

Government to reconsider endangered status

St. Croix's agave eggersiana and St. John's solanum conocarpum could be listed

by ALDETH LEWIN

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ST. THOMAS - The federal government will reconsider placing two native Virgin Islands plants on the endangered species list after a settlement agreement was reached in a federal lawsuit regarding their status.

The Center for Biological Diversity, represented by the University of Denver Sturm College of Law Environmental Law Clinic, reached a settlement agreement Tuesday with the U.S. Fish and Wildlife Service and the Department of the Interior in which the agencies agreed to revisit the the issue.

The two species are agave eggersiana, an aloe-like plant native only to St. Croix, and solanum conocarpum, a bushy plant with small purple flowers found only on St. John.

Michael Harris, the director of the law clinic, said the federal government approached them for a settlement.

"Clearly, they must be thinking they made a wrong decision or they wouldn't have gone down this path," Harris said.

However, just because the government has agreed to revisit the matter does not guarantee that the plants will ultimately make it to the federally protected list, Harris said.

The move to get the native plants under federal protection began more than 12 years ago.

In 1996, the V.I. Department of Planning and Natural Resources' Fish and Wildlife Division petitioned the federal government to protect the two plants under the federal Endangered Species Act. Two years later, the U.S. Fish and Wildlife Service submitted an initial report, called a 90-day finding, that agreed with the local government's petition.

By law, after a 90-day finding is issued, the U.S. Fish and Wildlife Service has one year to review the species in depth and make a final finding.

This final report was supposed to be submitted within nine months, but six years went by without any action by the federal government.

In 2004, the Center for Biological Diversity picked up the territory's cause and took the federal government to court. That lawsuit resulted in a 2005 settlement

agreement in which the federal government agreed to submit its final finding by February 2006.

When the final finding was submitted, U.S. Fish and Wildlife Service reversed its initial position and found the petition to protect the two rare plants was not warranted.

The U.S. Fish and Wildlife Service found that the plants failed to meet even one of the five criteria used to determine an endangered species.

The five factors to consider are: the threat facing the habitat of the species; the overuse of the species for commercial, recreational, educational or scientific purposes; disease or predation; inadequate regulations; and other natural or man-made factors that threaten the species.

Part of the reasoning for denying the solanum conocarpum was because a large portion of the remaining population is on Virgin Islands National Park land where the habitat was already protected.

At the time, agave eggersiana could not be found in the wild on St. Croix, so it also could not be considered an endangered species.

The Center for Biological Diversity, an Arizona-based nonprofit organization, filed another lawsuit in District Court in Atlanta on Sept. 9 challenging the decision. The suit named Southeast Regional Director of the U.S. Fish and Wildlife Service Sam Hamilton, U.S. Fish and Wildlife Service Director Rowan Gould and Secretary of the Interior Kenneth Salazar.

The lawsuit stated that the U.S. Fish and Wildlife Service ignored its own experts and other scientific evidence that proved the vulnerability of the plants. The suit also claimed the federal agency did not conduct a mandated peer review of the 90-day finding.

In the settlement filed Tuesday in the U.S. District Court for the Northern District of Georgia, the government agreed to revisit its 1996 rejection. In addition, the government will pay more than \$51,470 in legal fees to the Center for Biological Diversity.

The civil action had asked the court to order the defendants to

vacate their previous decision not to list the two species as endangered and order the government to issue a new finding within 60 days.

The new agreement lays out a timeline for the government to produce new findings.

The deadlines for the U.S. Fish and Wildlife to issue their findings in the form of a proposed rule are Sept. 17, 2010, for the agave and Feb. 15, 2011, for the solanum.

Once the proposed rules are published there will be a public comment period, which will provide an opportunity to present new evidence that the two plants should join the endangered species list.

While the agency will most likely start by considering the original information filed in 1996, some things have changed. William Coles, V.I. Fish and Wildlife endangered species coordinator, has since found agave *eggersiana* growing in the wild on St. Croix. On St. John, more solanum

conocarpum populations have been identified as well.

If the plants are listed as endangered species, the federal government would create a recovery plan to reintroduce the plant into the wild and protect the plant's critical habitat. Center for Biodiversity staff attorney Jaclyn Lopez said it also would open up funding opportunities to help the territory protect the species.

"With that listing comes the Fish and Wildlife obligation to protect the species and free up funding," she said.

The U.S. Fish and Wildlife Service did list a third plant as endangered at the time it denied the agave and the solanum.

The *catesbae melanocarpa*, a thorny shrub found only on 4 acres of St. Croix's south shore, is now federally protected along with Vahl's boxwood, St. Thomas lidflower and the prickly ash - all species found in the territory that were already protected.