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Synopsis

The Wireline Competition Bureau seeks comment on whether guidance or additional clarification would assist providers with their filing obligations related to the Rural Call Completion Order, FCC 13-135, published at 78 FR 76218, December 17, 2013. Specifically, we seek comment on whether to modify or otherwise provide assistance regarding the criteria described in Appendix C of the Rural Call Completion Order for categorizing certain types of call attempts. We release this document in response to the questions raised in the record regarding the "answered" and "ring no answer" categories of call attempts described in Appendix C, pursuant to delegated authority. These questions raise the

possibility that the relevant criteria in Appendix C were inadvertently drafted in a way that fails to reflect the Commission's clear intent, as expressed in the Order.

"Answered" call attempts. The reporting requirements in the Rural Call Completion Order require covered providers to categorize call attempts either as "answered" or as one of three types of calls that are not answered: "busy," "ring no answer," or "unassigned number." The Rural Call Completion Order defines "answered call" as

a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system), causing the network to register that the terminating party is prepared to receive information from the calling user.

The Commission emphasized that "the call answer rate is the data point least susceptible to variations in data reporting or to differences in the quality or accuracy of signaling; the called party either answered the call or did not answer the call."

Appendix C of the Rural Call Completion Order provides a spreadsheet that covered providers must use to file the required call completion data with the Commission each quarter. The legend accompanying the spreadsheet identifies specific "ISUP Cause values and corresponding SIP Response messages" for each category of call attempt. An "answered" call is described in Appendix C as a call attempt "signaled back with ISUP 16 & 31 and SIP BYE & CANCEL."

In recent meetings with Commission staff, Level 3 and Verizon explained that release cause code 16—one of the codes identified in Appendix C as denoting an answered call—is also used to indicate that the calling party has hung up before the called party answered. Level 3 contends that including calling-party hangups as answered calls would result in a "much higher" reported call-completion rate than a provider would report if it excluded them.

In this document, we seek comment on this contention and on whether it would assist providers if the Bureau clarified that, as specified in the Order, covered providers should record and report calls as "answered" only to the extent that such calls satisfy the definition of "answered call" that appears in paragraph 72 of the Rural Call Completion Order. Appendix C could be clarified to eliminate any basis for interpreting it inconsistently with the definition of "answered call" in the Order. If so, should the description of

"answered call" in Appendix C be revised to include a different description (e.g., a different set of release codes) of how networks identify answered calls? Or should the legend in Appendix C simply be deleted, allowing each covered provider to identify answered calls in a manner consistent with the definition in the Rural Call Completion Order and with industry practice?

"Ring no answer" call attempts. The Rural Call Completion Order requires covered providers to record and report "ring no answer" call attempts, which are required to calculate the network effectiveness ratio (NER). A "ring no answer" call is described in Appendix C as a call attempt that is "signaled back with ISUP 18 & 19 and IP 408 & 480."

Level 3 asserted that some of the criteria in Appendix C for "ring no answer" call attempts will only capture a very small percentage of the intended call attempts. Verizon expressed concern about using call signaling data to identify "ring no answer" calls at all. We therefore seek comment on whether the description of "ring no answer" call attempts in Appendix C should be revised to provide clearer guidance to covered providers, and if so, how. Alternatively, should the legend in Appendix C be deleted, allowing each covered provider to interpret the required call attempt categories in a manner consistent with industry practice and with the Commission's stated intent in the Rural Call Completion Order?

Federal Communications Commission.

Lisa S. Gelb,

Deputy Bureau Chief, Wireline Competition Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2013-0069; 4500030113]

RIN 1018-AY73

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Leavenworthia exigua* var. *laciniata* (Kentucky Glade Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress), a plant species from Bullitt and Jefferson Counties, Kentucky. The effect of this regulation will be to add this species to the List of Endangered and Threatened Plants.

DATES: This rule is effective June 5, 2014.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. All of the comments, materials, and documentation that we considered in this rulemaking are also available by appointment during normal business hours at: U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway, Rm. 265, Frankfort, KY 40601; telephone 502-695-0468.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **ADDRESSES** above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

Please refer to the proposed listing rule for *Leavenworthia exigua* var. *laciniata* (78 FR 31498; May 24, 2013) for a detailed description of previous Federal actions concerning this species.

Background

Leavenworthia exigua var. *laciniata* is an annual member of the mustard family (*Brassicaceae*) known only from Bullitt and Jefferson Counties, Kentucky. The natural habitat for *L. exigua* var. *laciniata* is cedar or limestone glades (Baskin and Baskin 1981, p. 243), but the taxon is also known from overgrazed pastures, eroded shallow soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock (Evans and Hannan 1990, p. 8). The plants grow to 5 to 10 centimeters (1.97 to 3.94 inches) in height with early leaves that are simple with a slender petiole (central stalk of the leaf) and mature leaves that are sharply lobed (appear as disconnected pieces along the main leaf vein), somewhat squarish

at the ends, and arranged as a rosette (circular cluster of leaves) (Evans and Hannan 1990, p. 5). Please refer to the proposed listing rule for *L. exigua* var. *laciniata* (78 FR 31498; May 24, 2013) for a summary of species information.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species 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; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Summary of Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Comprehensively, the loss and degradation of habitat represents the greatest threat to *Leavenworthia exigua* var. *laciniata*. Destruction and degradation of glades through development, roads, utilities, and conversion to lawns have resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue far into the future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. While the rate of development and associated activities will probably not reach the highs seen during the housing market bubble of the mid-2000s, it is expected to continue at a rate above the State average. As the Louisville metropolitan area continues to expand, undeveloped portions of southern Jefferson and northeastern Bullitt Counties will continue to be attractive to developers, and, consequently, residential and commercial development and its ancillary activities will continue. Documented impacts from horseback riding, off-road vehicle use, and changes in grazing practices have resulted in the loss or degradation of several *L. exigua* var. *laciniata* occurrences. These activities are expected to continue in the future but to an unknown extent. Forest

encroachment is expected to continue in areas without active management. A few voluntary conservation measures are in place on properties owned by private individuals, or State or local government, that reduce threats to specific *L. exigua* var. *laciniata* occurrences, but to date, none of these has resulted in any measurements of success or assurances that these activities will continue into the future. Climate change has the potential to impact this species, but to what extent we cannot predict.

Summary of Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no information to suggest that *Leavenworthia exigua* var. *laciniata* is currently collected for commercial, recreational, or educational purposes. The Service will coordinate with any agency or university studying *L. exigua* var. *laciniata* to ensure that future collections will not significantly contribute to the decline of the species. Accordingly, we have no reason to believe that this factor will become a threat to the species in the future.

Summary of Factor C: Disease or Predation

There is no available information regarding disease in *Leavenworthia exigua* var. *laciniata*. Furthermore, we have not identified any information regarding animal (wild or domestic) predation on *L. exigua* var. *laciniata*. Field observations by the Kentucky State Nature Preserves Commission (KSNPC) during extensive surveys of this species indicate that neither disease nor predation is a factor contributing to the decline of the species at this time (Evans and Hannan 1990, p. 12; White, pers. comm., 2012).

Summary of Factor D: The Inadequacy of Existing Regulatory Mechanisms

Other than the Act (16 U.S.C. 1531 *et seq.*), we are not aware of any State or Federal statutes or regulations that would provide protections to *Leavenworthia exigua* var. *laciniata*. The Kentucky Rare Plants Recognition Act (Kentucky Revised Statutes, chapter 146, sections 600-619) directs the KSNPC to identify plants native to Kentucky that are in danger of extirpation within Kentucky and report every 4 years to the Governor and General Assembly on the conditions and needs of these endangered or threatened plants. We determined that this statute does not include any regulatory prohibitions of activities or direct protections for any identified species. The intent of this statute is not to

ameliorate the threats identified for the species, but it does provide information on the species.

Summary of Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Leavenworthia exigua var. *laciniata* is subject to several ongoing natural and manmade factors that could affect its continued existence. The species has a narrow range, occurring in only small portions of two counties. Within this range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas that occur sporadically across the range. More than half of the remaining occurrences had low (fewer than 100 individuals) population counts at the time of the most recent survey. Additionally, the presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk of extirpation as their capacity for adaptation to change is reduced.

Please refer to Summary of Factors Affecting the Species section of the species status assessment (78 FR 31498; May 24, 2013) for a more detailed discussion of the factors affecting *L. exigua* var. *laciniata*. Our assessment evaluated the biological status of the species and threats affecting its continued existence. The assessment was based upon the best available scientific and commercial data and the expert opinion of the species status assessment team members.

Summary of Comments and Recommendations

In the proposed rule published on May 24, 2013 (78 FR 31498), we requested that all interested parties submit written comments on the proposal on or before July 23, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Louisville Courier Journal and the Pioneer News. We did not receive any requests for a public hearing. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included

familiarity with *Leavenworthia exigua* var. *laciniata* and its habitat, biological needs, and threats. We received responses from three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of *L. exigua* var. *laciniata*. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) *Comment:* One peer reviewer recommended that within the *Biology* section, where we describe the changes that *L. exigua* var. *laciniata* seed undergo during the summer, we change the word “physical” to “physiological.”

Our Response: We appreciate the recommendation and have updated the *Biology* section to reflect this change.

(2) *Comment:* One peer reviewer questioned the statement in the section on *Current Range/Distribution* that very little remaining glade habitat within the species’ range has not been surveyed. This peer reviewer asked if we had intended to state that little habitat had been surveyed.

Our Response: We intended to state that very little glade habitat remains within the species’ range that has not been surveyed. Over the last 20 years, KSNPC has systematically used aerial photography and known geology to identify potential *L. exigua* var. *laciniata* glade habitat with the intent of identifying new populations within the known range and exploring potential areas to expand the known habitat. Very little potential habitat, i.e., cedar or limestone glades, the only habitat known for this species, has not been surveyed. Also, this part of the State is heavily explored because it is so populated and accessible; therefore, discovering any additional habitat for this species is very unlikely (D. White, pers. comm., 2012).

(3) *Comment:* One peer reviewer stated that it is not clear in our discussion of significant landownerships whether the species is actually present at the locations identified.

Our Response: Table 3 of the proposed rule (78 FR 31498; May 24, 2013) summarizes the ownership areas and includes the most recent population data for *L. exigua* var. *laciniata* in those areas.

Comments From States

The Commonwealth of Kentucky did not submit comments. We note, however, that one of the peer reviewers was from KSNPC. Those comments are addressed above.

Public Comments

During the public comment period, we received two comment letters directly addressing the proposed listing. These letters also addressed the proposed critical habitat designation. Comments pertaining to the critical habitat designation are addressed in that final rule, published elsewhere in today’s **Federal Register**. Both comment letters received regarding the proposed listing were positive and in support of the proposed listing.

(4) *Comment:* One commenter provided information regarding recent infrastructure improvements (water line extensions, new sewer pump station) that would encourage expanded development within the range of *L. exigua* var. *laciniata*.

Our Response: We appreciate the supporting information.

(5) *Comment:* One commenter stated that more locations of *L. exigua* var. *laciniata* will be identified.

Our Response: We agree that it is likely that the plant will be found in more locations as survey efforts increase. Intense efforts on the ground and via aerial imagery have already been conducted to identify and explore potential cedar glade habitats. We will evaluate new information as it becomes available to determine if it results in any significant expansion of the species’ range or a significant increase in extant occurrences.

(6) *Comment:* One commenter provided information on a possible *L. exigua* var. *laciniata* occurrence in the vicinity of Chenoweth Run Creek and Seatonville Road and voiced concerns about future impacts that could affect the species at this location.

Our Response: We are not aware of any *L. exigua* var. *laciniata* occurrences at this location but will carefully evaluate any proposed projects that we review in this area, or for any proposed projects within the range of the species, for potential impacts to the species or its habitat.

(7) *Comment:* One commenter asked if the limestone quarry in Bullitt County could be affecting the habitat of *L. exigua* var. *laciniata*.

Our Response: We have no data to suggest that the quarry has impacted *L. exigua* var. *laciniata* or its habitat. There are no known historical or extant *L. exigua* var. *laciniata* populations known to occur at the quarry.

(8) *Comment*: One commenter recommended seed collection as an important way to ensure the survival of the species.

Our Response: Some seed collection for this species has already occurred, as we discussed under the Factor B analysis in the proposed rule. The use of seed collection as a possible tool for recovering this species will be considered during the development of the recovery plan for *L. exigua* var. *laciniata*.

Summary of Changes From Proposed Rule

Other than minor changes in response to recommendations, in this final rule we made no substantial changes to the proposed rule.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Leavenworthia exigua* var. *laciniata*. The most significant threats to the species are described under Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Specifically, destruction and degradation of glade habitat through development, roads, utilities, and conversion to lawns has resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue for the foreseeable future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. Within the narrow (small portions of two Kentucky counties) range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas, which occur sporadically across the range. The

presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk as their capacity for adaptation to change is reduced. These threats occur across the taxon's range and are ongoing and, therefore, imminent.

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." Although we recognize that the threats to the species are ongoing, often severe, and occurring throughout the species' range, we find that an endangered species status is not appropriate for *Leavenworthia exigua* var. *laciniata* because the possibility that all occurrences of the species would be equally impacted in the foreseeable future, thus resulting in extinction, is unlikely. However, we find that *L. exigua* var. *laciniata* is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the severity and immediacy of threats currently impacting the species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. As stated above, the threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its range.

Significant Portion of the Range

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." A major part of the analysis of "significant portion of the range" requires considering whether the threats to the species are geographically concentrated in any way. If the threats are essentially uniform throughout the species' range, then no portion is likely to warrant further consideration.

We have carefully considered all scientific and commercial information available regarding the past, present, and future threats to *L. exigua* var. *laciniata*. *L. exigua* var. *laciniata*, proposed for listing in this rule, occurs

only in portions of two Kentucky counties and the threats to the survival of the taxon are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the taxon throughout its entire range. We find that *L. exigua* var. *laciniata* is likely, within the foreseeable future, to become an endangered species throughout its entire range, based on the immediacy, severity, and scope of the threats described above. We are listing *L. exigua* var. *laciniata* as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery

progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/angered>), or from our Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

When this species is listed (see **DATES**), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Commonwealth of Kentucky will be eligible for Federal funds to implement management actions that promote the protection or recovery of *L. exigua* var. *laciniata*. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Please let us know if you are interested in participating in recovery efforts for the *L. exigua* var. *laciniata*. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires

Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include issuance of Federal permits under section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

With respect to threatened plants, 50 CFR 17.71 provides that all of the provisions in 50 CFR 17.61 shall apply to threatened plants. These provisions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of 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. However, there is the following exception for threatened plants. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of 50 CFR 17.61, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container during the course of any activity otherwise subject to these regulations. Exceptions to these prohibitions are outlined in 50 CFR 17.72.

We may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Regulations

governing permits are codified at 50 CFR 17.72. With regard to threatened plants, a permit issued under this section must be for one of the following: Scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.71) for threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a rule promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. With respect to a threatened plant, the Secretary of the Interior also has the discretion to prohibit by regulation any act prohibited by section 9(a)(2) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species at 50 CFR 17.71 and exceptions to those prohibitions at 50 CFR 17.72. We have determined to not promulgate a rule under section 4(d) of the Act, and as a result, all of the section 9(a)(2) general prohibitions, including the "take" prohibitions, will apply to the *L. exigua* var. *laciniata*.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any

existing regulations, permit and label requirements, and best management practices; and,

(2) Normal residential landscape activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Kentucky Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404/679-7313; Fax 404/679-7081).

Required Determinations

National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as

defined under the authority of the NEPA, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of references cited in this rulemaking is available on the

Internet at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2013-0069 and upon request from the Kentucky Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT).

Authors

The primary authors of this final rule are the staff members of the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.12(h), add an entry for “*Leavenworthia exigua* var. *laciniata*” in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
<i>Leavenworthia exigua</i> var. <i>laciniata</i> .	Kentucky glade cress.	U.S.A. (KY)	Brassicaceae	T	833	17.96(a)	NA
*	*	*	*	*	*	*	*

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Dated: April 21, 2014.
Rowan W. Gould,
Acting Director, U.S. Fish and Wildlife Service.
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