

other country, and to accord to industries in the other country treatment no less favorable in relation to procurement than is accorded to industries of its own country. Therefore, DoD has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of defense equipment produced or manufactured in Sweden. This final rule amends DFARS 225.872-1 to add Sweden to the list of countries for which DoD has made such public interest determinations, and to remove Sweden from the list of countries for which exemption from the Buy American Act is permitted only on a purchase-by-purchase basis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule will not have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003-D089.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 225

Government procurement.

**Michele P. Peterson,**  
Executive Editor, Defense Acquisition  
Regulations Council.

■ Therefore, 48 CFR Part 225 is amended as follows:

■ 1. The authority citation for 48 CFR Part 225 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 225—FOREIGN ACQUISITION

#### 225.872-1 [Amended]

■ 2. Section 225.872-1 is amended as follows:

■ a. In paragraph (a) by adding, in alphabetical order, "Sweden" to the list of countries; and

■ b. In paragraph (b) by removing "Sweden" from the list of countries.  
[FR Doc. 04-3698 Filed 2-20-04; 8:45 am]  
BILLING CODE 5001-08-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AH50

### Endangered and Threatened Wildlife and Plants; Removing the Mariana Mallard and the Guam Broadbill From the Federal List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), remove the Mariana mallard (*Anas platyrhynchos oustaleti*) and Guam broadbill (*Myiagra freycineti*) from the Federal List of Endangered and Threatened Wildlife. All available information indicates that these species are extinct. The Mariana mallard was endemic to the Mariana Archipelago and documented to have occurred on the islands of Guam, Tinian, and Saipan. We listed the Mariana mallard as endangered on June 2, 1977 (42 FR 28136), because its population was critically low due to excessive hunting and loss of wetland habitat. No confirmed sightings of the Mariana mallard have been made since 1979. The Guam broadbill was endemic to the island of Guam. We listed the Guam broadbill as endangered on August 27, 1984 (49 FR 33881), because of its critically low population. No confirmed sightings of the Guam broadbill have been made since 1984. This final rule removes the Federal protection provided by the Act for the Guam broadbill and Mariana mallard but does not alter or supersede their designation by the government of Guam as endangered species. The Mariana mallard is not a species protected by the Commonwealth of the Northern Mariana Islands Government (CNMI).

**DATES:** This rule is effective February 23, 2004.

**ADDRESSES:** The administrative record file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana

Boulevard, Room 3-122, Honolulu, HI 96850.

**FOR FURTHER INFORMATION CONTACT:** Fred Amidon, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/792-9400; facsimile: 808/792-9580).

### SUPPLEMENTARY INFORMATION:

#### Background

The Mariana mallard was endemic to the Mariana Archipelago and documented to occur on the islands of Guam, Tinian, and Saipan. There was some speculation that Mariana mallards were once found on the islands of Rota and Pagan (Baker 1948; Steadman 1992; Reichel and Lemke 1994).

The Mariana mallard is believed to have been a subspecies that originated as a hybrid between the common mallard (*Anas platyrhynchos*) and the grey duck (*Anas superciliosa*) (Reichel and Lemke 1994). The majority of males and all female Mariana mallards resembled the grey duck except their legs were orange, their bill was olive, and they lacked the grey duck's prominent brown streak below the eye (Yamashina 1948). The remaining males resembled male common mallards, having green heads and purple-blue speculums (Yamashina 1948).

Mariana mallards were recorded in freshwater marshes, lakes, and rivers, and were also observed in mangrove lagoons (Stott 1947; Marshall 1949; Kibler 1950). Little was known about their foraging habitat but they were observed foraging on green vegetation and seeds (Marshall 1949). Mariana mallards apparently bred from March to August (Kuroda 1941, cited in Reichel and Lemke 1994; Kuroda 1942, cited in Reichel and Lemke 1994; Marshall 1949), and were believed to have laid 1 clutch of 7 to 12 eggs per year (Kuroda 1942, cited in Reichel and Lemke 1994).

No population estimate was ever recorded for the Mariana mallard prior to its decline. However, it was believed that they were never abundant due to the limited habitat availability of freshwater marshes and lakes in the Mariana Archipelago (Baker 1951). The largest number of Mariana mallards ever recorded was of 2 flocks of 50 to 60 Mariana mallards at Lake Hagoi, Tinian, in 1936 (Kuroda 1942, cited in Reichel and Lemke 1994). However, by the 1940s, most observations of Mariana mallards on Tinian, Saipan, and Guam were of 12 or fewer birds (Stott 1947; Marshall 1949; Kibler 1950). The last Mariana mallards observed on Guam and Tinian were observed in 1967 and 1974, respectively (Drahos 1977; Tenorio and Associates 1979). On

Saipan, the last wild Mariana mallards were observed in 1979 by our biologist Eugene Kridler (1979). At that time, Mr. Kridler also captured a pair of Mariana mallards for captive propagation at Pohakuloa, HI, which were then sent to Sea World, San Diego, CA. All attempts at propagation failed and the last known Mariana mallard died there in 1981 (Engbring and Pratt 1985). Since 1979, surveys of all the known wetlands on Guam, Rota, Saipan, and Tinian have produced no observations of Mariana mallards (Tenorio and Associates 1979; Stinson *et al.* 1991, 1997; Reichel *et al.* 1992; Reichel and Lemke 1994; Service unpublished report, 2003).

The Mariana mallard's range reduction and eventual extinction have been attributed to habitat loss and hunting, especially during and immediately after World War II (WWII) (Baker 1948; Reichel and Lemke 1994). Evolving without predators, the mallard was not wary of humans, and so was easily caught (Kuroda 1942, cited in Reichel and Lemke 1994; Stott 1947). Kuroda (1942, cited in Reichel and Lemke 1994) reported that there was a hunting season on Saipan from July through December, but no hunting was allowed on Tinian. However, it is unknown if these regulations were enforced. After WWII, islanders were allowed to own firearms and hunting of the birds persisted (Drahos 1977).

Draining and fragmentation of wetlands greatly reduced the quantity and quality of habitat available for the Mariana mallard on Guam, Tinian, and Saipan (Stinson *et al.* 1991; Reichel *et al.* 1992; Reichel and Lemke 1994). During the Japanese occupation of Saipan and Tinian between 1914 and 1945, most wetlands were channelized and converted to rice paddies. Also during this time, sugar mill wastes were discharged into Lake Susupe on Saipan, the last known location of the Mariana mallard in the wild. Since 1945, many wetlands have been drained or filled in as a result of urban development on Guam, Tinian, and Saipan (Stinson *et al.* 1991; Reichel *et al.* 1992; Reichel and Lemke 1994). The Mariana mallard, never great in number, is believed to have lost most of its limited habitat with the decimation of wetlands, while being hunted with little to no enforcement of hunting restrictions.

The Guam broadbill (*Myiagra freycineti*) was a member of the monarch flycatcher family (Monarchidae). Most of the eight or nine genera in this subfamily are widespread in the tropical Pacific islands, and many species are endemic to a single island or archipelago (Pratt *et al.* 1987). The Guam broadbill was closely related to

congeners (same genus) in Palau (*M. erythroptus*), Chuuk (*M. oceanica*), and Pohnpei (*M. pluto*). The Guam broadbill weighed approximately 0.4 ounces (12 grams) and had a bluish head, neck, back, wings, and tail, and a white throat and light cinnamon breast (Baker 1951). Similar to other monarch flycatchers, the Guam broadbill was insectivorous and fed both by gleaning prey from twigs and foliage and by taking insects from the air (Jenkins 1983). This species nested year-round, and nests usually were placed in a fork of branches in understory trees or shrubs (Jenkins 1983). Both sexes incubated eggs and brooded young (Jenkins 1983).

Guam broadbills were once found in all forested habitats on Guam as well as in mangrove swamps (Stophlet 1946; Kibler 1950; Baker 1951; Jenkins 1983). However, by 1979 the Guam broadbill was restricted primarily to mature limestone forests of the relatively undisturbed northern cliff-line of Guam (Jenkins 1983). A 1981 survey estimated a total population of 460 Guam broadbills in Guam, with birds occurring at low densities, and encountered regularly only in extreme northwestern Guam (Engbring and Ramsey 1984). In 1983, the population was primarily restricted to the Pajon Basin, a small area on the north coast, and was estimated at less than 100 individuals (Aguon 1983). That same year, a male Guam broadbill was collected for captive propagation (Beck 1983). This captive breeding attempt failed because no other individuals could be located and the captive male died of unknown causes in February 1984 (Beck 1984). The last sightings of this species took place in 1984, one in March in the Northwest Field on Andersen Air Force Base, and one in August adjacent to the Navy golf course in Barrigada (52 FR 2239). Since 1984, annual spring bird surveys and other ornithological activities in areas where this species would likely occur have yielded no observations (Wiles *et al.* 1995; Service unpublished report 2003).

Reduction in the range of the Guam broadbill and its eventual extinction have been variously attributed to pesticide use during and after WWII, the spread of avian diseases, and predation by introduced animals, including rats (*Rattus spp.*), monitor lizards (*Varanus indicus*), and brown tree snakes (*Boiga irregularis*). However, studies have determined that predation by the brown tree snake was likely the single most important factor in the decline of the Guam broadbill and other native forest birds of Guam (Savidge 1986, 1987; Conry 1988; Wiles *et al.* 1995; Rodda *et al.* 1997).

### Previous Federal Action

Federal action on the Mariana mallard began on May 22, 1975, when the Fund for Animals, Inc., petitioned us to list 216 taxa of plants and animals as endangered species pursuant to the Act (16 U.S.C. 1531 *et seq.*). These species appeared in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but did not appear on the U.S. List of Endangered and Threatened Wildlife and Plants. We published in the **Federal Register** a proposed rule to list 216 species as endangered, including the Mariana mallard, on September 26, 1975 (40 FR 44329). In a final rule, published on June 14, 1976 (41 FR 24062), we determined 159 of the 216 taxa were endangered species. However, the Mariana mallard was not included in this rule because the Governors of Guam and the Commonwealth of the Northern Mariana Islands inadvertently were not notified of the proposal as required by the Act. These Governors were later notified and allowed 90 days for comment. A final rule listing the Mariana mallard as endangered was published on June 2, 1977 (42 FR 28136), without critical habitat. On January 25, 2002 (67 FR 3675), we published a proposed rule in the **Federal Register** to delist the Mariana mallard due to extinction.

Federal action on the Guam broadbill began on February 27, 1979, when the Acting Governor of Guam petitioned us to list the Guam broadbill and five other forest bird species as endangered. We issued a notice of review for 12 petitioned animals, including the Guam broadbill, on May 18, 1979 (44 FR 29128). In our December 30, 1982 (47 FR 58454), Review of Vertebrate Wildlife, the Guam broadbill was considered a category 1 candidate for Federal listing. Category 1 species were those for which we had substantial information on biological vulnerability and threats to support preparation of a listing proposal, but for which a listing proposal had not yet been published because it was precluded by other listing activities. We published a proposed rule to list the Guam broadbill as endangered on November 29, 1983 (48 FR 53729). The final rule determining the Guam broadbill to be an endangered species was published on August 27, 1984 (49 FR 33881), and a recovery plan for the Guam broadbill and four other listed bird species on Guam and Rota was published in 1990 (Service 1990).

A proposed rule to designate critical habitat for the Guam broadbill and five other endangered species on Guam was

published in the **Federal Register** on June 14, 1991 (56 FR 27485). This proposed rule was withdrawn on April 4, 1994 (59 FR 15696) because most of the lands proposed as critical habitat had by this time been incorporated into the Guam National Wildlife Refuge overlay lands. We determined that critical habitat designation was not prudent because it would not provide the Guam broadbill with any benefit beyond that already provided by the refuge overlay lands. On April 3, 2000, the Marianas Audubon Society and the Center for Biological Diversity filed a suit to challenge our withdrawal of critical habitat for these species. On September 7, 2000, we filed a motion to voluntarily remand the nonprudency decision based on subsequent court decisions on critical habitat. This motion set a deadline of June 1, 2003, for us to redetermine prudency and designate final critical habitat, if prudent, for the Guam broadbill and five other listed species. We published a proposed rule in the **Federal Register** to delist the Guam broadbill due to extinction on January 25, 2002 (67 FR 3675). On April 16, 2002, the Guam District Court issued a ruling that ordered us to comply with terms of the critical habitat settlement agreement by June 1, 2003.

On October 15, 2002, we published a proposed rule to designate critical habitat for the Mariana fruit bat (*Pteropus mariannus mariannus*), the Mariana crow (*Corvus kubaryi*), and the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*) (67 FR 63738). In this proposed rule, we also found that designation of critical habitat for the Guam broadbill would not be prudent because the species was extinct. On May 30, 2003, the Government of Guam filed a motion to extend the deadline for publication of the final rule to allow time to develop an alternative to critical habitat designation on Guam. The Government of Guam stated that they did not have adequate time to develop these alternatives due to a recent change in administration and hardships encountered as a result of the Typhoon Chataan and the Supertyphoon Pongsona. On June 13, 2003, the Guam District Court extended the deadline for publication of a final rule indefinitely.

#### Summary of Comments and Recommendations

In the proposed rule to delist the Mariana mallard and Guam broadbill published on January 25, 2002 (67 FR 3675), we requested that all interested parties submit comments on the proposal. We also contacted all

appropriate State and Federal agencies, county governments, landowners, and other interested parties and invited them to comment. The comment period closed on March 26, 2002 (67 FR 3675).

Only one comment was received during the comment period. The Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife stated that they concurred with our conclusion that the Mariana mallard is extinct and should be removed from the List of Endangered and Threatened Wildlife.

We also requested and received peer review from three experts on the waterbirds and forest birds of the Mariana Islands. All three peer reviewers concurred with our conclusion that the Mariana mallard and the Guam broadbill are extinct and should be removed from the List of Endangered and Threatened Wildlife.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. We may delist a species according to section 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened; and/or (3) The original scientific data used at the time the species was classified were in error.

After a thorough review and consideration of all information available, we have determined that the Mariana mallard and Guam broadbill are extinct and should be removed from the List of Endangered and Threatened Wildlife. We determined that none of the five factors addressed in section 4(a)(1) of the Act now affects these species.

No confirmed sightings or vocalizations of the Mariana mallard have been reported since 1979, despite surveys, and the last captive bird died in 1981. No confirmed sightings or vocalizations of the Guam broadbill have been reported since August 1984, despite surveys, and the last captive bird died in February 1984. Therefore, we believe enough evidence exists to

declare the Mariana mallard and Guam broadbill extinct and to remove them from the List of Endangered and Threatened Wildlife.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting could cost government agencies staff time and monies in conducting formal section 7 consultation on actions that may affect a species no longer in need of protection under the Act. Relieving the existing restrictions associated with this listed species will enable Federal agencies to minimize any delays in any ongoing or future project planning and implementation actions that may have affected the Mariana mallard and Guam broadbill.

#### Effects of This Rule

This final rule revises § 17.11(h) to remove the Mariana mallard and the Guam broadbill from the List of Endangered and Threatened Wildlife due to extinction. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, will no longer apply to these species. There is no designated critical habitat for these species.

The Mariana mallard and the Guam broadbill are protected by the government of Guam (Pub. L. 15–36). Removal of these species from the List of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species.

#### Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Information collections associated with threatened and endangered species permits are covered by an existing OMB approval and are assigned control number 1018–0093, which expires March 31, 2004.

#### National Environmental Policy Act

We have 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. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The primary author of this final rule is Fred Amidon, Ecological Services, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

#### Regulation Promulgation

■ Accordingly, we 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. Amend § 17.11(h) by removing the entries for “Mallard, Mariana” and “Broadbill, Guam” under “BIRDS” from the List of Endangered and Threatened Wildlife.

Dated: February 10, 2004.

**Steve Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 04–3784 Filed 2–20–04; 8:45 am]

**BILLING CODE 4310–55–P**