

Before the U.S. Department of the Interior

U.S. Fish & Wildlife Service
(FWS)

Endangered and Threatened Wildlife)
and Plants;) 67 Fed. Reg. 46626, 69176
Designating Critical Habitat for Plant)
Species Designations from the Island)
of Lanai, HI)
)

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Comments of Public Employees for Environmental Responsibility (PEER)

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November 25, 2002

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After reviewing the Proposed Designations of Critical Habitat for Plant Species from the Island of Lanai, published at 67 FR 46626, 69176, PEER respectfully submits the following comments:

Loss of Habitat and Endangered Species

The Endangered Species Act of 1973 was enacted to reverse the process of species extinction by identifying and listing at-risk species, designing recovery plans for those species, and finally implementing those recovery plans. The ultimate goal for any given species that is listed as threatened or endangered is de-listing. The proper function of a species recovery plan is to restore populations to levels sufficient to obviate the need for the listing of that species whatsoever. See Jon P. Tasso, *Habitat Conservation Plans As Recovery Vehicles: Jump Starting the Endangered Species Act*, 16 U.C.L.A. J. ENVTL L. & POL'Y 297 (1998).

Animal and plant species alike depend on the ecosystem that they live in for their survival. It is no surprise that when a species' habitat is destroyed or degraded, the species suffers or is driven to extinction. It follows then, as one might suspect, destruction and degradation of habitat is the primary cause of species endangerment in the United States.¹ John Harte, *Land Use, Biodiversity, and Ecosystem Integrity: The Challenges of Preserving the Earth's Life Support System*, 27 *ECOLOGY L.Q.* 929 (2001).

Hawaii is particularly at risk. The Hawaiian Islands support a wealth of biodiversity and contain the habitat for many species that are unique to the Islands. A failure to protect the habitat of Hawaii's endemic species means that those species will be lost forever. Sadly, as Hawaii's land has been developed and alien species have been introduced, Hawaii's ecosystem has become one of the most threatened in the country.² *Babbitt v. Sweet Home: Will the Endangered Species Act Survive?*, 18 *HAWAII L. REV.* 909 (1996) (Case Note, Diane S.L. Yuen).

The protection of the habitat of Hawaii's endemic species conforms to the Congressional legislative mandate of the Endangered Species Act. It is the very destruction of that habitat that is responsible for the listing of the 37 species referred to in 67 Fed. Reg. 46626, 69176. Though climate change may be an element in the loss of the four (4) of the thirty-seven (37) plant species allegedly no longer found on Lanai, it seems more probable that land use is the key to the decline and destruction of those four (4) species: *Mariscus fauriei*, *Silene lanceolata*, *Tetramolopium lepidotum ssp. Lepidotum*, and *Zanthoxylum hawaiiense*. With respect to *Tetramolopium lepidotum ssp. Lepidotum*, if the U.S. Fish & Wildlife Service previously determined it to be prudent to designate habitat for this species (March 4, 2002), then it should hold to that decision and not strip the designated habitat in the final rule.

¹ Carroll, *Strengthening the Use of Science in Achieving the Goals of the Endangered Species Act: An Assessment by the Ecological Society of America*. *Ecological Applications* 6(1): 1-11 (1996).

² Peter, Robert L. and Noss, Reed F. 1995. *America's Endangered Ecosystems*, DEFENDERS MAGAZINE (Fall 1995).

Habitat Protection

PEER's concerns with respect to *Tetramolopium lepidotum ssp. Lepidotum* may be unfounded. If the species is still present on the other Hawaiian Islands, then a determination of what critical habitat is necessary for its survival is possible. If the issue is simply that no lands of that critical habitat on Lanai can be identified, then PEER simply asks the Service to discuss that matter in its final rule.

Designation of critical habitat is essential if recovery plans are to be full implemented. The protective mandate of the Endangered Species Act has not been successfully implemented on the scale necessary to rehabilitate threatened and endangered species populations. The listing of a species in itself is unlikely to be sufficient to result in the subsequent recovery and ultimate de-listing of the species. If threatened and endangered populations are to recover, then recovery plans for those populations must be *implemented*. In 1999, 70.3% of recovery plans for listed species were at least partially implemented.³ This failure of implementation is even more common with regard to recovery plans for land plant species, which are less likely to be implemented than plans for animals or aquatic species.⁴ Multi-species recovery plans, like the one currently under consideration, fair still worse in the competition for implementation resources.⁵

It is perhaps reasonable, then, to expect that because FWS' resources are limited, some of the thirty-seven (37) six species named in 67 Fed. Reg. 46626, 69176 will be forced to make due without the aid of the full implementation of a recovery plan. It does not follow, however, that these species are doomed to be neglected into extinction. Because habitat destruction is such a powerful force in the extinction process, the designation of critical habitats for endangered and threatened species is an important part of any recovery plan. In this case, the critical habitat designations proposed in 67 Fed. Reg. 46626, 69176 are likely to return significant benefits at a

³ Lundquist, Carolyn J., Jennifer M. Diehl, Erik Harvey, Louis W. Botsford, *Factors Affecting Implementation Of Recovery Plans*, ECOLOGICAL APPLICATIONS (2002)(12:3) at 713–718.

⁴ *Id.*

⁵ *Id.*

marginal cost to the Service and the surrounding community.⁶ Limited FWS resources are unlikely to be allocated to the benefit of these plant species. Critical habitat designation is therefore an indispensable low-cost remedy for their partial protection, and hopefully their rehabilitation. For these reasons, critical habitat for *Tetramolopium lepidotum ssp. Lepidotum* should be included in the final rule, if such habitat is present on Lanai. Such an “umbrella” approach to species recovery can be very effective in the protection of habitat, not only for already threatened and endangered species, but also for species that are at-risk of becoming threatened.⁷

In light of the importance of critical habitat, PEER is concerned that a critical habitat designation for *Tetramolopium lepidotum ssp. Lepidotum* alone would not be sufficient to promote the subsequent introduction, recovery and de-listing of that species’ populations. Large-scale habitat protection at the ecosystem level is most likely to promote the survival and recovery of endangered populations.⁸ And some species may need habitat beyond what they currently occupy or even beyond what they historically occupied, in order to be successful.⁹ Because this species has a historical range that extends beyond Lanai¹⁰, it may be necessary to designate a critical habitat for them that also extends beyond Lanai. Species with a large habitat are also more likely to survive catastrophic events, resulting from natural disasters or human activity.¹¹

⁶ *Draft Economic Analysis of Proposed Designations of Critical Habitat for Plant Species from the Northwestern Hawaiian Islands*, U.S. Fish and Wildlife Service (Draft September 2002). Available at http://pacificislands.fws.gov/CHRules/NWHI_draftEA9-02.pdf (last visited October 2002).

⁷ Carroll, R., et al. (1996).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Recovery Plan for Multi-Island Plants*, U.S. Fish and Wildlife Service at 101-102 (1999). Available at <http://endangered.fws.gov/RECOVERY/RECPLANS/Index.htm> (last visited July 2002).

¹¹ Carroll, R., et al. (1996).

Recommendations

In consideration of the fact that as a result of the Service's limited funding to implement recovery plans, PEER supports the general designation of critical habitats for Lanai, but also asks for reconsideration and articulated findings in the case of *Tetramolopium lepidotum* ssp. *Lepidotum*. This species may also benefit from a large geographical habitat that is roughly analogous to their historical ranges.

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