

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat Buckwheat)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The Service proposes to determine endangered status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat buckwheat), pursuant to the Endangered Species Act of 1973, as amended. This plant is only known from one site at Steamboat Hot Springs, Washoe County, Nevada, where it grows in several colonies scattered over approximately 100 acres. This species is vulnerable to habitat alteration that may be caused by the potential threats of drilling for geothermal development, recreational and commercial development, and mining activities near where it occurs. It is presently detrimentally affected by off-road vehicle use, dumping of refuse, and alternations to moisture patterns. A determination that *Eriogonum ovalifolium* var. *williamsiae* is endangered would implement the protection provided by the Endangered Species Act. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of

Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:**Background**

The Steamboat buckwheat was first collected in 1884 by K.C. Brandegee, but was not recognized taxonomically until 1981, when James Reveal described it as a new variety of *Eriogonum ovalifolium*. The species is known only from one site at Steamboat Hot Springs in Washoe County, Nevada. Most of the plants are concentrated on 20 acres of a total of 80 acres of Bureau of Land Management (BLM) land at the Hot Springs, and on 40 acres owned by a private citizen. The buckwheat occurs on open, slightly to steeply sloped areas composed of loose, gravelly, sandy-clay soil derived from hot springs deposits. The plant is a low perennial with small, oval, greenish white leaves that are densely congested in tight rosettes. It frequently forms large mats. It has small white flowers (often with a pink midrib on each sepal) that are clustered in a head at the end of an erect stem 4 to 10 inches (10 to 25-centimeters) high.

The species has only been collected from the area around Steamboat Hot Springs, but is thought to have been more widespread in the past. Approximately one acre of habitat was destroyed in about 1978 during the construction of a U.S. Post Office. It is not known what effects other past developments have had on the buckwheat. Two collections from the 1930's refer to Reno Hot Springs as a collection site. A mineral bath by that name was operated, in the past, a few miles from Steamboat Hot Springs. No plants occur there at this time. It is possible that this site was actually Steamboat Hot Springs, since herbarium labels are often quite general. At Steamboat Hot Springs Spa, a nearby commercial development, no plants have been found even though the habitat is similar to sites where colonies do occur. *Eriogonum ovalifolium* var. *williamsiae* is thought to have declined because of past development activities and is vulnerable, due to its restricted range, to any further alterations of its remaining habitat.

On December 15, 1980 (45 FR 82480), the Service published a notice of review of plant taxa for listing as endangered or

threatened species, pursuant to the Endangered Species Act of 1973, as amended. *Eriogonum ovalifolium* var. *williamsiae* was included in that notice (as *E. ovalifolium* var. nov. ined.) as a category-1 species, indicating that the Service then had sufficient information on file to support proposing to list it. A supplement to the 1980 notice of review, published on November 28, 1983 (48 FR 53640), also placed this taxon in category 1 as *E. ovalifolium* var. *williamsiae*. 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. Species included in the December 15, 1980, notice of review are treated as under petition to be listed. A finding was required on such species on or before October 13, 1983. On October 13, 1983, and again on October 12, 1984, findings were made that the listing of the Steamboat wild buckwheat was warranted, but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Consequently, a new finding is required by October 13, 1985; this notice constitutes a finding that listing of this taxon is warranted and proposes to implement the action, 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 (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 *Eriogonum ovalifolium* Nutt. var. *williamsiae* Reveal (Steamboat buckwheat) are as follows (abstracted from Williams, 1982):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, as discussed in the "Background" section, development lead to a decline in the

species. The *Eriogonum* is detrimentally affected by drilling of geothermal test wells, development of a park on one Bureau of Land Management (BLM) parcel that is leased to the Washoe County Parks and Recreation Department, and a planned commercial development on private land that is adjacent to a colony of plants. Also threatening this small population is the possibility of mining on private lands. BLM has restricted mining on public lands, but placer mining could still occur. Cinnabar is abundant enough to be commercially profitable and stibnite, gold, and silver are found in small amounts in the species' habitat.

Roads have been built through most of the colonies of *Eriogonum ovalifolium* var. *williamsiae*, and off-road vehicle (ORV) travel has further disturbed the habitat and destroyed plants. BLM had designated the main terrace with active geothermal activity as an Area of Critical Environmental Concern and has fenced this area on three sides. Although it is posted as closed to motor vehicles, ORV's have entered on the unfenced side and driven across the terrace. It is not known whether trespassers are intentionally damaging the Steamboat buckwheat, but with increased public awareness of the species it will become more vulnerable to such actions. Refuse has been dumped on and near the buckwheat colonies, resulting in additional loss of habitat.

The Steamboat buckwheat is sensitive to changes in moisture and has been observed to die when more than normal moisture is received. Degradation of its habitat by ORV use and dumping of refuse may alter moisture patterns, further threatening the species. There is also a possibility that drilling of geothermal test wells may contribute to changes in water regimes for the plants.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Species of *Eriogonum* are often collected for rock gardens. Although it is not known whether this species has been sought by collectors in the past, it is possible that its rare status may make it a desirable garden subject.

C. Disease or predation. Nothing is known about disease or predation that may harm this plant.

D. The inadequacy of existing regulatory mechanisms. This species is protected on private and State lands by the Nevada Division of Forestry under provision of NRS 526276. This regulation, however, does not apply to Federal lands on which the species is found, nor does it allow for protection of the species' habitat. Under provisions of the State law, the private landowner is

required to notify the State if the plants are going to be destroyed so that they may be salvaged by the State prior to destruction. Listing under the Act would provide this taxon with additional habitat protection and protection from collecting on Federal land.

E. Other natural or manmade factors affecting its continued existence. The species is known from only one population, consisting of seven colonies on less than 100 acres of land. Even though the species is abundant where it occurs, with individual plants numbering about 10,000-15,000, its restricted distribution makes it vulnerable to fire or any other disturbance in its habitat. The further loss of individuals may have adverse effects on the reproductive capacity and survival of the species. During of field survey in 1981, no seedlings were found, indicating that the buckwheat may have low reproductive potential.

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 *Eriogonum ovalifolium* var. *williamsiae* as endangered without critical habitat. The need for such listing is demonstrated by the restricted range of the lone population and the immediate and potential threats faced by the species. Critical habitat is not being proposed for *Eriogonum ovalifolium* var. *williamsiae* for the reasons discussed below.

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. As discussed under threat factors A and B above, the Steamboat buckwheat is vulnerable to collecting and vandalism, activities not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants on lands under Federal jurisdiction. Publication of precise critical habitat descriptions, and maps delineating localities of colonies, would make this species more vulnerable to collecting pressures and vandalism than it is at present. Therefore, it would not be prudent to determine critical habitat for the Steamboat buckwheat 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 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 collecting 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. 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 destroy or adversely modify proposed critical habitat, if any is being designated. 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 such a species or 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. Since BLM closed to mining development its land on which *Eriogonum ovalifolium* var. *williamsiae* occurs, the only known Federal activity that may affect the species is the proposed development of a recreational area by Washoe County on land leased from BLM. Development of such an area will require measures for protection of the *Eriogonum* if the plant is listed. BLM has already expressed a willingness to work with the public and with the private landowner to develop conservation and management programs for the *Eriogonum* if it is listed. Such programs might include the development of a cooperative agreement with the landowner, and/or possibly a land exchange.

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 *Eriogonum ovalifolium* var. *williamsiae*, 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. No trade in this species is known. It is anticipated that few trade permits involving *Eriogonum ovalifolium* var. *williamsiae* 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. This prohibition would apply to *Eriogonum Ovalifolium* var. *williamsiae*. 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 prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. Although *Eriogonum ovalifolium* var. *williamsiae* occurs on Federal lands, it is not anticipated that many collecting permits will ever be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, 6th Floor Broyhill, U.S. Fish and Wildlife Service, Washington, DC 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 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 the following:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Eriogonum ovalifolium* var. *williamsiae*;
- (2) The location of any additional populations of *Eriogonum ovalifolium* var. *williamsiae* 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 subject area and their possible impacts on *Eriogonum ovalifolium* var. *williamsiae*.

The Service's final determination on the proposal to list *Eriogonum ovalifolium* var. *williamsiae* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation 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 publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under 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).

Literature Cited

Williams, Margaret. 1982. Status Report on *Eriogonum ovalifolium* var. *williamsiae*, prepared under contract with the U.S. Fish and Wildlife Service.

Authors

The primary authors of this proposed rule are Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334-1816 or FTS 554-1806) and Carol A. Wilson, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

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 Polygonaceae, 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					
Polygonaceae—Buckwheat family:						
<i>Eriogonum ovalifolium</i> var. <i>williamsiae</i>	Steamboat buckwheat	U.S.A. (NV)	E		NA	NA

Dated: August 27, 1985.

P. Daniel Smith,
Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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