

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Abutilon Menziesii* (Ko'olua 'ula)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Abutilon menziesii* (ko'olua 'ula) as an endangered species. This plant is known from only three small populations located on the islands of Lanai, Maui, and Oahu, in the State of Hawaii. These populations are vulnerable to any substantial habitat alteration and face the potential threats of fire, flood, overgrazing by feral animals, and predation by the Chinese rose beetle. A determination that *Abutilon menziesii* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. Comments and related materials on this proposal are solicited.

DATES: Comments from all interested parties must be received by September 6, 1985. Public hearing requests must be received by August 30, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Abutilon menziesii was first collected by Dr. Archibald Menzies while in Hawaii with Capt. George Vancouver aboard the "Discovery" in 1790-1794. In

1865, B.C. Seemann found Menzies' collection in the British Museum of Natural History, London. Seemann described the plant and named it for Dr. Menzies. The exact locality of Menzies' collection is unknown. The collection site was listed simply as "The Sandwich Islands." The plant is a shrub, 6-8 feet (2-2.5 m) tall, with coarsely-toothed, silvery, heart-shaped leaves 1-3 inches (2-8 cm) long. The flowers are dark red, about 0.8 inch (2 cm) across. The capsules are hairy, five- to eight-parted, with about three seeds per cell.

The species formerly grew on the islands of Hawaii, Maui, and Lanai; today there are fewer than 25 plants growing naturally in the wild. The principal population is on Lanai. There is a very small remnant population on Maui, and one plant on Oahu is probably an escape from cultivation. The extant populations are threatened by exotic animals (e.g., axis deer, Chinese rose beetle), soil erosion, fire, flood, and commercial development.

Federal actions involving *Abutilon menziesii* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) of the Act, and of its intention to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Abutilon menziesii* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General

comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was allowed for proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the pending portion of the June 16, 1976, proposal, along with four other proposals that had expired. *Abutilon menziesii* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service has sufficient biological information on hand to support their being proposed for listing as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Findings were made on October 13, 1983, and again on October 12, 1984, that listing *Abutilon menziesii* was warranted, but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes the additional required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abutilon menziesii* Seemann (ko'olua 'ula) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Abutilon menziesii* has been described by collectors from several localities. A recorded population of this species on the island of Hawaii has disappeared completely. The species is now reduced to fewer than 25 individuals on the islands of Lanai, Maui, and Oahu. The Lanai population is now found only at one very small peripheral site, whereas it previously had been recorded from at

least six different localities. Only two plants are found on Maui, and the Oahu population consists of a single individual, thought to have escaped from cultivation.

Much of the land where *Abutilon menziesii* had occurred has been cleared for cultivation (pineapple and sugar cane) or pasture, with the land often abandoned in later years. Erosion has been and continues to be a major threat to *Abutilon menziesii*. The Lanai population is in an area that is quite heavily eroded and the Maui population maintains a tenuous existence in a gulch subject to erosion and grazing. All known populations are frequently exposed to severe drought and periodic flooding. Flooding increases the erosion and threatens the existing populations. Also, the drought conditions often lead to wildfires that could destroy any of the existing populations. Overgrazing by axis deer, cattle, and goats also aggravates the erosion problems. Development for housing and commercial use is a continuing threat. The site where the Oahu population grows will almost certainly be developed in the future.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Although *Abutilon menziesii* is not greatly sought after by collectors, the species is occasionally used in ornamental plantings. Since the population has been reduced to fewer than 25 individuals, any collecting for commercial or scientific use would be significant.

C. Disease or predation. Browsing by cattle, goats, and axis deer is primarily responsible for decline of *Abutilon menziesii* and may prevent reestablishment of the species. Cattle browsing has been the major problem and is evidently responsible for the disappearance of the plant from the island of Hawaii. Axis deer and feral goats apparently pose the major threat to the plants currently existing on Lanai.

The Chinese rose beetle (*Adoretus sinicus*) has also been documented to defoliate the plants. Since the plants produce new leaves only during a flush growth period in the wet season, such defoliation has a significant negative impact on the survival of the species.

D. The inadequacy of existing regulatory mechanisms. There are no State laws or existing regulatory mechanisms at the present time to protect *Abutilon menziesii* or prevent its further decline. Federal listing would automatically invoke listing under State law, which prohibits taking and encourages conservation by the State government.

E. Other natural or manmade factors affecting its continued existence. The small number of surviving plants in such small areas makes this species very susceptible to extinction because small fluctuations in any of several environmental factors could have a devastating effect. A single fire or flood on Lanai could wipe out the principal population of *Abutilon menziesii*. Loss of genetic variability is likely in a population of such low numbers. The decline of many native insect pollinators, especially *Nesoprosopis* bees, probably poses an additional threat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Abutilon menziesii* as endangered. Its decline in numbers to approximately 25 individuals and reduction in range to 3 sites indicate the appropriateness of listing this species as endangered.

It is not prudent to proposed critical habitat because doing so would increase risk for the species, as detailed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *Abutilon menziesii* has been reduced to three populations and fewer than 25 individuals in a limited geographical range. Any publication of critical habitat descriptions giving the localities of these populations could result in collecting or vandalizing at the sites. All populations are on private land and minimal benefit to the species would result from designating critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the

States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There is no known Federal involvement affecting *Abutilon menziesii*, since all populations occur on private land. Voluntary or mandatory protection of this species and its habitat will require cooperation among private landowners, the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Abutilon menziesii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would 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, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits involving the species

would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply in *Abutilon menziesii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Abutilon menziesii* occurs solely on private lands, so requests for taking permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Abutilon menziesii*;

(2) The location of any additional populations of *Abutilon menziesii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the areas mentioned and their possible impacts on *Abutilon menziesii*.

Final promulgation of the regulations on *Abutilon menziesii* will take into consideration any comments and any additional information received by the Service, and such communications may lead to adoption of a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and

addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References

- Char, W., and N. Balakrishnan. 1979. 'Ewa Plains botanical survey. Dept. of Botany. Univ. of Hawaii at Manoa. 119 pp. + appendices and maps.
- Funk, E., and C.W. Smith. 1982. Status report on *Abutilon menziesii*. U.S. Fish and Wildlife Service contract 14-16-0001-79096. 30 pp.
- Hillebrand, W. 1965. Flora of the Hawaiian Islands (Facsimile of the Edition of 1888). Hafner Publishing, New York. xcvi + 673 pp., frontispiece + 4 maps.
- Seeman, B.C. 1865-1873. Flora Vitiensis: A description of the plants of the Viti or Fiji Islands, with an account of their history, uses, and properties. London: L. Reeve and Co. xxxiii + 453 pp., 100 color plates.

Author

The primary author of this proposed rule is Dr. Derral Herbst, U.S. Fish and

Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530). This rule is largely based upon a status report and other research by Ms. Evangeline J. Funk and Dr. Clifford W. Smith, University of Hawaii. Mr. Richard P. Ingram and Dr. George Drewry served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow family:						
<i>Abutilon menziesii</i>	Ko'olua 'ula	U.S.A. (HI)	E		N/A	N/A

Dated: June 20, 1985.

Susan Rocce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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