

1852.227-88 Government-Furnished Computer Software and Related Technical Data.

As prescribed in 1827.409(m), insert the following clause:

(a) *Definitions.* As used in this clause—

Government-furnished computer software or GFCS means computer software:

(1) In the possession of, or directly acquired by, the Government whereby the Government has title or license rights thereto; and

(2) Subsequently furnished to the Contractor for performance of a Government contract.

Computer software, data and technical data have the meaning provided in the Federal Acquisition Regulations (FAR) Subpart 2.1—Definitions or the Rights in Data—General clause (FAR 52.227-14).

(b) The Government shall furnish to the Contractor the GFCS described in this contract or in writing by the Contracting Officer. The Government shall furnish any related technical data needed for the intended use of the GFCS.

(c) *Use of GFCS and related technical data.* The Contractor shall use the GFCS and related technical data, and any modified or enhanced versions thereof, only for performing work under this contract unless otherwise provided for in this contract or approved in writing by the Contracting Officer.

(1) The Contractor shall not, without the express written permission of the Contracting Officer, reproduce, distribute copies, prepare derivative works, perform publicly, display publicly, release, or disclose the GFCS or related technical data to any person except for the performance of work under this contract.

(2) The Contractor shall not modify or enhance the GFCS unless this contract specifically identifies the modifications and enhancements as work to be performed. If the GFCS is modified or enhanced pursuant to this contract, the Contractor shall provide to the Government the complete source code, if any, and all related documentation of the modified or enhanced GFCS.

(3) Allocation of rights associated with any GFCS or related technical data modified or enhanced under this contract shall be defined by the FAR Rights in Data clause(s) included in this contract (as modified by any applicable NASA FAR Supplement clauses). If no Rights in Data clause is included in this contract, then the FAR Rights in Data—General (52.227-14) as modified by the NASA FAR Supplement (1852.227-14) shall apply to all data first produced in the performance of this contract and all data delivered under this contract.

(4) The Contractor may provide the GFCS, and any modified or enhanced versions thereof, to subcontractors as necessary for the performance of work under this contract. Before release of the GFCS, and any modified or enhanced versions thereof, to such subcontractors (at any tier), the Contractor shall insert, or require the insertion of, this clause, including this paragraph (c)(4), suitably modified to identify the parties as

follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(d) The Government provides the GFCS in an “AS-IS” condition. The Government makes no warranty with respect to the serviceability and/or suitability of the GFCS for contract performance.

(e) The Contracting Officer may by written notice, at any time—

(1) Increase or decrease the amount of GFCS under this contract;

(2) Substitute other GFCS for the GFCS previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract;

(3) Withdraw authority to use the GFCS or related technical data; or

(4) Instruct the Contractor to return or dispose of the GFCS and related technical data.

(f) *Title to or license rights in GFCS.* The Government shall retain title to or license rights in all GFCS. Title to or license rights in GFCS shall not be affected by its incorporation into or attachment to any data not owned by or licensed to the Government.

(g) *Waiver of Claims and Indemnification.* The Contractor agrees to waive any and all claims against the Government and shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney’s fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of the GFCS and related technical data by the Contractor, a subcontractor, or by any person to whom the Contractor has released or disclosed such GFCS or related technical data.

(h) *Flow-down of Waiver of Claims and Indemnification.* In the event a contract includes this NASA FAR Supplement clause 1852.227-88, the Contractor shall include the foregoing clause 1852.227-88(g), suitably modified to identify the parties, in all subcontracts, regardless of tier, which involve use of the GFCS and/or related technical data in any way. At all tiers, the clause shall be modified to define GFCS as it is defined herein and to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause. In subcontracts, at any tier, the Government, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause 1852.227-88 constitute a contract between the subcontractor and the Government with respect to the matters covered by the clause.

(End of clause)

1852.228-73 [Removed]

■ 65. Section 1852.228-73 is removed.
 ■ 66. in section 1852.231-71, paragraph (d) is revised to read as follow

1852.231-71 Determination of Compensation Reasonableness.

* * *

Determination of Compensation Reasonableness

(XX/XX)

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(d) The offeror shall require all service subcontractors provide, as part of their proposal, the information identified in (a) through (c) of this provision for cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value expected to exceed the threshold for requiring certified cost or pricing data as set forth in FAR 15.403-4.

(End of provision)

■ 67. In section 1852.232-70, paragraphs (a)(2) and (c)(3) are revised to read as follows:

1852.232-70 NASA Modification of FAR 52.232-12 .

* * * * *

NASA Modification of FAR 52.232-12

(XX/XX)

(a) * * *

(2) In paragraph (m)(1), delete “in the form prescribed by the administering office” and substitute “and Standard Form 425, Federal Financial Report.”

* * * * *

(c) * * *

(3) In paragraph (j)(1), insert between “statements,” and “and” “together with Standard Form 425, Federal Financial Report”

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1852.237-72, 1852.237-73, 1852.242-70, 1852.249-72 [Removed]

■ 68. Sections 1852.237-72 and 1852.237-73 are removed.

■ 69. Section 1852.242-70 is removed.

■ 70. Section 1852.249-72 is removed.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R8- ES-2014-0039; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Eriogonum corymbosum var. nilesii and Eriogonum diatomaceum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plants *Eriogonum diatomaceum* (Churchill Narrows buckwheat) and *Eriogonum corymbosum* var. *nilesii* (Las Vegas buckwheat) as endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing either *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* or their habitats at any time.

DATES: The finding announced in this document was made on September 24, 2014.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2014-0039. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775-861-6300; or facsimile 775-861-6301.

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775-861-6300; or facsimile 775-861-6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We identified *Eriogonum diatomaceum* as a candidate species in the May 4, 2004, candidate notice of review (CNOR; 69 FR 24876). *Eriogonum diatomaceum* was included in all subsequent annual CNORs (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994,

November 21, 2012; 78 FR 70104, November 22, 2013). When it was first identified as a candidate, we assigned a listing priority number (LPN) of 2, reflecting a species with threats that were high in magnitude and imminent. The LPN was changed to 5 in 2008 (73 FR 75176, December 10, 2008) to reflect a species with threats that were high in magnitude but not imminent; the LPN remained at 5 in all subsequent CNORs.

We identified *Eriogonum corymbosum* var. *nilesii* as a candidate species in the December 6, 2007, CNOR (72 FR 69034). *Eriogonum corymbosum* var. *nilesii* was included in all subsequent annual CNORs (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013). On April 22, 2008, we received a petition (Center for Biological Diversity 2008) to list *E. c. var. nilesii* as endangered or threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 et seq.). We did not publish separate substantial 90-day and warranted-but-precluded 12-month petition findings, but made these findings in the 2008 CNOR (73 FR 75176, December 10, 2008). When it was first identified as a candidate, we assigned a LPN of 6, reflecting a species with threats that were high in magnitude but not imminent; the LPN remained at 6 in all subsequent CNORs.

Background

We completed comprehensive assessments of the biological status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii*, and we prepared reports of the assessments (Species Reports), which provide a thorough account for each of the plants. This finding is based upon these Species Reports for *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* and scientific analyses of available information prepared by the Service and an application of section 4(a) of the Act. The Species Reports contain the best scientific and commercial data available concerning the status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii*, including the past, present, and future stressors to the plants. As such, the Species Reports provide the scientific basis that informs our regulatory decision in this document, which involves the further application of standards within the Act and its regulations and policies. The Species Reports (including all references) and other materials relating

to this finding can be found on the Nevada Fish and Wildlife Office Web site at: http://www.fws.gov/nevada/highlights/species_actions/species_actions.html and at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2014-0039.

A summary of the biology, taxonomy, life history, and distribution for each of the plants follows. The reader is directed to the Species Reports for a more detailed discussion of these topics as well as the current conditions of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* (Service 2014a; Service 2014b; http://www.fws.gov/nevada/highlights/species_actions/species_actions.html).

Eriogonum diatomaceum

Eriogonum diatomaceum is a member of the Polygonaceae (buckwheat family). It is a low, matted, herbaceous perennial forb with leaves that have densely matted, wooly hairs and with head-like clusters of creamy-white flowers. Flowering typically occurs between the months of June and September. *E. diatomaceum* occurs between 4,300 and 4,560 feet (ft) (1,311 and 1,390 meters (m)) in elevation on diatomaceous outcrops, and is a narrow endemic of the Lahontan Basin section of the western Great Basin (Service 2014a, pp. 3–6). We recognize four populations of this species that are restricted to approximately 3 square miles (7.8 square kilometers) in the Churchill Narrows area of the Pine Nut Mountains in Lyon County, Nevada. These four populations occupy approximately 18 acres (ac) (7.3 hectares (ha)) on lands managed entirely by the Bureau of Land Management (BLM) (Service 2014a, pp. 7–10), and *E. diatomaceum*'s historical range is the same as its current range. *E. diatomaceum* was added to the Nevada State list of fully protected species of native flora in 2004. In addition, *E. diatomaceum* is recognized by the BLM as a sensitive species (Service 2014a, p. 3).

BLM monitored each of the four populations from 2005–2007 and in 2012. This sampling data and estimated abundance data for *Eriogonum diatomaceum* in each monitoring location are presented in the Species Report (Service 2014a, pp. 10–13). Overall, BLM sampled 1,104–1,604 plants during each sampling year, and of those, approximately 638–994 were live plants. The estimated abundance of *Eriogonum diatomaceum* in each monitoring location extrapolated from data collected in BLM monitoring macroplots, for each year of data collection, showed a range from 35,950 to 59,307 plants present depending on

the year of the monitoring effort (Service 2014a, p. 13).

Eriogonum corymbosum var. *nilesii*

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat) is a member of the Polygonaceae (buckwheat family) (Service 2014b, pp. 4–8). It is an open to somewhat spreading perennial shrub with numerous yellow to pale yellow flowers. Flowering typically occurs between the months of August and November. *Eriogonum corymbosum* var. *nilesii* occurs between 656 and 2,789 ft (200–850 m) in elevation on clayey, gravelly, or rarely sandy flats and slopes (0–3 percent) or gypsum flats and mounds (Service 2014b, pp. 17–18). We recognize the geographic range of *E. c.* var. *nilesii* as restricted to southern Nevada, in contrast to some prior accounts showing a range extending into southern Utah and northern Arizona based on morphological and genetic data described in detail in the Species Report (Service 2014b, pp. 4–11). In southern Nevada, *E. c.* var. *nilesii* is found northwest of the Virgin River (in Lincoln County) and west of Lake Mead (in Clark County). Within this region, *E. c.* var. *nilesii* currently occupies a total of approximately 795.3 ac (321.85 ha) (Service 2014b, pp. 11–12). The majority (80 percent) of this occupied acreage is federally owned, with 72 percent administered by the BLM, and another 8.15 percent by the Department of Defense (DOD), at Nellis Air Force Base. Landownership for the remainder of occupied habitat is as follows: City of Las Vegas (0.13 percent), Clark County (0.80 percent), State of Nevada (0.001 percent), and private landowners (18.81 percent). Of 12 historically recognized populations of the plant (all located in southern Nevada), 9 populations remain extant (4 in Las Vegas Valley, 2 in White Basin Mountains, 1 in Muddy Mountains, 1 in Coyote Springs Valley, and 1 in Toquop Wash), and 3 have been extirpated (2 in the Las Vegas Valley and 1 in the White Basin Mountains) (Service 2014b, pp. 14–16). In addition, four of the extant populations (Las Vegas Valley) have been partially extirpated. *Eriogonum corymbosum* var. *nilesii* is not listed by the State of Nevada, but it is recognized as a sensitive species by the BLM (Service 2014b, p. 3).

Expressed in terms of acreage, *Eriogonum corymbosum* var. *nilesii* has been extirpated from 1,303.5 ac (527.5 ha) of formerly occupied habitat, corresponding to nearly 62 percent of its range. Most of the lands from which the plant has been extirpated are in private ownership (94.9 percent) (Service 2014b, pp. 11–12). Within the range of

the plant, the combined total of available estimates of plants at the nine extant populations ranges between 31,176–31,773 individuals across a total of 795.3 ac (321.85 ha). Of the total 31,176–31,773 estimated individuals, 7,529–7,817+ are located in four populations in Las Vegas Valley, 296+ are located in one population in Muddy Mountains, 308–550+ are located in two populations in White Basin, 13,043–13,110+ are located in Coyote Springs, and 10,000+ are located in Toquop Wash (Service 2014b, pp. 14–16). However, reliable estimation of population size or trends in *E. c.* var. *nilesii* is complicated by many factors including varied survey methods, and as a result, the data are not always directly comparable and must be interpreted with caution (Service 2014b, pp. 18–19).

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed comprehensive assessments of the biological status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii*, and we prepared reports of the assessments (Species Reports), which provide a thorough account for each of the plants. In this section, we summarize the conclusions of those reports, which can be accessed at Docket FWS-R8-ES-2014-0039 on <http://www.regulations.gov>, and at http://www.fws.gov/nevada/highlights/species_actions/species_actions.html. Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, and reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

A species is an endangered species for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is a threatened

species if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For purposes of this analysis, we first evaluate the status of the species throughout all of its range, and then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

In making this finding, information pertaining to *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* in relation to the five factors provided in section 4(a)(1) of the Act is summarized below, based on the analysis of stressors contained in the Species Reports. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor stressor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine the scope and severity of the potential threat. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

Analysis Under Section 4(a)(1) of the Act

The Act requires that the Secretary determine whether a species is an endangered or threatened species because of any of the five factors enumerated in 16 U.S.C. 1533(a)(1). Our discussion of the threats, which we have categorized here under each of these five factors, is contained in the Species Reports (can be accessed at Docket FWS-R8-ES-2014-0039 on <http://www.regulations.gov>, and at http://www.fws.gov/nevada/highlights/species_actions/species_actions.html). In the Species Reports, we present detailed discussions of current and future stressors to *Eriogonum*

diatomaceum and *Eriogonum corymbosum* var. *nilesii*. We consider in this document how threats categorized under each of the five factors are affecting each of the plants. In our Species Reports, we describe the timing, scope, and severity for each stressor associated with each of the plants. We describe the scope as the percentage of the plant's distribution that is reasonably expected to be affected by a stressor within a specified, foreseeable amount of time, given continuation of current circumstances and trends. Within the scope of the threat, the severity is the level of damage to the plant's population or breeding occurrences that is reasonably expected from the stressor within a specified, foreseeable amount of time, given continuation of current circumstances and trends.

All potential stressors currently acting upon *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* or likely to affect either of the plants in the foreseeable future (and consistent with the five listing factors identified above) are evaluated and addressed in the Species Reports, and summarized in the following paragraphs. The reader is directed to the Species Reports (can be accessed at Docket FWS-R8-ES-2014-0039 on <http://www.regulations.gov>, and at http://www.fws.gov/nevada/highlights/species_actions/species_actions.html) for a more detailed discussion of the stressors summarized in this document.

Eriogonum Diatomaceum

The Species Report evaluated the biological status of the species and each of the potential stressors affecting its continued existence (Service 2014a, entire). It was based upon the best available scientific and commercial data and the expert opinion of the Species Report team members. Based on the analysis and discussion contained in the Species Report, we evaluated the potential threats under the five statutory factors: Mineral exploration and development (Factors A and E); livestock grazing (Factors A and E); herbivory (Factor C); off-highway vehicle (OHV) activity and road development (Factors A and E); nonnative, invasive plant species (Factors A and E); disease (Factor C); and climate change (Factors A and E). We found that these factors currently may have minor impacts on individuals in some locations, but they are not impacting the species as a whole currently and are not expected to in the future. The full analyses of these possible stressors are documented in the Species Report and are summarized

below. Based on the analysis contained in the Species Report, we find that the best available scientific and commercial information does not indicate that these stressors are causing a decline in the species or its habitat, either now or into the future.

Mineral Exploration and Development (Factors A and E)

Eriogonum diatomaceum occurs on diatomaceous soil deposits, which is an economically valuable mineral that is in increasing demand. Mineral activity (exploration and development of diatomaceous earth deposits) has impacted *E. diatomaceum* habitat and resulted in the loss of individual plants and habitat at one of the four populations, corresponding to a loss of 5 ac (1.67 ha) or 22 percent of historically occupied habitat for the species. Two active mining claims still remain open within the plant's range, and 95 claims are closed within this area; all lands occupied by *E. diatomaceum* are open to mineral entry. The BLM requires that all operations comply with State law and permits, and since *E. diatomaceum* is listed as threatened by the State, the BLM requires claimants to be in compliance with State law (Service 2014a, p. 29). The BLM has affirmed that protecting *E. diatomaceum* and its habitat from impacts is clearly within the BLM's discretion when it comes to mineral material sales, and expressed its intent to continue managing the species as a Special Status Species, avoid impacts to the species and its habitat, and otherwise coordinate with the Service to develop effective mitigation measures (Service 2014a, p. 21). The scope of the mining stressor historically was 100 percent, because all populations were thought to be affected by the potential for mining. In addition, the severity of the stressor of mining historically was moderate, because of the loss of 5.5 ac (2.2 ha) of historically occupied habitat from mining. However, this stressor is one of historical significance, because it is not known to be occurring at present. Given the limited number of mining claims and the active management of these claims by BLM, we do not consider mining (Factors A and E) to be a current or future threat to the species such that the species would warrant listing.

Livestock Grazing (Factors A and E)

All populations of *Eriogonum diatomaceum* are within grazing allotments and are potentially exposed to livestock grazing, so the scope of livestock grazing is 100 percent. Livestock grazing may result in impacts,

such as trampling, resulting in broken stems and leaves of plants, and soil compaction, to individual *Eriogonum diatomaceum* plants, but we have no data indicating (qualitatively or quantitatively) the numbers (or percentages) of individuals or habitat acreage lost as a result of grazing. In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that grazing is affecting the species through habitat loss (Service 2014a, p. 13). Therefore, while livestock grazing may affect individuals, based on the information that is available at this time, the information does not indicate that grazing is a current or future threat to the species such that the species would warrant listing.

Herbivory (Factor C)

Herbivory by jackrabbits, resulting in clipping of flower stems and tunneling into roots, has been documented on individuals at all four populations of *Eriogonum diatomaceum*; however, the best available scientific information does not provide any indication of a significant effect on recruitment of *E. diatomaceum*. In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that herbivory is affecting the species (Service 2014a, p. 13). Therefore, while herbivory may affect individuals, based on the information that is available at this time, the information does not indicate that herbivory is a current or future threat to the species such that the species would warrant listing.

OHV Activity and Road Development (Factors A and E)

OHV activity and road development is known to occur at three of the four *Eriogonum diatomaceum* populations; roads can alter the hydrology of a site, and OHV activity can compact soils, crush plants, and provide a means for nonnative plant species to invade otherwise remote, intact habitats. However, we are currently not aware of individuals or habitat having been lost as a result of these activities, and the best available scientific information does not provide an indication of the level to which OHV activity and road development currently affects *E. diatomaceum* or is likely to affect the species into the future. In addition, BLM monitored each of these populations from 2005–2007 and in 2012, and the results of these surveys do not indicate

that the population numbers are declining or that OHV activity and road development is affecting the species through habitat loss (Service 2014a, p. 13). Therefore, while OHV activity and road development may affect individuals, based on the information that is available at this time, the information does not indicate that OHV activity and road development is a current or future threat to the species such that the species would warrant listing.

Nonnative, Invasive Plant Species (Factors A and E)

Nonnative, invasive plant species can negatively affect *Eriogonum diatomaceum* through competition with and displacement of native plant species and degradation of habitat. When *E. diatomaceum* habitat is undisturbed, nonnative, invasive plant species are not a threat because the specialized habitat of *E. diatomaceum* does not appear to be conducive to their spread. However, when soil disturbances occur within occupied *E. diatomaceum* habitat, nonnative, invasive plant species can impact *E. diatomaceum* due to their ability to potentially compete with and displace this species from its habitat. Nonnative, invasive plant species are present within all *E. diatomaceum* populations. However, the severity of nonnative, invasive plant species is unknown because the best available scientific information does not provide any indication of the level to which nonnative, invasive plant species affect *E. diatomaceum*. In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that nonnative, invasive plant species are affecting the species (Service 2014a, p. 13). Therefore, while nonnative, invasive plant species may affect individuals, based on the information that is available at this time, the information does not indicate that nonnative, invasive plant species are a current or future threat to the species such that the species would warrant listing.

Disease (Factor C)

A rust (fungal) pathogen was observed on approximately 26 percent of the overall *Eriogonum diatomaceum* population during survey work in the late 1990s. At this time, no studies are known that identify this pathogen, its origin, or its ultimate effect on this plant, and the long-term survival rate of rust-infected plants has not been determined or monitored. However, BLM monitored each of the four

populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that pathogens are affecting the species (Service 2014a, p. 13). Therefore, based on the best information that is available at this time, the information does not indicate that disease is a current or future threat to the species such that the species would warrant listing.

Climate Change (Factors A and E)

In the Great Basin, temperatures have risen, and current climate change projections indicate further warming over the rest of the century. Winter temperatures are projected to increase, which will change the balance of temperature and precipitation resulting in earlier spring snow runoff, declines in snowpack, and increased frequency of drought and fire events. Warmer temperatures and greater concentration of atmospheric carbon dioxide can create conditions favorable for nonnative, invasive plant species. We anticipate that the alteration of precipitation and temperature patterns could result in decreased survivorship of *Eriogonum diatomaceum* due to physiological stress of individual plants, altered phenology, and reduced seedling establishment and plant recruitment. However, the severity of climate change is unknown because even though climate projections exist for the Great Basin, we do not know how *E. diatomaceum* is likely to respond to these climatic changes. In addition, BLM monitored each of the four populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that climate change is currently affecting the species (Service 2014a, p. 13). In addition, we do not know of any information that demonstrates climate change is affecting the species. Therefore, based on the information that is available at this time, the information does not indicate that climate change is a current or future threat to the species such that the species would warrant listing.

Inadequacy of Existing Regulatory Mechanisms (Factor D)

The Act requires that the Secretary assess existing regulatory mechanisms in order to determine whether they are adequate to address threats to the species (Factor D). The Species Report includes discussions of applicable regulatory mechanisms for *Eriogonum diatomaceum* (Service 2014a, pp. 16–30). In the Species Report, the Service examines the applicable Federal, State,

and other statutory and regulatory mechanisms to determine whether these mechanisms provide protections to *E. diatomaceum*. For *E. diatomaceum*, all four populations occur on BLM land, and BLM has monitored these populations over time. *E. diatomaceum* is identified as a BLM sensitive species, which means that BLM's management objective is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing. Occupied and potential habitat for this species was nominated as an Area of Critical Environmental Concern (ACEC) in 2008; however, BLM has postponed finalizing this ACEC designation pending the completion of an amendment to the Carson City District Resource Management Plan (RMP). A decision for the RMP is not expected until 2016. During the preparation of the Species Report, we met with BLM managers to discuss the status of *E. diatomaceum* and BLM's ongoing management of the species. During those conversations, the BLM affirmed its intent to continue managing the species as a BLM sensitive species, regardless of the species' status under the Act, and to avoid impacts to the species or its habitat, particularly in the context of mining activity (Service 2014a, p. 16).

Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that there is an inadequacy of existing regulatory mechanisms to address impacts from the identified potential threats such that listing would be warranted.

Interaction Among Factors

When conducting our analysis about the potential threats affecting *Eriogonum diatomaceum*, we also assessed whether the species may be affected by a combination of factors. In the Species Report (Service 2014a, p. 30), we identified multiple potential stressors that may have interrelated impacts on *E. diatomaceum* or its habitat. Mineral development and exploration result in the loss of habitat; depending on the nature of mining activities, these impacts can be permanent and irreversible (conversion to land uses unsuitable to the species) or less so (minor ground disturbance and loss of individual plants) (Factors A and E). When mineral development and exploration occurs in between (but not within) populations, this can eliminate corridors for pollinator movement, seed dispersal, and population expansion. Livestock grazing may result in direct

impacts to individual *Eriogonum diatomaceum* plants due to trampling (Factors A and E). Both livestock grazing and OHV/road corridors create patterns of soil disturbance that in turn alter habitat function and create conditions conducive to the invasion of nonnative plant species (Factors A and E). Once nonnative, invasive plant species are established, these species tend to spread beyond the footprint of mineral development and exploration or OHV/road corridors, further deteriorating otherwise intact habitat and native vegetation, including *E. diatomaceum*. Herbivory, when combined with climate change and altered precipitation and temperature regimes, may interfere with seedling recruitment and persistence of the species on the landscape (Factors A, C, and E). Each of these potential stressors may affect individuals of *E. diatomaceum*. However, BLM monitored each of the four populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that these stressors are currently affecting the species (Service 2014a, p. 13).

Therefore, the current best available scientific and commercial information does not show that these combined impacts are resulting in current or future impacts to the species such that the species would warrant listing.

All or some of the potential stressors could act in concert to result in cumulative stress on *Eriogonum diatomaceum*. However, the best available scientific and commercial information currently does not indicate that these stressors singularly or cumulatively are resulting now or will in the future result in a substantial decline of the total extant population of the plant or have impacts to *E. diatomaceum* at the species level. Therefore, we do not consider the cumulative impact of these stressors to *E. diatomaceum* to be substantial at this time, nor into the future such that the species would warrant listing under the Act.

Eriogonum corymbosum var. *nilesii*

The Species Report for *Eriogonum corymbosum* var. *nilesii* evaluated the biological status of the plant and each of the potential stressors affecting its continued existence (Service 2014b, entire). It was based upon the best available scientific and commercial data and the expert opinion of the Species Report team members. Based on the analysis and discussion contained in the Species Report, we evaluated the potential threats under the five statutory factors: Development for residential,

commercial, or other purposes (A and E); OHV use and road development (Factors A and E); mineral exploration and development (Factors A and E); nonnative, invasive plant species (Factors A and E); modified wildfire regime (Factors A and E); and climate change (Factors A and E). We found that these factors are not likely to impact the plant as a whole currently and are not expected to in the future. The full analyses of possible stressors are documented in the Species Report and summarized below. Based on the analysis contained in the Species Report and under the five statutory factors, we find that the best available scientific and commercial information does not indicate that current and future threats are causing or going to cause a decline in the plant or its habitat, either now or into the future. We recognize that habitat and individuals have been lost from 62 percent of the historical occurrences of *E. c.* var. *nilesii* through past development on private lands, and we anticipate that approximately 5.5 percent of remaining habitat will be lost into the future as a result of development. However, we do not anticipate future development to be a threat to the remaining populations because most are on public lands (many of which are in conservation areas) where we do not anticipate similar losses.

Development for Residential, Commercial, or Other Purposes (Factors A and E)

We found that past development has had an impact on *Eriogonum corymbosum* var. *nilesii* and has resulted in the loss of 1,303.5 ac (527.5 ha) of formerly occupied habitat mostly on private lands (Service 2014b, pp. 11–12, 24)). Future development is likely to impact an additional 43.93 ac (17.78 ha) of *E. c.* var. *nilesii* habitat (Service 2014b, pp. 24–30). Development has occurred in the past and is imminent into the future in these limited areas (43.93 ac (17.78 ha)). The future development of 43.93 ac (17.78 ha) will result in partial loss of two populations and entire loss of one population in Las Vegas Valley, and it will also result in partial loss of one population in Coyote Springs (Service 2014b, pp. 14–16). There should be no future development loss in one other population in Las Vegas Valley, one population in the Muddy Mountain Wilderness, two populations in White Basin, and one population in Toquop Wash. Even though some limited development will occur in the future, we found that development is not imminent in the future over most of the remaining extant

habitat, because 80 percent of the remaining occupied habitat is on Federal lands where development is unlikely due to conservation plans, conservation areas, wilderness areas, ACECs, and other protective means. The best available scientific and commercial information indicates that even though development has resulted in losses of historical occurrences of *E. c.* var. *nilesii*, we do not anticipate future development to result in large losses that would be a threat to the plant such that listing the plant would be warranted.

OHV Activity and Road Development (Factors A and E)

OHV use and road development can cause loss, degradation, and fragmentation of *Eriogonum corymbosum* var. *nilesii* habitat and compact soils, crush plants, and provide a means for nonnative plant species to enter otherwise remote, intact habitats. OHV use and road development is authorized and currently occurs to some degree in six of the nine extant populations of *E. c.* var. *nilesii*. The 1998 BLM Las Vegas District Resource Management Plan (RMP) includes provisions limiting OHV activity to designated roads, trails, and/or dry washes in all ACECs and Wilderness Study Areas. We do know that OHV use and road development do occur to some degree in many of the extant populations, but we are not currently aware of individuals or habitat having been lost as a result of these activities (Service 2014b, pp. 30–31). Therefore, while OHV activity and road development may affect individuals, based on the information that is available at this time, the information does not indicate that OHV activity and road development are a current or future threat to the plant such that the plant would warrant listing.

Mineral Exploration and Development (Factors A and E)

When *Eriogonum corymbosum* var. *nilesii* became a candidate for Federal listing in 2007 (72 FR 69034, December 6, 2007), mining activities were identified as having the potential to impact 2 of the 12 populations recognized in that document. In 2013, we reviewed the status of all locatable mining claims within the legal sections containing the plant. According to this review, there are 74 “closed” (an administrative term that indicates a prior claim that is no longer current) and no “active” (meaning paperwork and fees filed with the BLM in support of the claim are current) locatable mineral claims within the sections

occupied by this plant (Service 2014b, p. 33).

With regard to the timing of mining-related impacts, although this activity has been previously identified as having the potential to affect *Eriogonum corymbosum* var. *nilesii*, we are unaware of mining having directly affected this plant in the form of losses of individuals or habitat. With regard to scope, to the best of our knowledge, historically no populations have been affected by this activity, and no open locatable mineral claims currently exist within occupied habitat. In light of the above information, severity is low to nonexistent.

Overall, mineral exploration and development has been previously identified as having the potential to affect *Eriogonum corymbosum* var. *nilesii*, but we are unaware of mining having directly affected this plant in the form of losses of individuals or habitat. Historically, no populations have been affected by this activity, and no open locatable mineral claims currently exist within occupied habitat (Service 2014b, pp. 31–33); therefore, we do not consider mining to be a current or future threat to the plant such that the plant would warrant listing.

Nonnative, Invasive Plant Species (Factors A and E)

The majority of *Eriogonum corymbosum* var. *nilesii* habitat is not affected by nonnative, invasive plant species, likely because the specialized habitat of the plant has not experienced high levels of soil disturbances conducive to their spread. However, in areas where soil disturbances have occurred, nonnative, invasive plant species may pose a threat to *E. c.* var. *nilesii* due to their ability to potentially compete with and displace the plant and other native species from its habitat. Nonnative, invasive plant species are present to some degree in five of the nine extant populations; however, the severity of nonnative, invasive plant species is unknown because the best available scientific information does not provide any indication of the level of which nonnative, invasive plant species affect *E. c.* var. *nilesii*, and the majority of *E. c.* var. *nilesii* habitat is not affected by nonnative, invasive plant species (Service 2014b, pp. 33–34). Therefore, we do not consider nonnative, invasive plant species to be a current or future threat to the plant such that the plant would warrant listing.

Modified Wildfire Regime (Factors A and E)

Historically, wildfire has been infrequent in the Mojave Desert due to

limited fuels created by sparse vegetation. However, since the 1970s, fires have become more frequent due to recent invasions by annual grasses (Service 2014b, p. 34). Due to increasing invasion by nonnative, annual grasses, wildfire is now considered one of the primary stressors to the conservation of native plants and animals and to the maintenance of ecosystem integrity in the Mojave Desert. Regardless of an overall increase of wildfire in the Mojave Desert, there are no reported accounts of wildfire within *Eriogonum corymbosum* var. *nilesii* habitat (Service 2014b, pp. 34–35). We are unaware of wildfire having directly affected this plant in the form of losses of individuals or habitat, and we do not have information indicating that this plant would be negatively affected by wildfire. Therefore, based on the information that is available at this time, the information does not indicate that a modified wildfire regime is a current or future threat to the plant such that the plant would warrant listing.

Climate Change (Factors A and E)

The direct, long-term impact from climate change to *Eriogonum corymbosum* var. *nilesii* is yet to be determined. Current climate change projections for the Mojave Desert indicating warming temperatures, and climate predictions for the geographic range of *E. c.* var. *nilesii* suggest there will be more frequent and/or prolonged drought. However, predictions for this area in particular suggest localized, increasing August precipitation. We anticipate that the alteration of precipitation and temperature patterns could result in decreased survivorship of *E. c.* var. *nilesii* due to physiological stress of individual plants, altered phenology, and reduced seedling establishment and plant recruitment. Climate change also may exacerbate impacts from other factors currently affecting this plant and its habitat. However, the severity of climate change is unknown because even though climate projections indicating warming temperatures exist for the Mojave Desert, we do not know how *E. c.* var. *nilesii* is likely to respond to these climatic changes (Service 2014b, pp. 35–37). In addition, we do not know of any information that demonstrates climate change is affecting the plant. Therefore, based on the information that is available at this time, the information does not indicate that climate change is a current or future threat to the plant such that the plant would warrant listing.

Inadequacy of Existing Regulatory Mechanisms (Factor D)

The Act requires that the Secretary assess existing regulatory mechanisms in order to determine whether they are adequate to address threats to the species (Factor D). The Species Report includes discussions of applicable regulatory mechanisms (Service 2014b, entire). In the Species Report, the Service examines the applicable Federal, State, and other statutory and regulatory mechanisms to determine whether these mechanisms provide protections to *Eriogonum corymbosum* var. *nilesii*. *E. c.* var. *nilesii* is a BLM sensitive species (Service 2014b, p. 3). In addition, BLM has entered into conservation agreements (CA) for many lands to preserve, enhance, and restore riparian areas and their associated uplands for the plant (Service 2014b, pp. 38–42).

In 2002, the Muddy Mountains Wilderness, which supports the Muddy Mountains population of *Eriogonum corymbosum* var. *nilesii*, was added to the National Wilderness Preservation System by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Pub. L. 107–282). This designation protects this population from mining, grazing, OHV use, and human development (Service 2014b, p. 41).

In 2005, BLM, the Service, Nevada Division of Forestry (NDF), and the City of North Las Vegas entered a CA to retain 300 ac (121 ha) of the Upper Las Vegas Wash area in Federal ownership to establish it as the Eglington Preserve. The goal is to preserve, enhance, and restore riparian areas and their associated uplands within the Eglington Preserve. In 2011, the BLM established the 10,669-ac (4,318-ha) conservation transfer area (CTA), which contains the 300-ac (121-ha) Eglington Preserve, and encompasses one of the populations in the Las Vegas Valley. The BLM's vision for the CTA is "to preserve the natural functioning of the Upper Wash, protect the sensitive resources within, and support education, research, and low-impact recreational use. The CTA is ecologically functional to the maximum extent possible and managed to ensure the long-term integrity of the Las Vegas Formation and associated fossil beds, the rare plant habitat for *Arctomecon californica*, *Arctomecon merriamii*, and *Eriogonum corymbosum* var. *nilesii*, as well as natural flood water capacity for present and future generations." The BLM will require mitigation and monitoring measures to minimize impacts to resources caused by future allowable uses in the CTA as

determined on a case-by-case basis (Service 2014b, pp. 39–41).

In 2007, BLM re-purchased approximately 1,103 ac (446 ha) of land that supports one of the White Basin populations of *Eriogonum corymbosum* var. *nilesii*. Ongoing revisions to the Las Vegas BLM's RMP are expected to include a proposal to designate the property and the surrounding area as the Bitter Spring ACEC, for the protection of *E. c.* var. *nilesii* and two other special status plant species (Service 2014b, p. 41).

Another population in the Las Vegas Valley was designated as a “Buckwheat Conservation Area” by Clark County in 2010. Also in 2010, the Nellis Air Force Base (AFB) established a conservation area where sites containing *Eriogonum corymbosum* var. *nilesii* would remain undeveloped unless military mission requirements dictate otherwise, and the DOD would not allow further development for activities that are purely recreational. In addition, Nellis AFB will also consult with NDF and the Service to incorporate conservation measures for the plant if development is to occur within occupied habitat.

As described in the Species Report, there are several Federal, State, and County protections for *Eriogonum corymbosum* var. *nilesii*. In addition, BLM has entered into CAs for many lands to preserve, enhance, and restore riparian areas and their associated uplands for the plant (Service 2014b, pp. 38–42). Overall, there are conservation protections (such as conservation areas, ACECs, and wilderness areas) or limits on activities (such as OHV activity) within eight of the nine extant populations.

Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that there is an inadequacy of existing regulatory mechanisms to address impacts from the identified potential threats such that listing the plant would be warranted.

Interaction Among Factors

When conducting our analysis about the potential stressors affecting *Eriogonum corymbosum* var. *nilesii*, we also assessed whether the plant may be affected by a combination of factors. In the Species Report (Service 2014b, p. 38), we identified multiple potential stressors that may have interrelated impacts on *E. c.* var. *nilesii* or its habitat. OHV and other road corridors can exacerbate habitat loss and fragmentation, and tend to be associated with (accompanying or following) development activities (Factors A and

E). Development and OHV/road corridors tend to create conditions that favor the establishment of nonnative, invasive plant species; once established, these species tend to spread well beyond the footprint of development actions or OHV/road corridors, further deteriorating otherwise intact habitat and native vegetation (Factors A and E). Some nonnative, invasive plant species, particularly annual grasses, then increase the frequency of wildfire, leading to modified wildfire regimes (Factors A and E). Climate change has the potential to alter many patterns of land use, including development and associated infrastructure, but also the precipitation and temperature regimes that in turn influence the establishment and persistence of vegetation, both native and nonnatives alike (Factors A and E). However, the current best available scientific and commercial information does not show that these combined impacts are resulting in current impacts or are likely to result in future impacts to the plant.

All or some of the potential stressors could act in concert to result in cumulative stress on *Eriogonum corymbosum* var. *nilesii*. However, the best available scientific and commercial information currently does not indicate that these stressors singularly or cumulatively are resulting now or will in the future result in a substantial decline of the total extant population of the plant or have impacts to *E. c.* var. *nilesii* at the taxon level. Therefore, we do not consider the cumulative impact of these stressors to *E. c.* var. *nilesii* to be substantial at this time, nor into the future.

Determination

As required in section 4(a)(1) of the Act, we conducted a review of the status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* and assessed the five factors in consideration of whether *E. diatomaceum* and *E. c.* var. *nilesii* are endangered or threatened species throughout all of their ranges. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to these plants. We reviewed information available in our files and other available published and unpublished information. We also consulted with species experts and land managers in the areas where these plants occur.

Eriogonum diatomaceum

We evaluated each of the potential stressors in the Species Report for *Eriogonum diatomaceum*, and we

determined that mineral exploration and development (Factors A and E); livestock grazing (Factors A and E); herbivory (Factor C); OHV activity and road development (Factors A and E); nonnative, invasive plant species (Factors A and E); disease (Factor C); and climate change (Factors A and E) are factors that have had impacts on individuals in some locations, but they are not impacting the species currently or into the future such that listing would be warranted. Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that these stressors are going to cause a decline in the species or its habitat, either now or are likely to do so into the future. In addition, we evaluated existing regulatory mechanisms and did not determine an inadequacy of existing regulatory mechanisms for *E. diatomaceum*. Finally, although there is uncertainty in extrapolations of population estimates based on survey results, the best available scientific and commercial information shows that *E. diatomaceum* population numbers do not appear to be in decline (Service 2014a, pp. 12–13).

Eriogonum corymbosum var. *nilesii*

We evaluated each of the potential stressors in the Species Report for *Eriogonum corymbosum* var. *nilesii*, and we determined that development for residential, commercial, or other purposes (Factors A and E); OHV use and road development (Factors A and E); mineral exploration and development (Factors A and E); nonnative, invasive plant species (Factors A and E); modified wildfire regime (Factors A and E); and climate change (Factors A and E) are factors that may have impacts on individuals in some locations, but they are not impacting the plants currently or into the future such that listing would be warranted. Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that these stressors currently are going to cause a decline in the plant or its habitat, either now or are likely to do so into the future. In addition, we evaluated existing regulatory mechanisms and did not determine an inadequacy of existing regulatory mechanisms for *E. c.* var. *nilesii*. Even though we found that some of the potential stressors have caused the loss of *E. c.* var. *nilesii* populations in the past, we do not anticipate that the potential threats are likely to impact the remaining populations in the future.

such that listing the plant would be warranted, because of the large amount of occupied habitat being conserved and the land ownership of much of *E. c.* var. *nilesii*'s habitat.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Based on our analyses conducted in the Species Reports and summarized in this finding, and using the best scientific and commercial information available, we find that the magnitude and imminence of threats do not indicate that *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* are in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout their ranges. In the Species Report, we describe how our ability to project future trends in the various factors identified as relevant to *E. diatomaceum* and *E. c.* var. *nilesii* differs for each factor, with some factors better assessed in terms of relatively short time periods, whereas others are more appropriately assessed in terms of longer time horizons. Our ability to project future trends in the various factors identified as relevant to each of the plants differs for each factor, with some factors (such as development and grazing) more easily predicted in terms of relatively short time periods (such as the 1–10 years for which future development is anticipated based on plans and the 10–15 year time period for grazing allotment permits). Others (such as climate change) can often be predicted over longer time horizons (such as 50 years for most climate models). We do not have a single foreseeable future timeframe because each of the potential stressors can be predicted into the future over different time horizons, and we do not have data to support a single foreseeable future timeframe.

In general, we assessed the potential stressors as a continuation of current circumstances as discussed in the Species Reports (Service 2014, p. 17; Service 2014b, p. 24). In the case of *Eriogonum diatomaceum*, as discussed above, the best available information indicates that there is no evidence of population declines within the species at current threat levels. In a continuation of current conditions, it is therefore likely that the populations will remain stable in the future. For *Eriogonum corymbosum* var. *nilesii*, our information shows that development is

likely to reduce the overall population and habitat by a small percentage within a reasonably short timeframe, however, aside from this stressor, the best available information indicates that populations are not currently being affected by other potential stressors. Additionally, much of the remaining populations and habitat are in conserved areas, or areas with limited activity, whereby the species would not likely be impacted by these potential stressors or the species exposure to these potential stressors would be reduced. Therefore, a continuation of current conditions would indicate that the remaining populations will likely be stable in the future. With regard to both species, although models can predict climate changes over longer timeframes, the best available scientific information does not indicate how climate change effects will impact either of these plants into the future. Therefore, our ability to predict future climate change effects is limited.

Therefore, based on our assessment of the best available scientific and commercial information, we find that listing *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* throughout all or a significant portion of their ranges as endangered or threatened species is not warranted at this time.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines "endangered species" as any species which is "in danger of extinction throughout all or a significant portion of its range," and "threatened species" as any species which is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature." We published a final policy interpreting the phrase "significant portion of its range" (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is "significant" if the species is not currently an endangered or a threatened species throughout all of

its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a

significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of “significant” (i.e., the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgetment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the “significant” question first, or the status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is “significant.”

We evaluated the current ranges of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* to determine if there is any apparent geographic concentration of potential threats for either of the plants. We examined potential threats to *E. diatomaceum* from mineral exploration and development; livestock grazing; herbivory; OHV activity and road development; nonnative, invasive plant species; disease; and climate change. We examined potential threats to *E. c. var. nilesii* from development for residential, commercial, or other purposes; OHV use and road development; mineral exploration and

development; nonnative, invasive plant species; modified wildfire regime; and climate change. Even though we found that some of the potential threats have caused the loss of *E. c. var. nilesii* populations in the past, we do not anticipate that the potential threats are likely to impact the remaining populations in the future such that listing the plant would be warranted, because of the large amount of occupied habitat being conserved and the land ownership of much of *E. c. var. nilesii*'s habitat. Overall, we found no current concentration of threats now or into the future that suggests that either of these plants may be in danger of extinction in a portion of its range. We found no portions of their ranges where current or future potential threats are significantly concentrated or substantially greater than in other portions of their ranges. Therefore, we find that potential threats affecting each plant are essentially uniform throughout its range, indicating no portion of the range of either plant warrants further consideration of possible endangered or threatened species status under the Act.

Our review of the best available scientific and commercial information indicates that neither *Eriogonum diatomaceum* nor *Eriogonum corymbosum* var. *nilesii* are in danger of extinction (an endangered species) or likely to become endangered within the foreseeable future (a threatened species), throughout all or a significant portion of their ranges. Therefore, we find that listing either of these two plants as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* to our Nevada Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor these plants and encourage their conservation. If an emergency situation develops for either of these two plants, we will act to provide immediate protection.

References Cited

- Service 2014a. Species Report for *Eriogonum diatomaceum* (Churchill Narrows buckwheat). Nevada Fish and Wildlife Office. March 28, 2014.
- Service 2014b. Species Report for *Eriogonum corymbosum* var. *nilesii* (Las Vegas buckwheat). Nevada Fish and Wildlife Office. March 28, 2014.

A complete list of references cited in each of the Species Reports (Service 2014a; Service 2014b) is available on the Internet at <http://www.regulations.gov> or at <http://www.fws.gov/nevada/>

[highlights/species_actions/species_actions.html](http://www.fws.gov/nevada/highlights/species_actions/species_actions.html) and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this finding are the staff members of the Pacific Southwest Regional Office and the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2014.

Stephen Guertin,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-BE24

Fisheries of the Exclusive Economic Zone Off Alaska; Establishing Transit Areas Through Walrus Protection Areas at Round Island and Cape Peirce, Northern Bristol Bay, Alaska; Amendment 107

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 107 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 107, if approved, would establish seasonal transit areas for vessels designated on Federal Fisheries Permits (FFPs) through Walrus Protection Areas in northern Bristol Bay, AK. This action would allow vessels designated on FFPs to transit through Walrus Protection Areas in the U.S. Exclusive Economic Zone (EEZ) near Round Island and Cape Peirce from April 1 through August 15, annually. This action is necessary to restore the access of Federally-permitted vessels to transit through Walrus Protection Areas that was limited by