These letters, which have requested extensions of between 30 and 90 days in the comment period, have focused on the amount of time needed to digest the SNPRM and formulate thoughtful comments. In addition, Department staff who have been meeting with groups of interested parties to explain the content of the SNPRM have heard numerous informal expressions of concern about the time needed to review the SNPRM and draft comments on it.

The Department believes that these requests for extension have merit. This is an important rulemaking, and the Department has emphasized, in discussing it with interested parties, that we are very interested in receiving thoughtful, thorough comments that will help the Department create a final rule that is legally sound and practically workable. We believe that providing additional time for comments will help commenters and the Department achieve this objective. Therefore, we are extending the comment period for an additional 60 days, through September 29, 1997.

Issued this 14th day of July, 1997 at Washington, D.C.

Nancy E. McFadden,

General Counsel.

[FR Doc. 97–19111 Filed 7–18–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Newcomb's Snail From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes threatened status pursuant to the Endangered Species Act of 1973, as amended, for Newcomb's snail (*Erinna newcombi*). This freshwater snail is restricted to the Hawaiian Island of Kaua'i. The distribution of this snail has greatly decreased from the known historic distribution and extant populations are presently limited to restricted habitats within five perennial streams on State land. The five known populations of this snail and its habitat are currently threatened by predation by a species of non-native predatory snail and two species of non-native marsh flies. These populations are also subject to an increased likelihood of extirpation from naturally occurring events, including natural disasters such as hurricanes and landslides. Comments and materials related to this proposal are solicited.

DATES: To ensure consideration in the final rule for this species, comments from all interested parties should be received by September 19, 1997. Public hearing requests must be received by September 4, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Manager, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, Box 50088, Honolulu, Hawaii 96850. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749; facsimile 808/541–2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago is comprised of eight main islands (Ni'ihau, Kaua'i, O'ahu, Moloka'i, Lãna'i, Kaho'olawe, Maui, and Hawaii) and their offshore islets, plus the shoals and atolls of the Northwest Hawaiian Islands. The main islands and the northwestern chain were formed sequentially by basaltic lava that emerges from a crustal hot spot currently located near the southeast coast of the island of Hawaii (Stearns 1985). Hawaii is the youngest island in the chain and is characterized by gently sloping shield volcanoes and currently active lava flows. Volcanoes on the other islands are either dormant or extinct. Ongoing erosion has formed steep-walled valleys with well developed soils and stream systems throughout the chain. Kaua'i, the oldest and most northwesterly of the main islands, is characterized by high rainfall, deep valleys, numerous perennial streams, and luxuriant vegetation.

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968, Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kaua'i. Newcomb's snail is unique among the Hawaiian lymnaeids in that the shell spire typically associated with lymnaeids has been completely lost. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 inches (in.)) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. & A. Adams (see Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea.* Morrison (1968) opposed Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna.* Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi.* This is the currently accepted scientific name for Newcomb's snail.

Newcomb's snail is an obligate freshwater species. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation and there are no dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Dispersal of Newcomb's snail between stream systems is probably very infrequent due to their obligate freshwater habitat requirements. Historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. It should be noted that this life history differs greatly from the freshwater Hawaiian neritid snails (*Nertinana* sp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). It is likely that larvae of these neritid snails can disperse across the oceanic expanses that separate the Hawaiian Islands and colonize streams

on any or all of these islands. This dispersal capacity is not available to Newcomb's snail.

The specific habitat requirements of Newcomb's snail include fast flowing perennial streams with stable overhanging rocks, springs, rock seeps (rheocrenes), and waterfalls (Michael Kido, University of Hawaii *in litt.* 1994; Stephen Miller, U.S. Fish and Wildlife Service *in litt.* 1994; Polhemus 1992; Burch 1968; Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kaua'i indicate that Newcomb's snail is rarely found in this habitat (Adam Asquith, U.S. Fish and Wildlife Service *in litt.* 1994a; Don Heacock, State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources *in litt.* 1995; M. Kido *in litt.* 1994, 1995; S. Miller *in litt.* 1994a, b; Timbol 1983). The limited occurrence of this snail in main stream channels may be due to scouring by sediment, rocks, and boulders that are moved downstream during heavy rains. Consequently, available suitable habitat is generally associated with small feeder streams, seeps, and waterfalls.

The present known range of Newcomb's snail is limited to five stream systems. Each stream supports a single population of Newcomb's snail (A. Asquith *in litt.* 1994a; M. Kido *in litt.* 1994; S. Miller *in litt.* 1994a, b; Hubendick 1952). These populations are located in the Hanalei River, Kalalau Stream, the Lumahai River, Makaleha Stream, and Waipahe'e Stream. Makaleha and Waipahe'e Streams both flow into Kapa'a Stream. The populations fall into two groups—populations first observed prior to 1925 and populations observed since 1993. Five populations were identified prior to 1925. Three of these populations (Wainiha, Hanakāpī'ai, and Hanakoa) no longer exist. Of the two remaining pre-1925 populations, one (Waipahe'e) is small and the other (Kalalau) is relatively large (see below). These data indicate that the number of populations of Newcomb's snail has been greatly reduced since 1925, perhaps by as much as 60 percent.

Since 1990, surveys of at least 46 streams, tributaries and springs on Kaua'i have located three previously unknown populations of Newcomb's snail (A. Asquith *in litt.* 1994a, b; D. Heacock *in litt.* 1995; M. Kido *in litt.* 1994, 1995; S. Miller *in litt.* 1994a, b; Timbol 1983). Two of these populations are small (see below), and the third population has been described as large.

No historic information is available on the population sizes of Newcomb's snail. However, recent reports indicate that two of the five known populations of Newcomb's snail are relatively large: The Kalalau and Lumahai populations. The Kalalau population is found in the northeastern tributary on two permanent waterfalls and in the section of intervening stream between the waterfalls. The high density of individuals in this population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper permanent waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller *in litt.* 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Habitat used by these snails is probably limited to the lower section of the waterfall. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido *in litt.* 1995).

The population in Makaleha Stream is divided into two subpopulations. The subpopulation at the waterfall that forms the head of the main channel of Makaleha Stream is estimated at 30 snails/m^2 (2 to 3 snails/ft^2) distributed over 2 to 3 m^2 (21 to 32 ft^2) (M. Kido *in litt.* 1994). This is considerably smaller than the previously described waterfall population in Kalalau Stream. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non-native predators and biocontrol agents that feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs and its small feeder stream covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller *in litt.* 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/m^2 (1 to 3 snails/ft^2) (S. Miller *in litt.* 1994a).

The sizes of two other populations of Newcomb's snail have been characterized as small. The population in the Waipahe'e branch of Kealia Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/m^2 (4 to 8 snails/ft^2) (A. Asquith *in litt.* 1994a). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations in the upper reach of this river (M. Kido *in litt.* 1994, 1995). One subpopulation has approximately 10 to 20 snails/m^2 (1 to 2 snails/ft^2) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations are reported to be small with very few snails (M. Kido *in litt.* 1995).

Based on these data, the Service estimates that the five known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the two populations at Kalalau and Lumahai.

Previous Federal Action

The February 28, 1996, Notice of Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded.

The processing of this proposed listing rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475–64481). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 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) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for Newcomb's snail falls under Tier 3. The Pacific Islands Ecoregion currently has no outstanding Tier 1 or 2 species, therefore processing of Tier 3 activities is encouraged under the listing priority guidance (61 FR 64480). This rule has been updated by the Pacific Islands Ecosystem Office to reflect any changes in distribution, status and threats since the effective date of the listing moratorium.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing

provisions of the Act 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 Newcomb's snail (*Erinna newcombi* H. and A. Adams 1855) are as follows:

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

Although modification of habitat is not an immediate threat, water development projects have been proposed within Newcomb's snail habitat in the past. For example, in 1994, a proposed water development project at Makaleha Springs (State of Hawai'i 1994a) threatened to destroy the population of Newcomb's snail at this site. This project was ultimately rejected by the State of Hawai'i, Commission of Water Resource Management (Michael Wilson *in litt.* 1995). However, the State of Hawai'i Department of Water and Land Development can submit a new application for future development of the water resources at Makaleha Springs.

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

Overutilization is not known to be a factor affecting Newcomb's snail, and future overutilization of this species is not anticipated.

C. Disease and Predation

Predation by the non-native rosy glandina snail (Euglandina rosea) is a serious threat to the survival of Newcomb's snail. This predatory snail was introduced into Hawaìi in 1955 (Funasaki *et al.* 1988), and has established populations throughout the main islands. The rosy glandina feeds on snails and slugs, and field studies have established that it will readily feed on native snails found in Hawaìi (Hadfield *et al.* 1994). Furthermore, Kinzie (1992) demonstrated that the rosy glandina snail can fully submerge itself under water and feed on aquatic snails such as Newcomb's snail. The rosy glandina has been observed on the wet, algae-covered rocks of the Makaleha Springs stream very near individuals of Newcomb's snail (S. Miller *in litt.* 1994a), and is believed to prey on them. The rosy glandina snail has caused the extinction of many populations and species of native snails throughout the Pacific islands (Hadfield *et al.* 1994, Miller 1993, Hopper and Smith 1992, Murray *et al.* 1988, Tillier and Clarke 1983), and represents a significant threat to the survival of Newcomb's snail.

Predation on the eggs and adults of native Hawaiian lymnaeid snails by two non-native species of Sciomyzidae flies also represents a significant threat to the survival of Newcomb's snail. Two species of marsh flies (*Sepedomerus macropus* and *Sepedon aenescens*) that feed on lymnaeid snails (Davis 1960) were introduced into Hawaii in 1958 and 1966, respectively, as biological control agents for a non-native lymnaeid snail, *Galba viridis* (Funasaki *et al.* 1988). *Galba viridis* was targeted for biocontrol because it is an intermediate host of the cattle liver fluke (*Fasciola gigantica*) (Alicata 1938, Alicata and Swanson 1937). These authors misidentified *Galba viridis* as *Fossaria ollula*, as discussed in Morrison (1968). The non-native lymnaeid and the two biocontrol flies occur on Kauài as well as on other islands in Hawaìi (Funasaki *et al.* 1988, Davis and Chung 1969, Davis 1960, Hubendick 1952). One of the marsh fly species has been observed at a site (Hanakoa stream) where Newcomb's snail was historically recorded but is no longer present (S. Miller *in litt.* 1994b). Another marsh fly was observed near the waterfall of a Kauài stream (Manoa) that had many dead lymnaeids in the waterfall plunge pool (S. Miller *in litt.* 1994b). These biocontrol agents represent a significant threat to Newcomb's snail and other native lymnaeid snails.

D. The Inadequacy of Existing Regulatory Mechanisms

All of the five known extant populations of Newcomb's snail are located on watershed lands of the State of Hawaii. Currently, there are no State or Federal laws that afford protection for Newcomb's snail. Recent recommendations by the Stream Protection and Management Task Force (State of Hawaìi 1994b) may lead to some protection for some of the populations of Newcomb's snail. All of the stream systems that currently support populations of Newcomb's snail or have supported populations in the past have been identified as streams with outstanding aquatic resources (National Park Service 1990). All but one of these stream systems have been recommended as candidate streams for protection (National Park Service 1990). Kapàa Stream was not included in these recommendations, yet this stream system supports the Makaleha and Waipahèe populations of Newcomb's snail.

Newcomb's snail is not currently listed as an endangered or threatened species in Hawaii. If Newcomb's snail is listed under the Federal Endangered Species Act, the State of Hawaii Endangered Species Act (HRS, Sect. 195D–4(a)) will automatically be invoked. The State statue reads as follows:

''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter.''

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States (33 CFR parts 320–330). Waters of the United States include navigable waters and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands (either isolated or adjacent to other waters). Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill material into waters of the United States. Projects may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under Nationwide Permit 26 (NWP 26) if ''[t]he discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters of the United States for a distance greater than 500 linear feet of stream bed'' (61 FR 65916). These projects can normally be permitted with minimal environmental review by the Corps. Projects that qualify for authorization under NWP 26 and ''caus[e] a loss of ⅓ acre or less of waters of the United States the permittee must submit a report within 30 days of completion of the work * * *'' Formal predischarge evaluation of the impacts of such projects is thus precluded under the section 404 permit process. An individual permit may be required by the Corps if a project otherwise qualifying under NWP 26 would have greater than minimal adverse environmental impacts. No activity which is likely to jeopardize the continued existence of a threatened or endangered species, or which is likely to destroy or adversely modify the critical habitat of such species, is authorized under any NWP (61 FR 65920). Candidate species receive no special consideration under section 404, regardless of the type of permit deemed

necessary. Thus, this taxon currently receives no protection under section 404 of the Clean Water Act.

E. Other Natural or Manmade factors Affecting Its Continued Existence

Naturally occurring events may affect the continued existence of Newcomb's snail. As indicated above, the five known populations of Newcomb's snail cover very small areas in settings that may be subjected to extreme effects associated with exceptionally heavy rainfall or hurricanes. Hurricanes struck the island of Kauai in 1983 and 1992. Rainfall associated with these hurricanes can wash out streams (Polhemus 1993) and create landslides that can alter stream flow (Jones *et al.* 1984). Events such as these could destroy the habitat of Newcomb's snail or physically displace individuals into areas where they cannot survive.

Reduced stream flow due to water development projects, droughts, or other natural or human causes may have several potential negative effects on the ability of Newcomb's snail to complete its life cycle. Loss of water could reduce or eliminate the habitat of Newcomb's snail and possibly lead to increased resource competition or desiccation and death. Reduced water flow could also lead to increased predation by non-native predators. Low flows may allow marsh flies or the rosy glandina snail easier access to individual snails that are otherwise protected by the force of water movement. Droughts are not uncommon in the Hawaiian Islands. Between 1860 and 1986 the island of Kauai was affected by 33 droughts, 20 of which significantly affected the available water supply on the island (Giambelluca *et al.* 1991). The development of water resources also is a continuing issue. These projects divert water from streams, springs and aquifers that may otherwise maintain habitats for Newcomb's snail.

Intentional or accidental introductions of snail predators constitute a significant threat to Newcomb's snail. The State of Hawaii continues to carry out an active program of introductions of biological control agents. These introduced organisms are meant to control agricultural pests, and the impacts on native species have only recently been considered in evaluating a release program. The marsh flies and the rosy glandina snail are examples of biological control agents that were introduced to Hawaii without adequate assessment of their impact on Newcomb's snail or other native Hawaiian species.

Finally, the combined effects of numerous factors can degrade stream ecosystems, leading to a gradual decline in snail population size and an increase in the likelihood of negative stochastic or biological effects.

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 Newcomb's snail (*Erinna newcombi*) as threatened. Critical habitat is not being designated at this time for reasons addressed in the ''Critical Habitat'' section of this proposed rule.

Critical Habitat

Critical Habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means that use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Newcomb's snail at this time. Service regulations (50 CFR 424.12(a)(1)) state that 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.

Given the very restricted range of this species, the Service is concerned that the disclosure of the location of the species may lead to purposeful vandalism of known populations. The Service has received letters from a landowner on the island of Kaua'i that threaten such vandalism for other listed species. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat to this snail due to vandalism.

In addition, the species proposed herein is known to occur, at least in part, on non-federally owned lands. Critical habitat designation provides protection only on Federal lands or on private or State owned lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. All Federal and state agencies and local planning agencies involved, have been notified of the location and importance of protecting *Erinna newcombi* habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. Newcomb's snail is confined to small geographic areas and each population is composed of so few individuals that the determinations for jeopardy and adverse modification would be essentially the same. Therefore, designation of critical habitat provides no additional benefit beyond those that the species would receive by virtue of its listing as a threatened species and likely would increase the degree of threat from vandalism, collecting, or other human activities. The Service finds that designation of critical habitat for Newcomb's snail is not prudent at this time.

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 results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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 in 50 CFR part 402. Section 7(a)(4) 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) 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 affect a listed species or its critical habitat, the responsible federally agency must enter into formal consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers authorization of projects such as the construction of drainage diversions, roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES), and U.S. Housing and Urban Development or Natural Resource Conservation Service funded projects.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified in 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified in 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following activities will not result in a violation of section 9 of the Act:

(1) Scientific or recreational activities within the main channel of streams that support populations of Newcomb's snail, but exclusive of the specific sites known to support populations of this snail.

Activities that the Service believes could potentially result in ''take'' of Newcomb's snail include, but are not limited to the following:

(1) Release, diversion, or withdrawal of water that results in displacement, disruption of breeding or feeding, or death of individual snails.

(2) Actions that lead to the destruction or alteration of the occupied habitat of Newcomb's snail (*e.g.*, in stream dredging, rock removal, channelization, discharge of fill material, actions that result in siltation of the habitat, diversion of ground water flow required to maintain the habitat).

(3) Introduction of non-native species that are predators or competitors of aquatic snails and especially those snails in the family Lymnaeidae and the closely related family Physidae.

Questions regarding whether specific activities will constitute a violation of section 9 of the Federal Endangered Species Act should be directed to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any addition populations of this species and the reasons why habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

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

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Pacific Islands Ecoregion Manager (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of 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).

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from Pacific Islands Ecoregion (see **ADDRESSES** section).

Author: The primary author of this document is Dr. Stephen E. Miller, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, Ecological Services, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (808/541–3441; facsimile 808/541–3470). Recent data on the

distribution of Newcomb's snail were contributed by Dr. Adam Asquith, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion; Mr. Michael Kido, Environmental Research Laboratory, University of Hawaii, Kaua'i; and Mr. Don Heacock, Kaua'i District Aquatic Biologist, State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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. Section 17.11(h) is amended by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
SNAILS:							
*	*	*	*	*	*		*
Snail, Newcomb's	*Erinna newcombi*	U.S.A. (HI)	NA	T	NA	NA	NA
*	*	*	*	*	*		*

Dated: June 9, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19057 Filed 7–18–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of a Draft Recovery Plan for California Freshwater Shrimp for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the California freshwater shrimp (*Syncaris pacifica* Holmes 1895) listed as an endangered species on October 30, 1988 (53 FR 43889). The California freshwater shrimp occurs in the Marin, Sonoma and Napa counties north of San Francisco Bay, California. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received September 19, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3310 Camino Avenue, Suite 130, Sacramento, California 95821–6340. Written comments and material regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Please contact Karen Miller or Matthew Vandenberg, U.S. Fish and Wildlife Service, at 916/979–2752 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife 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 the site specific management actions considered necessary for conservation and survival of the species, establish objectives, and measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (act), as amended (16 U.S.C. 1531 *et seq.*) 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 the public notice and an opportunity for public review and comment be provided during recovery plan development. The Service, and other affected Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The California freshwater shrimp is endemic to Marin, Sonoma, and Napa Counties. There are 16 coastal streams harbor extant shrimp populations. Management issues and concerns include introduced fish, deterioration or loss of habitat resulting from water diversion, impoundments, livestock and dairy activities, agricultural activities and developments, flood control activities, gravel mining, timber harvesting, migration barriers, and water pollution.

The California freshwater shrimp draft recovery plan has been reviewed by the appropriate Service staff in Region 1 and was developed with input from selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and material received during this comment period.