

into the U.S., either directly or by a subsidiary it controls.

The effect of the rulemaking suggested by COSVAM would be to allow a small volume manufacturer to be eligible for an exemption if the worldwide production of all manufacturers within the control relationship that import into the U.S. does not exceed 10,000 vehicles per year, even though non-importing manufacturers may produce many more than 10,000 vehicles per year. As noted above, NHTSA considers that adoption of this language to be contrary to the commands of Chapter 329 and beyond the agency's authority. COSVAM argues however, that the agency would be within its authority as a proposed change to the existing scheme under an inherent power to fashion relief from the operation of a statutory scheme where the impact of such relief is *de minimis*, as recognized in the case of *Alabama Power versus Costle*, 636 F.2d 323 (D.C. Cir. 1979). The agency does not agree that it has such an implied power. Congress has expressly addressed the issue of exemptions under the CAFE statutes and issued precise criteria under which such exemptions may be granted. This express directive negates any implied right the agency might otherwise have had to fashion its own scheme.

COSVAM further argues that this petition should be granted because of this agency's commitment to regulatory reform. However, regulatory reform does not grant the agency authority to do what the statute does not permit. While COSVAM also suggested that the procedures for applying for an exemption be simplified, it offered no suggestions on how to make the petition process less cumbersome for a low volume automobile manufacturer. The agency has already reviewed Parts 525.6 and 525.7 as part of its regulatory reform effort and concluded that all of the information requested is necessary for the agency to fulfill its responsibility in establishing the maximum feasible fuel economy standard for manufacturers seeking an exemption. NHTSA also notes that provisions have been incorporated into Part 525 to allow for an exemption to be sought for as many as three model years. This was intended to provide some relief for the small volume manufacturer by reducing the frequency of petitions.

The agency has consistently concluded, since reconsideration of the Chase interpretation, that for CAFE purposes "vehicles manufactured by a manufacturer" includes all vehicles manufactured, worldwide, by any entity that controls, is controlled by, or is under common control with the

manufacturer. In the agency's view this interpretation is consistent with the express language and the purpose of Chapter 329. For the reasons stated above, the petition is denied.

Issued on: July 16, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97-19151 Filed 7-21-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Availability of Draft Recovery Plan for Four Species of Hawaiian Ferns for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Technical/Agency Draft Recovery Plan for Four Species of Hawaiian Ferns. These four taxa are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii.

DATES: Comments on the draft recovery plan must be received on or before September 22, 1997.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541-3441); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232-4181 (phone 503/231-6131); the Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748; Kailua-Kona Public Library, 75-138 Hualalai Road, Kailua-Kona, Hawaii 96740; Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii 96720; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui, Hawaii 96793. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Kevin Foster at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The four taxa being considered in this recovery plan are: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN).

These four taxa are all Federally listed as endangered and are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii. Three of the four endangered fern taxa have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forests, while *Pteris lidgatei* appears to be restricted to lowland wet forest. *Diplazium molokaiense* has been reported from lowland to montane forests in mesic to wet settings. The fourth species, *Asplenium fragile* var. *insulare*, has been reported from montane wet, mesic and dry forest habitats as well as subalpine dry forest and shrubland

habitat. The four taxa and their habitats have been variously affected or are threatened by one or more of the following: habitat degradation and/or predation by feral or domestic animals (goats, pigs, cattle, sheep and deer); competition for space, light, water, and nutrients from alien plants; human impacts; and fire. In addition, these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from chance (stochastic) events due to the small number of existing individuals and their very narrow distributions.

The objective of this plan is to provide a framework for the recovery of these four taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. This plan summarizes available information about each taxon, reviews the threats to their continued existence, and lists management actions needed to remove these threats. Immediate actions needed to prevent extinction of these taxa include habitat protection through fencing for exclusion of ungulates, control of alien plants, and protection from fire. *Ex situ* propagation and augmentation of some populations may also be needed. Long-term activities necessary for the perpetuation of these taxa in their natural habitats include long-term monitoring and management as well as re-establishment of populations within their historic ranges. Research on life history, limiting factors, habitat requirements, and minimum viable population size is needed to help make appropriate management decisions.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 27, 1997.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Pacific Region.

[FR Doc. 97-19175 Filed 7-21-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Stone Mountain Fairy Shrimp as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Stone Mountain fairy shrimp (*Branchinella lithaca*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on July 11, 1997. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by September 22, 1997.

ADDRESSES: Questions, comments, data, or information concerning this petition should be sent to the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Milio (see **ADDRESSES** section); telephone (904) 232-2580, ext. 112.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The processing of this petition conforms with the Service's final listing

priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will continue to process the backlog of rulemakings during fiscal year 1997 following two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (tier 1), second highest priority (tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions. The processing of this petition falls under tier 3. At this time, the Southeast Region has no pending tier 1 actions and pending tier 2 actions are near completion. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480).

The Service has made a 90-day finding on a petition to list the Stone Mountain fairy shrimp, *Branchinella lithaca*. The petition, dated March 29, 1995, was submitted by Mr. Larry Winslett, President of the "Friends of Georgia," Lithonia, Georgia, and was received by the Service on March 31, 1995. It requests the Service to emergency list the Stone Mountain fairy shrimp as endangered and designate critical habitat under 5 U.S.C. 553 of the Administrative Procedures Act. The petition identifies construction and demolition associated with further development at the summit of Stone Mountain Park as the immediate threats to the species' continued existence. It includes as potential impacts the contamination of the shrimp's vernal (temporary) pool habitat by chemicals and physical debris, and crushing of its resting stages by vehicles.

The Stone Mountain fairy shrimp is one of four species of *Branchinella* known from North America, where they are among the least common fairy shrimp species (Belk and Sissom 1992). Fairy shrimp are small Anostracan crustaceans usually restricted to fishless ponds, particularly vernal pools. Their life cycle includes both active and resting stages which are synchronized with the seasonal filling and drying out