
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for *Stephanomeria malheurensis* (Malheur wire-lettuce)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Malheur wire-lettuce (*Stephanomeria malheurensis*) to be an Endangered species and to designate its Critical Habitat, under the authority contained in the Endangered Species Act. This plant is known only from one small population located in Harney County in southeastern Oregon. The lone population of this species is vulnerable to any substantial habitat alteration and faces the potential threat of surface mining on and near the site where it occurs. A determination that *Stephanomeria malheurensis* is an Endangered species and designation of its Critical Habitat would implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: Comments from the public must be received on or before January 29, 1981. A public meeting and a public hearing will be held on November 13 and December 2, 1980, respectively.

ADDRESSES: Interested persons or organizations are requested to submit comments or materials, preferably in triplicate, to the Regional Director (SE), Department of the Interior, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and material relating to this proposal are available for public inspection by appointment during normal business hours at the Service's Regional Office, 700 NE. Multnomah Street, Suite 550, Portland, Oregon. The public meeting and the public hearing on this proposal will be held at the Museum Club Room, 18 West D Street, Burns, Oregon, beginning at 10:00 a.m. on November 13 and December 2, 1980, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Marshall, Senior Staff Biologist, Endangered Species Program, Region 1, U.S. Fish and Wildlife Service, Department of the Interior, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232, 503/231-6131.

SUPPLEMENTARY INFORMATION: The first discovery of *Stephanomeria malheurensis* was made in 1966 when seeds of this species were collected along with those from a population of its ancestral subspecies, *Stephanomeria exigua* ssp. *coronaria*. The locality where these two taxa are found together is at the northern end of the range of the ancestral subspecies, further studies by Dr. Leslie Gottlieb of the University of California, Davis, demonstrated consistently distinguishable field characteristics and reproductive isolation between these two taxa, establishing *Stephanomeria malheurensis* as a valid species (Gottlieb 1973, 1977, 1978). This annual plant is a member of the aster family (Asteraceae) and grows to 5 dm. tall, with a basal rosette of leaves, a much branched stem with scale-like leaves, and numerous pink to white (rarely yellow-orange) flower heads. *Stephanomeria malheurensis* is known only from one locality near Malheur National Wildlife Refuge in Harney County, Oregon. Its Habitat is situated on top of a dry, broad hill on a soil derived from volcanic tuff layered with some limestone. Numbers of individual plants vary greatly from year to year depending on the amount of precipitation prior to and during the spring growing season. This plant flowers in July and August.

The extremely restricted range of this plant makes the species vulnerable to even small land disturbances in and around its habitat. Such a potential threat exists in the form of some recently established mining claims which include the habitat of

Stephanomeria malheurensis. Future zeolite mining in the area endangers the continued existence of this species (Griffith and Hohn, 1979). The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and the effects of the proposed action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of this report as a petition within the context of Subsection 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 *Federal Register* publication. *Stephanomeria malheurensis* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal are summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909-17916).

The Endangered Species Act Amendments of 1978 (Pub. L. 95-632) required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976, proposal along with other proposals which had expired (44 FR 70796-70797). At this time the Service has sufficient new information to warrant repropounding *Stephanomeria malheurensis*. Its Critical Habitat is proposed for the first time.

Note.—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Factors Affecting the Species

Subsection 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described

in that subsection. These factors and their application to *Stephanomeria malheurensis* Gottlieb are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Stephanomeria malheurensis* has been known from only one 70-acre location south of Burns in Harney County, Oregon, since its discovery. No more than 750 adult plants of the species have been found in any one summer season since observations began in 1968. The restricted range of the species makes it vulnerable to many types of habitat alteration. Zeolite mining in the area is likely in the near future, and mining claims cover the entire area of this species' habitat as well as all adjacent areas. Protection of the habitat of *Stephanomeria malheurensis* and its immediate surroundings is imperative to the conservation of the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). A 160-acre tract of land including the entire population of *Stephanomeria malheurensis* has been fenced, which prevents grazing of the species by livestock. Larvae of an unidentified insect have been found foraging on the species, but their effect is unknown.

4. *The inadequacy of existing regulatory mechanisms.* The Bureau of Land Management (BLM) administers all of the land supporting this species, and in August 1975 it gave notice of the closure of the 160 acres necessary for the species' survival (40 FR 39536-39537). However, zeolite was determined to be a locatable mineral under mining law in June 1977. In consequence, access to the zeolite ore is regulated by the Mining Law of 1872, as amended. The adequacy of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), often called the BLM organic act, to protect *Stephanomeria malheurensis* is unclear in these circumstances. The Endangered Species Act of 1973, as amended, offers additional possibilities for protection of the species.

5. *Other natural or man-made factors affecting its continued existence.* The small size of the only known population causes this species to be in significant danger of extinction due to natural fluctuations in the number of individuals in the population. Since this species is an annual, its numbers vary greatly from year to year, depending largely on the amount of precipitation prior to and during the spring growing season. In 1974 and 1975, juvenile populations of *Stephanomeria* numbered 12,000 and

35,000, respectively (Gottlieb, 1977). New fieldwork shows the population was only a few dozen individuals in August 1980 (Brauner and Gottlieb, 1980). In addition, Brauner and Gottlieb discuss the effects of a 1972 fire which swept much of the colony area. In 1979 and 1980, it has become apparent that cheat grass (*Bromus pectorum*) has invaded the burnt area much to the detriment of *Stephanomeria*. In their September 1980 report, Gottlieb states that the Malheur wire-lettuce is eminently threatened with extinction unless immediate action is taken to control the cheat grass invasion.

Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Critical Habitat for *Stephanomeria malheurensis* is being designated to include the 160-acre Scientific Study Area on Bureau of Land Management land located 27 miles south of Burns in Harney County, Oregon. This includes the entire, lone population of *Stephanomeria malheurensis*. This area is located on the lands west of state highway 205 within the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 11; and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 12, T27S, R30E, Willamette Meridian. Natural expansion will likely be a desired management goal in the future. The proposed Critical Habitat includes land within the Scientific Study Area which presently does not support the species but provides a buffer against adverse indirect impacts and which is considered essential for the conservation of the species.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such

activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect all of the activities mentioned below, as Critical Habitat designation only affects Federal agency activities through Section 7 of the Act.

Any activity which would significantly disturb the soil, topography or other physical and biological components of the area where *Stephanomeria malheurensis* occurs would adversely modify its Critical Habitat. Land uses in the immediate locality of the population and in its surroundings must be carefully regulated to prevent such modifications. This might require restricting mining activities within and perhaps near the area in order to prevent adverse direct and indirect impacts. Since access to zeolite on BLM land is regulated by the Mining Law of 1872, the effect of this species' listing and Critical Habitat designation on the mining activity is uncertain (cf. BLM, n.d.; Sheridan 1977, 1978). Cooperative efforts between the Anaconda Company, the BLM, the Service, and any others so as to avoid damage to the species and its habitat are certainly indicated.

Subsection 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant for the foreseeable future. The area proposed as Critical Habitat for *Stephanomeria malheurensis* is already being protected by the BLM, and represents only about 5 percent of the 3,000 acre area with mining claims by the Anaconda Company. The exact distribution of the subsurface deposits of zeolite are unknown, so that their relationship to the habitat requirements of the species cannot be determined. Furthermore, it is not known whether the zeolite is commercially exploitable in this area, and if it is, whether Section 7 would provide protective regulation for the species and its Critical Habitat.

The Service has contacted the Bureau of Land Management, which has jurisdiction over the land under consideration in this proposed action, and the Anaconda Company, which has the mining claims on the land where the species occurs. The BLM, other interested Federal agencies, the Anaconda Company, and other interested persons or organizations are requested to submit information on economic or other impacts of the proposed action. The Service will

prepare a final impact analysis prior to the time of final rulemaking.

Effects of This Proposal If Published As a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered, and any proposed or designated Critical Habitat. Provisions for Interagency Cooperation implementing this section are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in preparation. This proposed rule requires Federal agencies to confer with the Director on any of their actions which are likely to jeopardize this proposed species, or adversely modify its proposed Critical Habitat. If published as a final rule, Federal agencies would be required to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, or adversely modify its Critical Habitat.

The only known potential action which may be affected by the Endangered Species Act is the zeolite mining by private interests planned for the Federal land in the immediate area which includes the proposed species and its Critical Habitat. As the Federal land management agency, the Bureau of Land Management would be responsible for carrying out the intentions of the Endangered Species Act on this land. The Mining Law of 1872, however, may restrict the authority of the BLM to regulate mining activities of locatable minerals, including zeolite. Voluntary or mandatory protection of this species and its habitat will require cooperation between the BLM, the private mining interests, and the U.S. Fish and Wildlife Service.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373-32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations are found at § 17.61 of 50 CFR and are summarized below. With respect to *Stephanomeria malheurensis* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 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 would 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 such trade in this species is known. It is anticipated that few permits involving the species would ever be requested.

If this plant is listed as an Endangered species and its Critical Habitat designated, certain conservation authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the provision of two-thirds Federal (and one-third State) funds for the species should Oregon qualify for a cooperative agreement under Subsection 6(c)(2) of the Act, and the development of a recovery plan for the species as specified in Subsection 4(g).

If listed as Endangered under the Act, the Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Portland Regional Office, 700 NE Multnomah Street, Suite 550, Portland, Oregon, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500-1508).

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of each Endangered species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack

thereof) to the species included in this proposal;

(2) The location of any population of *Stephanomeria malheurensis* and the reasons why any habitat of this species should or should not be designated as Critical Habitat;

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

(4) Current or planned activities in the subject area and the probable impact of such activities on the area designated as Critical Habitat; and

(5) The foreseeable economic and other impacts of the Critical Habitat designation of Federal activities.

Final promulgation of a rule on *Stephanomeria malheurensis* will take into consideration any comments and additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

Public Meetings

The Service hereby announces that a public meeting and a public hearing will be held on this proposed rule. The public is invited to attend the meeting and to present opinions and information on the proposal. Specific information relating to the public meeting and the public hearing is set out below:

Public Meeting

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
 Date: November 13, 1980
 Time: 10:00 a.m.
 Subject: Malheur wire-lettuce

Public Hearing

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
 Date: December 2, 1980
 Time: 10:00 a.m.
 Subject: Malheur wire-lettuce

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary authors of the proposed rule are Bruce MacBryde, Office of Endangered Species, Washington, D.C. (703/235-1975) and Peter A. Stine, Endangered Species Staff, Portland Regional Office, Portland, Oregon (503/231-6131).

References Cited

Brauner, S. and L.D. Gottlieb. 1980. Letter dated September 3, 1980 addressed to Dr. Janet Hohn. Portland Regional Office. U.S. Fish and Wildlife Service.
 Bureau of Land Management. n.d. Draft Environmental Impact Statement. Surface Management of Public Lands under the U.S. Mining Laws 43 CFR 3809. BLM, Washington.
 Gottlieb, L.D. 1973. Genetic differentiation, sympatric speciation, and the origin of a diploid species of *Stephanomeria*. *Amer. J. Bot.* 60(6):545-553.
 Gottlieb, L.D. 1977. Phenotypic variation in *Stephanomeria exigua* ssp. *coronaria* (Compositae) and its recent derivative species "Malheurensis." *Amer. J. Bot.* 64(7):873-880.
 Gottlieb, L.D. 1978. *Stephanomeria malheurensis* (Compositae), a new species from Oregon. *Madrono* 25(1):44-46.
 Griffith, S.K., and J.E. Hohn. 1979. Status report on *Stephanomeria malheurensis* Gottlieb. Prepared by U.S. Fish and Wildlife Service, Portland, July 5, 1979.

Sheridan, D. 1977. Hard rock mining on the public land. Council of Environmental Quality. GPO, Washington.
 Sheridan, D. 1978. Mining the public wealth. *Sierra Club Bull.* 63(3):10-13.

Regulations Promulgation

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. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

2. It is further proposed that § 17.96(a) be amended by adding the Critical Habitat of *Stephanomeria malheurensis* after that of Asteraceae (*Echinacea tennesseensis*) as follows:

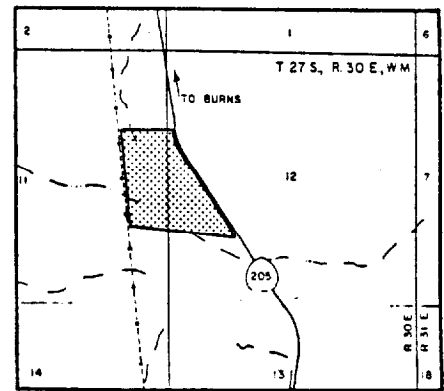
§ 17.96 [Amended]

Asteraceae

Stephanomeria malheurensis

Malheur wire-lettuce

Oregon, Harney County; the lands west of State highway 205 within the SE¼ of the NE¼ and NE¼ of the SE¼, Section 11; and W½ of the SW¼ of the NW¼, and the SW¼ of the NE¼ of SW¼, Section 12, T27S, R30E, Willamette Meridian.



Dated October 27, 1980.

Robert S. Cook,
 Director, Fish and Wildlife Service.

[FR Doc. 80-33834 Filed 10-30-80; 8:45 am]
 BILLING CODE 4310-55-M

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Stephanomena malheurensis</i>	Malheur wire-lettuce	U.S.A. (OR).....	E	NA	17.96a	NA