persist in most areas in spite of such efforts. In addition, the control of introduced ungulates such as feral pigs, which contribute to the spread of alien plant species, is viewed as a prerequisite to the effective control of nonnative plants (e.g., Holt 1992, p. 527). Therefore, due to the ubiquitous nature of the invasive plant problem in the Hawaiian Islands, the extreme difficulty of eradicating invasive, nonnative plant species that have become widespread and well-established, and the continuing presence of introduced ungulates that contribute to the spread and establishment of nonnative plants, we have no indication that this threat to *Phyllostegia hispida* is likely to be significantly reduced any time in the near future.

In summary, feral pigs contribute to the modification and degradation of *Phyllostegia hispida*'s habitat by disturbing and destroying vegetative cover, trampling plants and seedlings, reducing or eliminating plant regeneration by damaging or eating seeds and seedlings, and increasing erosion by creating large areas of bare soil. Feral pigs are also a major vector for the dispersal of invasive, nonnative plant species that pose a threat to *P. hispida*. The presence of nonnative plant species contributes to the modification and degradation of *P. hispida*'s habitat by modifying availability of light, altering soil-water regimes, modifying nutrient cycling, and changing the fire characteristics of the native plant community. Evidence suggests that *P. hispida* is negatively affected by shade and competition, both conditions exacerbated by invasive nonnative plants. We therefore find that habitat modification and degradation by feral pigs and nonnative plants poses an immediate and ongoing threat to *Phyllostegia hispida*, despite the occurrence of the species on protected lands, and we have no indication that this threat is likely to be significantly ameliorated in the near future.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes is not known to be a threat to *Phyllostegia hispida* in any portion of its range, and as such is not addressed in this rule.

#### C. Disease or Predation

Because the native vegetation of Hawaii evolved without any browsing or grazing mammals present, many plant species do not have natural defenses against such impacts (Carlquist 1980, pp. 173-175; Lamoureux 1994, pp. 54-55). Native plants such as *Phyllostegia hispida* do not have physical or chemical adaptations, such as thorns or noxious compounds, to protect them, thereby rendering them particularly vulnerable to predation by feral pigs or other ungulates (Department of Geography 1998, pp. 137-138; Carlquist 1980, p. 175). Browsing by ungulates has been observed on many other native plants, including common and rare or endangered species (Cuddihy and Stone 1990, pp. 64-65). In a study of feral pig populations in the Kipahulu Valley on the island of Maui, feral pigs were observed feeding on at least 40 plant species in the rainforest ecosystem, 75 percent of which were native plants

occurring in the herbaceous understory and subcanopy layer (Diong 1982, p. 160). Therefore, even though we have no evidence of direct browsing for *P. hispida*, given the presence of feral pigs in the area where *P. hispida* occurs, we consider it likely that feral pigs may affect the species directly through predation. As described above under Factor A, due to the persistence of feral pigs in the limited range of *P. hispida* in spite of control efforts, and the likelihood that their presence will continue, we believe feral pigs pose an immediate and ongoing threat to the species throughout its range, and that this threat is unlikely to be significantly reduced in the near future.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Of the 238 known individuals of *Phyllostegia hispida*, 24 wild and 214 recently outplanted, 237 occur on TNCH's Kamakou Preserve. TNCH manages this private land for the benefit of threatened and endangered species and ecosystems. The management efforts at TNCH's Kamakou Preserve include control of nonnative plants and feral pigs, as well as fencing, all of which benefit *P. hispida*. However, as noted in the discussion of Factor A above, the eradication of nonnative plants and feral pigs, even within fenced areas under active management, is a difficult and extremely lengthy task. The continuing presence of nonnative plants and feral pigs within the fenced area of the preserve, in concert with the threat of very small population size and limited number of reproductive individuals, which will be discussed in Factor E, renders *P. hispida* vulnerable to extinction due to these threats despite beneficial management on the Kamakou Preserve. The threat of extinction is not posed, however, by an inadequacy of regulatory mechanisms on TNCH lands.

Only one known individual of *Phyllostegia hispida* is found on State lands, in the Puu Alii NAR. Hawaii Administrative Rules 13-209 provide protections for this single individual, including a prohibition against removal, injury, or killing, and a prohibition against the introduction of plants or animals. The State has been working to fence greater areas of the NAR and to eradicate feral pigs and nonnative plants within the fenced areas, but this work is not yet complete. As noted in the discussion of Factor A above, the eradication of nonnative plants and feral pigs, even within fenced areas under active management, is a difficult and extremely lengthy task. Although some regulatory protections are in place on the NAR that benefit *P. hispida*, only

one single plant occurs under these protections. This fact, in conjunction with the persistence of nonnative plants and feral pigs, small population size, and limited number of reproductive individuals of the species remaining, renders *P. hispida* vulnerable to extinction due to these threats despite the protections on the Puu Alii NAR. The threat of extinction is not posed, however, by an inadequacy of regulatory mechanisms on the NAR. The regulatory mechanisms that provide for the control of threats to *P. hispida* on the Puu Alii NAR appear to be adequate, but as the success of these control efforts has yet to be realized, the threats continue at present.

We find that where individuals of *Phyllostegia hispida* are currently found, the inadequacy of regulatory mechanisms does not pose a threat to the species. However, should the recovery of the species eventually require reintroductions in other areas, this factor may pose a potential impediment to recovery.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most significant threats to *Phyllostegia hispida* is its extremely low numbers and highly restricted distribution. A total of 238 plants are currently known to exist, 24 naturally occurring and 214 outplanted. Only two wild individuals are mature and have fruited and produced seeds. All of the remaining individuals are young or only recently established. Survivorship of known wild individuals has been poor, and although outplantings have been attempted, none of these outplantings has yet proven successful for more than the short term. Although propagules of *P. hispida* have been collected on an opportunistic basis and some controlled propagation of the species has taken place, there is no dedicated funding for propagation of the species and no formal plan exists for outplanting and reintroduction.

Deterministic factors, such as habitat alteration or loss of a key pollinator, may have reduced this population to such a small size that it is now susceptible to a stochastic extinction event (Gilpin and Soulé 1986, pp. 24-25). Species that are known from few wild individuals and are endemic to a single, small island are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a few populations and individuals by genetic bottlenecks, random demographic fluctuations, and localized catastrophes, such as hurricanes and disease outbreaks (Mangel and Tier 1994, pp. 607-614;

Pimm *et al.* 1988, pp. 757-785). In the case of *Phyllostegia hispida*, the entire population of the species is small and restricted to a highly localized geographic area, rendering it highly vulnerable to the risk of extinction in the wild due to the lack of redundancy in populations. In addition, the lack of reproductive individuals and skewing of the population toward young plants poses a significant threat to the species, as recruitment may not be sufficient to offset mortality in the population. These consequences of small population size (e.g., insufficient natural reproduction, loss of genetic diversity), in conjunction with the risk of losing the entire population in the wild due to factors such as localized events (e.g., hurricanes) and threats posed by ungulates, render the species highly vulnerable to extinction at any time. Although some species are naturally rare, the poor survivorship of *P. hispida* suggests that the requisite biological or ecological needs of the species are not being met under current conditions. The reasons for the poor survivorship and lack of reproduction observed in this species are not known.

All of these negative demographic factors, as well as the vulnerability of extinction of the population from a catastrophic natural event, pose immediate and significant threats to the species despite the fact that it currently occurs on protected lands, including State and TNCH reserves. Small population size has therefore become a primary and immediate threat to this species, and given the current size and composition of the population, we do not foresee the likelihood of this threat lessening to any significant degree any time in the near future.

#### Conclusion and Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Phyllostegia hispida*. The species' extremely low numbers and highly restricted geographic range make it particularly susceptible to extinction at any time from random events such as hurricanes (Factor E). In addition, the lack of mature reproductive individuals poses an immediate threat to the species (Factor E). Although the species is found on protected lands with ongoing management efforts, as described above, we find that it nonetheless faces continuing threats from habitat destruction and degradation due to feral pig activity and invasive nonnative plants (Factor A), competition with nonnative plant species (Factor A), and predation by nonnative mammals

(Factor C). The pervasive nature of feral pigs and invasive plants on the island of Molokai makes it unlikely that control efforts will significantly reduce the degree of threat to the species anytime in the near future; therefore we find that these factors, in combination with the extremely low number of reproductive individuals and limited distribution of the population, pose a significant and immediate threat to *P. hispida* and place the species at current risk of extinction throughout its range.

The Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." *Phyllostegia hispida* is highly restricted in its range, currently occurring only within Puu Alii NAR and the immediately adjacent Kamakou Preserve on the island of Molokai. Based on the immediate and ongoing significant threats to *P. hispida* throughout its entire limited range, as described above, we consider the species *P. hispida* to be in danger of extinction throughout all of its range. Therefore, we are listing *P. hispida* as an endangered species under the Act. Because we determine that *P. hispida* is endangered throughout all of its range, there is no reason to consider its status in any significant portion of its range.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures 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 designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, 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 the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For *Phyllostegia hispida*, Federal agency actions that may require consultation as described in the preceding paragraph include feral ungulate removal or other management actions undertaken by the National Park Service within Puu Alii NAR; the provision of Federal funds to State and private entities through Federal programs, such as the Service's Partners for Fish and Wildlife Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration Program; and the various grants administered by the U.S. Department of Agriculture, Natural Resources Conservation Service. Other types of actions that may require consultation include U.S. Army Corps of Engineers activities, such as the construction or maintenance of boardwalks and bridges subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All 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, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. Although Hawaii has a strong Endangered Species law (HRS, Sect. 195-D), *Phyllostegia hispida* is not currently protected under that law. Federal listing of *P. hispida* will automatically invoke State listing under Hawaii's Endangered Species law and

supplement the protection available under other State laws. The Federal Endangered Species Act will, therefore, offer additional protection to this species.

The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that the only permits that would be sought or issued for *Phyllostegia hispida* would be in association with recovery efforts, as this species is not common in cultivation or the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-6158; facsimile 503-231-6243).

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) 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

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protections; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the

prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on

the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

#### Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require 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. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that *Phyllostegia hispida* is threatened by taking or other human activity. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act, for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, the area is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of a critical habitat designation is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At present, the only known

extant individuals of *Phyllostegia hispida* occur on State and private land, and all previously known occurrences have been on State and private lands. However, the State-owned Puu Alii NAR falls within the boundaries of the Kalaupapa National Historic Park, and the National Park Service may need to consult with the Service in the future should they determine that actions they intend to fund, carry out, or authorize within the NAR may affect *P. hispida* or destroy or adversely affect critical habitat. In addition, lands that may be designated as critical habitat in the future for this species may be subject to Federal actions that trigger the section 7 consultation requirement, such as the granting of Federal monies for conservation projects or the need for Federal permits for projects, such as the construction and maintenance of boardwalks and bridges subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of this species. In the case of *P. hispida*, these aspects of critical habitat designation would potentially benefit the conservation of the species. Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for *P. hispida*.

#### Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and determinable." Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

- (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or
- (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat,

we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical or biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, and rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We are currently unable to identify the primary constituent elements for *Phyllostegia hispida*, because those physical and biological features that are essential to the conservation of this species are not known at this time. As discussed in the "Species Information" section of this rule, between the years 1910 and 1996 only 10 occurrences of *P. hispida* were documented, and the location information for these occurrences was recorded at a relatively coarse scale. Elevations are known only for the few individuals discovered within the last 10 years. From 1996 through 2005, a total of only 6 plants (3 adults, 2 seedlings, and 1 juvenile) were located, all existing only as single individuals in disparate locations. All of the previously known adults died without reproducing naturally in the wild. Currently, there are 24 individuals known to naturally exist in the wild, only 2 of which are mature. Seeds and cuttings have been removed from these two individuals for attempted cultivation (Oppenheimer 2008b). As of April 2008, an additional 214 individuals produced from cuttings and outplanted into exclosures in Kamakou Preserve are also extant.

The reasons for the deaths of the *Phyllostegia hispida* individuals summarized in the "Species Information" section of this rule are unknown, as are the reasons for poor natural reproduction in the wild. Key features of the plant's life history, such as longevity, dispersal mechanisms, or vectors for pollination, are unknown.

With so few recorded occurrences of the species, little is known of *Phyllostegia hispida* in terms of what this plant needs to survive and

reproduce successfully in the wild. The poor viability of the *P. hispida* occurrences observed in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of this species. Although two mature plants that are producing fruits were recently discovered, there has yet to be an observation of an individual or population of *P. hispida* that has successfully produced surviving young in the wild. As the successful survival and reproduction of the species in the wild has not yet been documented, the optimal conditions that would provide the biological or ecological requisites of the species are not known. Although, as described above, we can surmise that habitat degradation from a variety of factors has contributed to the decline of the species, we do not know specifically what essential physical or biological features of that habitat are currently lacking for *P. hispida*. As we are unable to identify the physical and biological features essential to the conservation of *P. hispida*, we are unable to identify areas that contain these features and that might qualify for designation as critical habitat.

Although we have determined that the designation of critical habitat is prudent for *Phyllostegia hispida*, the biological needs of the species are not sufficiently well known to permit identification of the physical and biological features that may be essential for the conservation of the species, or those areas essential to the conservation of the species. Therefore, we find that critical habitat for *P. hispida* is not determinable at this time. The recent outplanting of more than 200 new seedlings into the Kamakou Preserve presents us with an opportunity to study the growth of these plants and better determine the physical and biological features that may be essential for the conservation of the species. We intend to use the iterative information gained from this continuing research into the essential life history requirements of *P. hispida* to facilitate identification of essential features and areas. In addition, we will evaluate the needs of *P. hispida* within the ecological context of the broader ecosystem in which it occurs, similar to the approach that was recently proposed for 47 species endemic to the island of Kauai (October 21, 2008; 73 FR 62592), and will consider the utility of using this approach for this species as well.

**Required Determinations**

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)**

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act**

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not

be prepared in connection with regulations adopted under 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 in this rule is available on the Internet at <http://www.regulations.gov> or upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Author(s)**

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

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

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**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.

■ 2. Amend §17.12(h) by adding the following entry to the List of Endangered and Threatened Plants in alphabetical order under “Flowering Plants”:

**§ 17.12 Endangered and threatened plants.**  
 \* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						

FLOWERING PLANTS

<i>Phyllostegia hispida</i>	None	U.S.A. (HI)	Lamiaceae	E	762	NA	NA
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Dated: March 4, 2009.

**Rowan W. Gould,**

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

[FR Doc. E9-5348 Filed 3-16-09; 8:45 am]

**BILLING CODE 4310-55-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0809251266-81485-02]

RIN 0648-XN60

**Fisheries of the Northeastern United States; Scup Fishery; Reduction of Winter I Commercial Possession Limit**

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS announces the reduction of the scup coastwide commercial possession limit from

Maine through North Carolina for the Winter I period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that 80 percent of the commercial quota allocated to the Winter I period is projected to be harvested and to announce that the possession limit for a Federal vessel permit holder is reduced.

**DATES:** Effective 0001 hours, March 19, 2009, through April 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:** Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.120(c) require the Northeast Regional Administrator to publish annual scup quota allocations and the percentage of landings attained during the Winter I period at which the possession limits would be reduced. On January 2, 2009, NMFS published the final rule for the summer flounder, scup, and black sea bass specifications in the **Federal Register** (74 FR 29). This final rule requires NMFS to publish a notification in the **Federal Register** advising and notifying commercial

vessels and dealer permit holders that the commercial scup possession limit will be reduced once 80 percent of the Winter I Period quota is projected to be harvested. Based upon recent projections, the Regional Administrator anticipates that 80 percent of the Federal commercial quota of 3,777,443 lb (1,713 mt) for the 2009 Winter I period will be harvested by March 19, 2009. Therefore, to maintain the integrity of the 2010 Winter I period quota by avoiding quota overages, the commercial scup possession limit will be reduced from 30,000 lb (13,608 kg) to 1,000 lb (454 kg) of scup per trip. This possession limit will remain in effect until the end of the Winter I period (through April 30, 2009) or until the Winter I quota allocation has been fully harvested, which ever occurs first.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*