Dated: September 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc 94-24321 Filed 9-29-94; 8:45 am]

BILLING CODE 4310-55-P

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50 CFR Part 17

RIN 1018-AB83 212-94

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Tetramolopium capillare (Pamakani)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Tetramolopium capillare* (pamakani). Two extant populations containing a total of 12 known individuals of the species remain in the southwestern portion of West Maui. The species and its habitat have been variously affected or are currently threatened by fire and by habitat degradation and competition from invasive alien plant species. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act. It also makes operative State regulations that will protect *Tetramolopium capillare* as an endangered species.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Tetramolopium capillare was first collected in 1819 on Maui by Charles Gaudichaud-Beaupre. He named this sterile specimen *Senecio capillaris*, choosing the specific epithet to refer to its very narrow involute leaves (with margins rolled under along the edges) (Gaudichaud-Beaupre 1830). Based on a fertile specimen collected on Maui in the 1830s, Sherff (1935) described and named *Tetramolopium bennettii*. After examining and comparing type specimens, St. John (1965) determined that Gaudichaud-Beaupre's *Senecio capillaris* and Sherff's *Tetramolopium bennettii* were actually the same species and that Sherff had placed the taxon in the correct genus; St. John (1965) subsequently made the new combination *Tetramolopium capillare*. Later, St. John (1974) described a new genus, *Luteidiscus*, for species of *Tetramolopium* with yellow disk florets, and formed the combination *Luteidiscus capillaris*. In the current treatment of the genus, Lowrey (1981, 1986, 1990) does not recognize St. John's division of the genus.

Tetramolopium capillare is a sprawling shrub with stems measuring 50 to 80 centimeters (cm) (20 to 31 inches (in)) long and covered with many glands when young. The very firm, stalkless leaves are involute and are usually 13 to 25 millimeters (mm) (0.5 to 1 in) long and 0.4 mm (about 0.01 in) wide. Flower heads are situated singly at the ends of stalks 1 to 3.5 cm (0.4 to 1.4 in) long. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets, 3.5 to 4 mm (about 0.1 in) long and 0.6 to 8 mm (0.02 to 0.3 in) wide, surround 15 to 25 greenish yellow tinged with red, functionally female florets about 3.6 mm (0.1 in) long. The achenes (dry, one-seeded fruits) measure 2 to 2.6 mm (0.08 to 0.1 in) long and 0.7 to 0.8 mm (0.03 in) wide and are topped by a white pappus comprising a single series of bristles 1.9 to 2.1 mm (0.07 to 0.08 in) long. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *Tetramolopium remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1990).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1981). This species is known to be extant near Halepohaku on State land (Hawaii Plant Conservation Center (HPCC) 1992a, 1992b). The two known populations, which are separated by 2.4 kilometers (km) (1.8 miles (mi)), contain a total of 12 known plants (Steve Perlman, HPCC, pers. comms., 1992). *Tetramolopium capillare* typically grows on rock substrates at elevations between 615 and 900 meters (m) (2,020 to 3,000 feet (ft)) in Lowland Dry Mixed Shrub and Grassland and in Montane Dry Shrubland. Plant species associated with the higher elevation population include *Dodonaea viscosa* ('a'ali'i), *Metrosideros polymorpha* ('ohi'a), and *Styphelia tameiameiae* (pukiawe). 'A'ali'i, *Heteropogon contortus* (pili grass), and *Myoporum sandwicense* (naio) are associates of the other population. The major threats to *Tetramolopium capillare* are fire; competition from alien plant species, particularly *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Rynchelytrum repens* (Natal redtop); and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (HPCC 1992a, 1992b).

Previous Federal Action

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Tetramolopium capillare* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Tetramolopium capillare*. The list of 1,700 plant taxa 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. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including *Tetramolopium*

capillare, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Tetramolopium capillare* was treated as a Category 1* species. Category 1* species are those that are possibly extinct. Because the species was rediscovered in 1991, it is now being listed as endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Tetramolopium capillare* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final one-year finding for this species.

On March 25, 1993, the Service published in the **Federal Register** (58 FR 16164) a proposal to list the plant *Tetramolopium capillare* as endangered. This proposal was based primarily on information from the Hawaii Plant Conservation Center and observations by botanists and naturalists. The Service now determines *Tetramolopium capillare* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the March 25, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended May 24, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Honolulu Star-Bulletin" on April 19, 1993. One letter of comment was received, supporting the listing of *Tetramolopium capillare*. The one issue raised in this letter is discussed below.

Issue: Over-collection of this species is not likely, and placing emphasis on this issue will make scientific research and horticultural conservation of the species more difficult.

Response: The Service feels that unrestricted collecting should not be allowed, since only two populations totaling 12 individuals are known. This should not adversely affect non-destructive scientific research and *ex situ* conservation efforts, since permits would still be available for these purposes.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tetramolopium capillare* (Gaud.) St. John are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Tetramolopium capillare* has undergone extreme alteration because of past and present land management practices, including grazing and alien plant introductions. Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, north Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. This animal eats native vegetation, tramples roots and seedlings, causes erosion, creates disturbed areas into which alien plants invade, and spreads seeds of alien plants (Cuddihy and Stone 1990). Feral cattle were formerly found on Maui and affected areas within the historic range of *Tetramolopium capillare* (Lowrey 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and substrate damage by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Tetramolopium capillare*, which has only two populations and a total of 12 known individuals. Any collection of whole plants of this species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. *Disease or predation.* No evidence of disease or predation of *Tetramolopium capillare* has been reported.

D. *The inadequacy of existing regulatory mechanisms.* No State or Federal regulations currently protect *Tetramolopium capillare*. However, Federal listing will automatically invoke endangered species status under Hawaii's endangered species act.

E. *Other natural or manmade factors affecting its continued existence.* The small number of individuals and populations of *Tetramolopium capillare* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. Erosion due to natural weathering in areas where *Tetramolopium capillare* grows can result in the death of individual plants as well as habitat destruction. This process especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, such as *Tetramolopium capillare*, and can be exacerbated by human disturbance and land use practices.

Erosion provides a suitable site for colonization by alien plants. Three alien plant taxa, naturalized in dry, disturbed areas on all the main Hawaiian islands, compete with *Tetramolopium capillare*. Natal redtop, an annual or perennial grass, is a major threat to both populations of *Tetramolopium capillare* (HPCC 1992a, 1992b; O'Connor 1990). Both koa haole, often the dominant species in dry, disturbed, low elevation areas, and lantana, an aggressive, thicket-forming shrub, have also invaded the habitat of *Tetramolopium capillare* (Geesnick *et al.* 1990; HPCC 1992a; S. Perlman, pers. comm., 1992). Because both populations of *Tetramolopium capillare* grow in dry areas, fire is considered a threat to the species (HPCC 1992a; S. Perlman, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in this final rule. Based on this evaluation, the preferred action is to list *Tetramolopium capillare* as endangered. This species numbers no more than about 12 individuals in two populations and is threatened by habitat degradation, competition from alien plants, fire, and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of

its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Tetramolopium capillare* for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Tetramolopium capillare*. The publication of a map and precise description of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. The species is found exclusively on State land. Interested parties and the State landowner have been notified of the importance of protecting the habitat of *Tetramolopium capillare*. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities, and is unlikely to aid in conservation of the species.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No known Federal activities occur within the habitat of *Tetramolopium capillare*, which is found only on State land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Tetramolopium capillare*, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant 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; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Office, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Tetramolopium capillare is not presently listed as an endangered species by the State of Hawaii. Both populations of this species occur on State land. Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). State law prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it results in State listing, also triggers these other State regulations protecting *Tetramolopium capillare*. Listing under the Federal Act would also provide additional protection to this species by making it an offense for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Sherff, E.E. 1935. Revision of *Tetramolopium*, *Lipochaeta*, *Dubautia* and *Railliardia*. Bernice P. Bishop Mus. Bull. 135:1–136.

Author: The authors of this final rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Office (see ADDRESSES section), (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Tetramolopium capillare	Pamakani	U.S.A. (HI)	E	556	NA	NA
*	*	*	*	*	*	*

Dated: September 9, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–24280 Filed 9–29–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 092194B]

Groundfish of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 15, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared