

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat buckwheat). 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 affected by off-road vehicle use, dumping of refuse, and alterations to moisture patterns. This determination that *Eriogonum ovalifolium* var. *williamsiae* is endangered implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is August 7, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. 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 (1981) 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 (currently leased to Washoe County for eventual development as a recreational and interpretive site), and on 40 acres owned by a private citizen

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 habit 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. *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 to support a proposal to list it as threatened or endangered. 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. Category 1 and 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 1, 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

finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Consequently, a new finding was required by October 13, 1985, which was represented by the proposed rule published on September 12, 1985 (50 FR 37252).

Summary of Comments and Recommendations

In the September 12, 1985, proposed rule (50 FR 37252) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, private landowners, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Reno Gazette-Journal* on December 17, 1985. The comment period was reopened until January 27, 1986, to accommodate this advertisement.

A total of six written comments were received and are discussed below. Three comments neither supported nor opposed the listing and provided some additional information concerning potential projects: One comment, from an attorney representing a private landowner, expressed concern over possible effects of the listing on geothermal development in the area and offered to participate in planning aimed at reducing any potential conflicts; two comments supported the listing, one of which voiced concern over potential impacts to buckwheat habitat from geothermal development.

The Nevada Department of Transportation (NDOT) provided information about two planned highway projects that may possibly impact the Steamboat buckwheat. However, one project is outside the known distribution of the species, and final alignment for the second project has not yet been decided. The Bureau of Land Management commented that geothermal development of public land adjacent to the Steamboat buckwheat population may be affected by the listing since such activities "might alter the discharge rates and temperatures of the water sources depended on by the species". The Washoe County Department of Comprehensive Planning included area-wide planning documents that (1) recognize the Steamboat buckwheat as an "endangered" species in Nevada, following Mozingo and Williams (1980); and (2) "support public and private efforts toward the development of geothermal resources." The Service responds that potential

effects of any proposed projects involving Federal lands, funds, or permits will be addressed in appropriate section 7 consultation(s) which will identify any determinable effects on the buckwheat and provide recommendations and/or alternatives to avoid or minimize impacts.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Eriogonum ovalifolium* var. *williamsiae* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 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 led to a decline in the species. The *Eriogonum* is detrimentally affected by drilling of geothermal test wells (Mozingo and Williams 1980), development of a park on the 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 containing the species. Cinnabar is sufficiently abundant 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 has 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. Also, refuse has been dumped on and near the buckwheat colonies in some areas, 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 527.270 c 527.300. These regulations, however, do not apply to Federal lands on which the species is found, nor do they allow for protection of the species' habitat. Under provisions of 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 a field survey in 1981, no seedlings were found, indicating that the buckwheat may have low reproductive potential.

The Service has carefully assessed that best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. 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 critical habitat at the time a 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 Factors A and B in the "Summary of Factors Affecting the Species," 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.

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 action 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 prohibition against taking 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 at 50 CFR Part 402 and were recently revised at 51 FR 19926 (June 3, 1986). 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 a listed species or 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 mining on its land where *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*. 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*. Such programs might include the development of a cooperative agreement with landowners, 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 plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export this species, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or to remove it and reduce it to possession. 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. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

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

References Cited

- Mozingo, H. N. and M. Williams. 1980. Threatened and Endangered Plants of Nevada—An Illustrated Manual. U.S. Fish and Wildlife Service and Bureau of Land Management. 268 pp.
- Reveal, J. 1981. Notes on endangered buckwheats with three newly described forms from the western United States. *Brittonia* 33: 446.
- Williams, M. 1982. Status report on *Eriogonum ovalifolium* var. *williamsiae*. Unpubl. report under contract with U.S. Fish and Wildlife Service. 30 pp.

Author

The primary author of this final rule is Randy M. McNatt, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Bldg. C, Reno, Nevada 89502 (702/784-5227 or FTS 470-5227).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. 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) * * *

Scientific name	Species Common name	Historic range	Status	When listed	Critical habitat	Special rules
Polygonaceae—Buckwheat Family: <i>Eriogonum ovalifolium</i> var. <i>williamsiae</i>	Steamboat buckwheat	U.S.A. (NV)	E	237	NA	NA

Dated: June 12, 1986.

Susan E. Recce,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

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