

Dated: June 25, 2009.

Marvin E. Moriarty,

Acting Director, U.S. Fish and Wildlife Service
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R4-ES-2009-0022; 92210-1117-000-B4]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Coqui Llanero (*Eleutherodactylus juanariveroi*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), announce a 90-day finding on a petition to list coqui llanero (*Eleutherodactylus juanariveroi*), a tree frog, as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Following our review of the petition, we find that it provides substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we initiate a status review to determine if listing the coqui llanero is warranted. To ensure that the status review is comprehensive, we request scientific and commercial data and other information regarding this species. We will initiate a determination on critical habitat for this species if and when we initiate a listing action.

DATES: We made the finding announced in this document on July 8, 2009. To allow us adequate time to conduct this review, we request that information be submitted on or before September 8, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS-R4-ES-2009-0022; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all information we receive on <http://www.regulations.gov>.

This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT:

Edwin E. Muñoz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone, (787) 851-7297; or by facsimile, (787) 851-7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, the Act (16 U.S.C. 1531 *et seq.*) requires us to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we seek information on the coqui llanero. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the coqui llanero. We seek information regarding:

- (1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat;
- (2) Information relevant to the factors that are the basis for our making any listing determination for a species under section 4(a) of the Act, which are:
 - (a) The present or threatened destruction, modification, or curtailment of the species' 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 and threats to the species or its habitat; and
- (3) Information on the effects of climate change, sea-level change, and water temperature change on the distribution and abundance of the species.

If we determine that listing the species is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we propose the listing. Therefore, with regard to areas within the geographical range currently occupied

by the coqui llanero, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold your personal information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that

the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On May 22, 2007, we received a petition dated May 11, 2007, from the Caribbean Primate Research Center requesting that we list the coqui llanero as endangered under the Act. The petition also requested that we designate critical habitat concurrently with listing, if listing occurs. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a July 23, 2007, letter to the petitioners, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that we would not be able to address the petition until funding became available. Actions in this petition were precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2007. However, in fiscal year 2008, funding became available, enabling us to address this petition. Accordingly, this finding addresses the petition. On January 22, 2009, we received an amended petition dated January 13, 2008. The amended petition included literature references published in 2007, provided photographs and maps, and updated information on current threats to the species.

Species Information

Neftali Rios-López and Richard Thomas first collected the coqui llanero (*Eleutherodactylus juanariveroi*), a tree frog, in 2005 from a seasonally flooded herbaceous wetland near the U.S. Naval Security Group Activity Sabana Seca (USNS-GASS) property and the Caribbean Primate Research Center, Toa Baja, Puerto Rico. The coqui llanero was later described as a new species of the

genus *Eleutherodactylus*, family Leptodactylidae, in 2007. Although the new species is similar to the *Eleutherodactylus gryllus*, differences in morphological ratios, body coloration, frequency of calls, call structure, DNA, and habitat association indicate that it is a well-differentiated species (Rios-López and Thomas 2007, pp. 53–60; Caribbean Primate Research Center 2007, p. 1; Caribbean Primate Research Center 2008, p. 1). At the time of this determination, this endemic Puerto Rican tree frog is only known from this type locality (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 1; Departamento de Recursos Naturales y Ambientales (DRNA) 2007a, p. 3; DRNA 2007b, p. 1; Caribbean Primate Research Center 2008, p. 2). It is only known to occur in the Sabana Seca-Ingenio Ward, Toa Baja, a municipality of Puerto Rico located on the northern coast, north of Toa Alta and Bayamón; east of Dorado; and west of Cataño, approximately 12 miles (20 kilometers) from San Juan.

The coqui llanero is the smallest Puerto Rican *Eleutherodactylus* and is the only known herbaceous-wetland specialist in Puerto Rico within the taxonomic genus *Eleutherodactylus*. It has a mean snout-vent length of 14.7 millimeters (mm) (0.58 inches (in)) in males, and 15.8 mm (0.62 in) in females. The nares (nasal passages) are prominent, and a ridge connects them behind the snout tip, giving the tip a somewhat squared-off appearance. The species has well-developed glands through its body; its dorsal coloration is yellow to yellowish brown with a light, longitudinal, reversed comma mark on each side; and its mid-dorsal zone is broadly bifurcated (divided into two branches). The species' communication call consists of a series of short high-pitched notes with call duration varying from 4 to 21 seconds. The advertisement call has the highest frequency among all Puerto Rican *Eleutherodactylus*, between 7.38 and 8.28 kilohertz. The calling activity starts at approximately 4:30 p.m. and decreases significantly before midnight. Egg clutches comprise one to five eggs and are found on leaf axils or leaf surfaces between 0.4 meters (m) (1.3 feet (ft)) and 1.2 m (3.9 ft) above water level (Rios-López and Thomas 2007, pp. 53–62). Observers did not see parental care in the field (Caribbean Primate Research Center 2007, p. 3; Caribbean Primate Research Center 2008, p. 5).

The coqui llanero is only known to occur in the Sabana Seca-Ingenio Ward, Toa Baja type locality, which consists of approximately 180 hectares (ha) (444.8 acres (ac)) of seasonally flooded

palustrine (marshy, non-tidal wetlands substantially covered with emergent vegetation such as trees, shrubs, and moss, or fresh-water herbaceous wetland), at 17 m (55.8 ft) above sea level (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 2). According to the petitioner, the species' habitat may represent a relict of an endemic habitat type (Rios-López and Thomas 2007, p. 63). The habitat is categorized as within the subtropical moist forest life zone (Ewel and Whitmore 1973, pp. 20–38). The main vegetation in this herbaceous wetland consists of toothed midorus fern (*Blechnum serrulatum*), willdenow's maiden fern (*Thelypteris interrupta*), bulltongue arrowhead (*Sagittaria lancifolia*), flat sedges (*Cyperus* sp.), spike rushes (*Eleocharis* sp.), and vines and grasses (Caribbean Primate Research Center 2007, p. 2; Caribbean Primate Research Center 2008, p. 2).

The majority of the individuals were found perching and calling on the toothed midorus fern and willdenow's maiden fern. Reproduction, however, only occurs on the bulltongue arrowhead (Caribbean Primate Research Center 2007, p. 2; Caribbean Primate Research Center 2008, p. 4). All specimens (45 individuals) were collected while perching, sitting, or calling on herbaceous vegetation, mainly on ferns. Egg clutches were found on leaf axils (21 egg clutches) or leaf surfaces (3 egg clutches) of only *S. lancifolia* (Rios-López and Thomas 2007, p. 60).

Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List 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.

In making this 90-day finding, we evaluated whether information regarding the coqui llanero, as presented in the petition and clarified by information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our

evaluation of this information is presented below.

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

According to the petition, the existence of the coqui llanero is imperiled due to the existing and imminent threatened destruction, modification, and curtailment of its wetland habitat and geographic range. The petitioner identified three main threats under Factor A: (1) The construction of a go-kart and motorbike racetrack in the coqui llanero's wetland habitat, (2) urban development, and (3) contamination from the Toa Baja Municipal Landfill. The petition claims that the construction and operation of a go-kart and motorbike racetrack within the vicinity of the habitat of the coqui llanero are presently affecting the species' habitat. The petition also claims that contamination with oil, gasoline, and other pollutants due to this racetrack is a threat since the area is prone to flooding.

Information in our files (DRNA 2007b, pp. 23–25) supports the petitioner's contention that the construction and operation of a racetrack for motorbikes and go-karts located north of the habitat would have negative impacts and is a current threat to the species. The Commonwealth of Puerto Rico's final designation of essential critical natural habitat for the coqui llanero (see Factor D discussion below) shows a photograph of the flooded racetrack (DRNA 2007b, p. 25). The text below the illustration specifies that the habitat of the coqui llanero was filled for the construction of racetrack, and that as a result of flooding events, contaminants such as oil and gasoline from the track spilled frequently into the wetland (DRNA 2007b, p. 25).

As described in the petition, the Toa Baja Landfill, located inland on top of a limestone hill, is another major threat to the coqui llanero. The petition states that polluted waters from the continued operation of this landfill may pose a serious threat to the coqui llanero, because underground-contaminated waters and leachates reaching the wetlands may change water quality, soils, and consequently plant composition (Caribbean Primate Research Center 2007, p. 4; Caribbean Primate Research Center 2008, pp. 6–9).

The petitioner also contends that the species and its habitat are threatened by large-scale residential projects that are currently planned within and around the coqui llanero habitat located within the south tract of the former U.S. Navy NSGA Sabana Seca. The petitioner

states that the Municipality of Toa Baja (as part of its land use plans) intends to zone the habitat, an area formerly part of the Sabana Seca Navy Base, for residential development. The petitioner claims that the U.S. Navy, in collaboration with the Municipality of Toa Baja, has selected residential development as the "preferred alternative" for the wetlands area within the south tract of the former navy base, which would represent the destruction of 168 ha (416 ac) of wetlands, including the coqui llanero's habitat.

In 2005, the U.S. Navy consulted with the Service on the sale of the former USNS–GASS property and reuse of the land for residential purposes. The proposed disposal mechanism for Sabana Seca involved the marketing and sale of the property. At that time, we were not aware of the existence of this new species and its habitat within the property. Therefore, the Service was only concerned about the possible adverse effects to wetland resources of future re-use and development of this area.

The petitioners assert that the above issues substantially impact the distribution and abundance of the coqui llanero, as well as its habitat in all of its range. Based on the information provided in the petition and available in our files, we conclude that the petitioners have presented substantial information to indicate that the present or threatened destruction or modification of habitat or range may present a threat to this species.

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

Neither the petition nor information in our files presents information indicating that overutilization of coqui llanero for commercial, recreational, scientific, or educational purposes is a threat. Therefore, we find that the petition does not present substantial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the coqui llanero.

C. Disease or Predation

Neither the petition nor information in our files presents information indicating that disease or predation are significant threats to the coqui llanero. Therefore, we find that the petition does not present substantial information to indicate that disease or predation may present significant threats to the coqui llanero.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioner claims that we need to list the species and designate critical habitat for it because no other regulatory mechanism protecting the species or its habitat is in place. However, according to information in our files, the Department of Natural and Environmental Resources (DNER) for the Commonwealth of Puerto Rico designated the species as Critically Endangered and designated its habitat as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766 in July 2007. The designation as "critically endangered" prohibits any person from taking the species: It prohibits harm, possession, transportation, destruction, or import or export of individuals, nests, eggs or juveniles without previous authorization from the Secretary of DNER. Article 2 of Regulation 6766 includes all prohibitions.

DNER designated approximately 200 ha (509 ac) as "essential critical natural habitat" in accordance with Regulation 6766. Article 4.05 of this regulation specifies that an area designated as essential critical natural habitat cannot be modified unless scientific studies determine that such designation should be changed. Article 2.06 of this regulation prohibits collecting, harassing, hunting, and removing, among other activities, of listed animals within the jurisdiction of Puerto Rico.

Because the coqui llanero's habitat is the first to be designated as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766, no one is certain of the level of protection this law will provide. Therefore, we conclude that the petitioners have presented substantial information to indicate that existing regulatory mechanisms may be inadequate to protect the coqui llanero.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner asserts that the species is at risk of extinction throughout its range as a result of its extremely limited distribution of approximately 200 ha (494 ac). With European colonization, land was extensively drained and modified for agricultural practices. A shift in the Puerto Rican economy from agriculture to industry led to land abandonment, and this species' habitat is thought to represent a relic of an endemic herbaceous palustrine wetland. Based on the information provided in the petition and information in our files, the species is currently only known

from the Sabana-Seca-Ingenio Ward (the locality in which the species was described), a seasonally flooded palustrine herbaceous wetland in Toa Baja (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 2; DRNA 2007a, pp. 1–11; and DRNA 2007b, pp. 1–38; Caribbean Primate Research Center 2008, p. 2). Land conversion to residential or commercial projects is likely to occur in the near future because the Municipality of Toa Baja (as part of its land use plans) intends to zone the habitat, an area formerly part of the Sabana Seca Navy Base, for residential development. This species has not been found in any other location. The species' limited range and apparent habitat requirements may be a factor affecting the species' continued existence.

The petitioner also asserted that the species is threatened by other reasons related to its low reproductive capacity, highly specialized ecological requirements, brush fires, use of herbicides and changing climate conditions. Although the petition reports an abundance of 450 individuals/ha (181 individuals/ac) (Caribbean Primate Research Center 2007, p. 3; Caribbean Primate Research Center 2008, p.5), it identified low reproductive capacity as a threat to the species. Rios-López and Thomas (2007, p. 60) found that egg clutches generally contain 1 to 5 eggs, based on data collected from 24 egg clutches. Rios-López and Thomas (2007, p. 63) indicated that recent surveys conducted in nearby wetlands failed to locate the species and that apparently, there are few or no wetlands with plant composition similar to that found in the Sabana-Seca type locality.

No additional information was provided regarding how many wetlands have been surveyed for determining presence or absence of the species nor what type of studies have been conducted to compare habitat characteristics among these wetlands. However, the evidence presented in the petition and in the scientific literature suggest that the species is an obligate marsh-dweller (Rios-López 2007, p. 62) and has only been found in the Sabana Seca-Ingenio Ward. Also, the petition mentions that brush fire increases the species risk of extinction by reducing the cover of the wetland. The amended petition mentioned that the current use of herbicides in the former base, as part of the maintenance work on the grounds, represents a current threat to the species. Additionally, the amended petition identified changing climatic conditions as a possible threat to the wetland where the coqui llanero is

currently present. However, no further information was provided supporting these threats.

To summarize, the primary natural or manmade threats appear to be the limited distribution, low reproductive capacity, highly specialized ecological requirements, and potential threats such as the use of herbicides and fires to the species' habitat. Based on the information presented in the petition and available in our files, we find that the petition presents substantial information to indicate that other natural or manmade factors may be affecting the continued existence of the coqui llanero. Therefore, we find that the petition presents substantial information for this factor.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). As described in our five-factor analysis above, the petition presents substantial information indicating that listing the coqui llanero as threatened or endangered throughout its entire range may be warranted based on Factors A, D, and E. We reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition.

The petition and supporting information identified numerous factors affecting the species, including residential development, lack of regulatory mechanisms protecting the species and its habitat, and the limited habitat suitability available to the species. Our conclusion is based on information that indicates that the

species' continued existence may be affected by loss and fragmentation of habitat from land conversion, development, and habitat contamination (Factor A); inadequate protection from threats by regulatory mechanisms (Factor D); and other natural or manmade factors such as limited habitat and range, low reproductive capacity, highly specialized ecological requirements, and use of herbicides and fires (Factor E). The petition did not contain information indicating that Factors B and C are considered a threat to this species. As a result of this finding, we are initiating a status review of the species. At the conclusion of the status review, we will issue a 12-month finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not we believe a proposal to list the species is warranted.

The "substantial information" standard for a 90-day finding is not the same as the Act's "best scientific and commercial data" standard that applies to a 12-month finding to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination of whether a petitioned action is warranted is not made until we have completed a thorough status review of the species as part of the 12-month finding on a petition, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 26, 2009.

Marvin E. Moriarty,

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

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