DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist or Reclassify From Endangered to Threatened Five Southwest Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the Eriogonum gypsophilum (gypsum wild-buckwheat), and downlist the black-capped vireo (Vireo atricapilla), lesser long-nosed bat (Leptonycteris curasoae var. kuenzleri), Tobusch fishhook cactus (Scleroactus brevifurcatus var. tobuschii), and Ancistrocactus tobuschii—Tobusch fishhook cactus, and Scleroactus brevifurcatus var. kuenzleri (Kuenzler hedgehog cactus), and Echinocereus fendleri var. kuenzleri (Kuenzler fishhook cactus) from endangered to threatened under the Endangered Species Act. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if the respective actions of delisting and reclassifying are warranted. Section 4(c)(2)(A) of the Act also requires a status review of listed species at least once every 5 years. We are, therefore, electing to conduct each of these 5-year reviews simultaneously with the corresponding 12-month finding. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive information to consider for the status review on or before November 8, 2013. The deadline for submitting information using the Federal eRulemaking Portal (see ADDRESSES section below) is 11:59 p.m. Eastern Time on this date. After November 8, 2013, you must submit information directly to the Division of Policy and Directives Management (see ADDRESSES section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.


Written comments: You may submit information by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: http://www.regulations.gov. Search for FWS–R2–ES–2013–0102, which is the docket number for this action. You may submit information for the status review by clicking on “Comment Now!”

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0102; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. We will not accept emails or faxes. We will post all information we receive on http://www.regulations.gov. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Michelle Saughnnessy, Assistant Regional Director, Southwest Regional Ecological Services Office, 500 Gold Avenue SW., Albuquerque, NM 87102; telephone 505/248–6920; facsimile 505/248–6788. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available to us. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the Federal Register.

Our standard for substantial scientific or commercial information with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Section 3(6) of the Act defines an “endangered species” as any species which is in danger of extinction throughout all or a significant portion of its range. A “threatened species” is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Under the Act, we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants) (List). We amend the List by publishing final rules in the Federal Register. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years (5-year review). Section 4(c)(2)(B) requires that we determine: (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened (downlisted); or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered (uplisted). Our regulations at 50 CFR 424.21 require that we publish a notice in the Federal Register announcing those species currently under active review.

Petition History

On July 16, 2012, we received a petition dated July 11, 2012, from The Pacific Legal Foundation, Jim Chilton, the New Mexico Cattle Growers’ Association, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau requesting that the Eriogonum gypsophilum (gypsum wild-buckwheat) be delisted, and the black-capped vireo (Vireo atricapilla), lesser long-nosed bat (Leptonycteris curasoae var. kuenzleri), Tobusch fishhook cactus (Scleroactus brevifurcatus var. tobuschii), and Ancistrocactus tobuschii (an accepted synonym for Scleroactus brevifurcatus var. tobuschii—Tobusch fishhook cactus, and Scleroactus brevifurcatus var. kuenzleri (Kuenzler hedgehog cactus), and Echinocereus fendleri var. kuenzleri (Kuenzler fishhook cactus) from endangered to threatened under the Endangered Species Act. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if the respective actions of delisting and reclassifying are warranted. Section 4(c)(2)(A) of the Act also requires a status review of listed species at least once every 5 years. We are, therefore, electing to conduct each of these 5-year reviews simultaneously with the corresponding 12-month finding. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.
cactus) be reclassified as threatened based on the analysis and recommendation contained in the most recent 5-year review for these taxa. The petition appeared to meet all of the requirements of 50 CFR 424.14(a).

**Previous Federal Action**

**Gypsum Wild-Buckwheat**

The gypsum wild-buckwheat was federally listed as threatened on February 18, 1981 (46 FR 5730, January 19, 1981). Critical habitat was designated at the time of listing for the Seven Rivers population in Eddy County, New Mexico. A recovery plan was issued March 30, 1984. The recovery plan has not been revised. A 5-year review was completed on November 9, 2007, in which the Service recommended delisting the species.

**Black-Capped Vireo**

The black-capped vireo was federally listed as endangered without critical habitat on November 5, 1987 (52 FR 37420, October 6, 1987). A recovery plan was issued September 30, 1991. The recovery plan has not been revised. A 5-year review was completed on July 26, 2007, in which the Service recommended downlisting the species to threatened.

**Lesser Long-Nosed Bat**

The lesser long-nosed bat was federally listed as endangered without critical habitat on October 31, 1988 (53 FR 38456, September 30, 1988). A recovery plan was issued on March 4, 1997. The recovery plan has not been revised. A 5-year review was completed on August 30, 2007, in which the Service recommended downlisting the species to threatened.

**Kuenzler Hedgehog Cactus**

The Kuenzler hedgehog cactus was federally listed as endangered without critical habitat on November 28, 1979 (44 FR 61924, October 26, 1979). A recovery plan was issued on March 28, 1983. The recovery plan has not been revised. A 5-year review was completed on June 7, 2005, in which the Service recommended downlisting the species to threatened.

**Tobusch Fishhook Cactus**

The Tobusch fishhook cactus was federally listed as endangered without critical habitat on December 7, 1979 (44 FR 64736, November 7, 1979). A recovery plan was issued on March 18, 1987. The recovery plan has not been revised. A 5-year review was completed on January 5, 2010, in which the Service recommended downlisting the species to threatened.

**Specie Information**

**Gypsum Wild-Buckwheat**

Gypsum wild-buckwheat is a rare, regionally endemic, perennial plant species (Service 2007a, p. 8). It occupies gypsum soils and gypsum outcrops of the Permian-age Casile Formation. These habitats are dry and nearly barren except for common species of gypsophilic plants and gypsum wild-buckwheat. Gypsum wild-buckwheat reproduces both by producing seed and also by producing clone rosettes from rhizomes or rootsprouts. There are only three known populations of gypsum wild-buckwheat, and all occur in Eddy County, in southeastern New Mexico (Service 2007a, pp. 8–12). Only one population (Seven River Hills) was known at the time of listing. Two additional populations were discovered in 1988 in the Yeso Hills of southern Eddy County, New Mexico, one near Black River Village and another at Ben Slaughter Draw below Ben Slaughter Spring. For more information on the life history, biology, and distribution of gypsum wild-buckwheat, see the 2007 5-year review of the species.

**Black-Capped Vireo**

The black-capped vireo is a small (10 to 12 centimeters (cm) (4 to 5 inches (in)) long), insect-eating, migratory songbird (Service 2007b, p. 7). They nest from Oklahoma south through central Texas to the Edwards Plateau, then south to the northern portion of Mexico. Breeding habitat is quite variable across its range, but is generally shrublands with a distinctive patchy structure. The shrub vegetation is mostly deciduous and generally extends from the ground to about 2 meters (m) (6 feet (ft)) above ground and covers about 30 to 60 percent of the total area. Open grassland separates the clumps of shrubs. Black-capped vireos may live for more than 5 years, and usually return year after year to the same territory to breed. They begin to migrate to the wintering grounds on Mexico’s western coast in July and are gone from Texas by mid-September (Service 2007b, p. 7). For more information on the life history, biology, and distribution of black-capped vireo, see the 2007 5-year review of the species.

**Lesser Long-Nosed Bat**

The lesser long-nosed bat is one of four members of the tropical bat family Phyllostomidae found in the United States. The bat’s core diet is believed to consist of pollen, nectar, and fruits of columnar cacti and agaves. These bats depend on caves and abandoned mines and tunnels for day roosting sites. Night roosts include the bats’ day roosts as well as other caves, mines, rock crevices, trees and shrubs, and occasionally abandoned buildings. They migrate seasonally from Mexico to southern Arizona and southwestern New Mexico. For more information on the life history, biology, and distribution of lesser long-nosed bat, see the 2007 5-year review of the species.

**Kuenzler Hedgehog Cactus**

A Kuenzler hedgehog cactus individual may be single stemmed or branched. The stems are normally 15 cm (6 in) long and 10 cm (4 in) wide. Typical Kuenzler hedgehog cactus habitat occurs on gentle, gravelly to rocky slopes and benches on limestone or limy sandstone along the lower fringes of the pinyon-juniper woodland at elevations of 1,600 to 2,000 m (5,200 to 6,600 ft). The recovery plan for Kuenzler hedgehog cactus identified two populations of cacti in the Rio Hondo and Rio Penasco drainages in Lincoln County (Service 1985). However, by the time of the 2005 5-year review, there were 11 documented population centers (Service 2005). For more information on the life history, biology, and distribution of Kuenzler hedgehog cactus, see the 2005 5-year review of the species.

**Tobusch Fishhook Cactus**

The Tobusch fishhook cactus is a small, round cactus, usually 5.1 to 7.6 cm (2 to 3 in) tall and up to 8.9 cm (3.5 in) in diameter, with light yellow spines with red tips. The lower central spines are hooked at the tip, like a fishhook. It produces yellow to cream flowers about 3.0 to 3.8 cm (1 to 1.5 in) long and wide during February through March. The fruit is fleshy and green, ripening to pink or pinkish-brown by late spring or early summer. The seeds are black.

The Tobusch fishhook cactus grows in discontinuous patches of very shallow, moderately alkaline, rocky loams or clay soils (primarily of the Tarrant, Ector, or Eckrat series) over massive, fractured limestone bedrock (usually the Edwards formation or an equivalent formation). The sites are open, in full sunlight, with a thin herbaceous cover of grasses and other herbaceous species, but within a matrix of woodland or savanna of live oak-juniper woodland community. In 1979 when the species was federally listed as endangered, fewer than 200 individuals had been documented in Bandera and Kerr Counties, Texas. The Texas Parks and Wildlife Department Natural Diversity Database indicates that, by 1999, researchers had documented 3,395 extant individuals in 8 counties of the Edwards Plateau...
The mere identification of factors that species is likely impacted could suffice. The combination of exposure and the species responds to the factor in a way that factor to determine whether the species may warrant listing as threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the gypsum wild-buckwheat, black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Information Provided in the Petition

The petitioner requested the Service delist the gypsum wild-buckwheat and reclassify the black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus as threatened based on the analysis and recommendations contained in the most recent 5-year reviews of these taxa. The petition cited the 5-year reviews for each of these respective species as supporting information for the petition, but provided no other information.

Evaluation of Information Provided in the Petition and Available in Service Files

We completed 5-year reviews for each of these five species, which included recommendation of status changes. Each 5-year review contains general background and life-history information, an overview of recovery criteria, an analysis of threats to each taxon based on the five listing factors found in section 4 of the Act, and recommendation of status change. In each 5-year review conducted for the five petitioned species, we analyzed the threats specific to each taxon based on the five listing factors in section 4 of the Act.

Gypsum Wild-Buckwheat

The 2007 5-year review for the gypsum wild-buckwheat recommended delisting of the species. The rationale for this recommendation was that the primary threats to the species at the time of listing were no longer deemed significant (Service 2007a, p. 12).

At the time of listing, gypsum wild-buckwheat was known from only a single population on the Seven Rivers Hills. Since the time of listing, two additional populations of gypsum wild-buckwheat were documented at Black River and Ben Slaughter Draw in Eddy County, Texas (Service 2007a, p. 12).

All three known populations contain between 11,000 and 18,000 plants.

The listing determination for gypsum wild-buckwheat cited off-road vehicles, grazing, and reservoir development as threats to this species (Service 2007a, p. 12). Due to the expanded range of the species at the time of the 5-year review, these stressors were no longer cited as threats to the species. However, all of the known gypsum wild-buckwheat habitat occurs in areas that are known to have high potential for mineral extraction and associated development, especially oil and gas. At the time of the 5-year review, this new threat was thought to be mitigated by the Bureau of Land Management's Special Management Areas classification on significant portions of each gypsum wild-buckwheat population.

In summary, we found that the threats previously identified may no longer be acting on the species at a level that causes the species to be in danger of extinction. Further, the range of the species has expanded, and there is some level of management of newly identified threats in those areas. Therefore, we find there is substantial information indicating that the species may no longer in danger of extinction now or in the foreseeable future, and that delisting may be warranted. This conclusion is based primarily on the analyses found in the 2007 5-year review, which was based on the best scientific information available at that time. Since the time of the 5-year review, we have received no information that would conflict with the conclusions found in that review.

Black-Capped Vireo

The 2007 5-year review for the black-capped vireo recommended reclassification of the species from endangered to threatened. The primary rationale for this recommendation was that the magnitude of threats to the species has been reduced since the time of listing, and that the range of the species has expanded (Service 2007b, pp. 22–24).

At the time of listing, the estimated population of black-capped vireos consisted of 256 to 525 pairs in Oklahoma (4 counties), Texas (21 counties), and Mexico (1 state). Since 2000, the known population consists of 6,200 vireos in Oklahoma (3 counties), Texas (38 counties), and Mexico (3 states) (Service 2007b, p. 22).

The major threats to the black-capped vireo identified at the time of listing included habitat loss through land use conversion, grazing and browsing by domestic and wild herbivores, and brood parasitism by brown-headed...
cowbirds (Molothrus ater). As discussed in the 5-year review, the threat of habitat destruction by domestic livestock appears to have decreased, based upon the decrease in density and abundance of livestock in those regions of particular concern during the original listing. However, it appears the density of white-tailed deer (Odocoileus virginianus) and exotic ungulates may have increased in the same regions, which may be a concern for habitat availability. Information discussed in the 5-year review concerning brown-headed cowbirds suggests that the species may be decreasing in abundance where its range overlaps the black-capped vireo, at least in Texas. Additionally, in the black-capped vireo’s U.S. range, brood parasitism appears to be effectively managed at the major black-capped vireo populations occurring on public land, and supplemented by cowbird control programs on private lands.

In summary, we found that threats to the species identified at the time of listing may no longer be acting on the species as severely as previously thought. Further, the range and abundance of the species appears to have expanded, and some level of management exists in regard to threats in those areas. Therefore, we find there is substantial information that the species may no longer be in imminent danger of extinction, and that reclassification may be warranted. This conclusion is based primarily on the analysis found in the 2007 5-year review, which was based on the best scientific information available at that time. Since the time of the 5-year review, we have received no information that would conflict with the conclusions found in the review.

Lesser Long-Nosed Bat

The 2007 5-year review for the lesser long-nosed bat recommended reclassification of the species from endangered to threatened. The primary rationale for this recommendation was that the threats to the species have been reduced as compared to the threats at the time of listing, and the distribution and abundance of the species has increased (Service 2005).

At the time of listing, only two populations with fewer than 200 individuals were known. However, by the time of the 5-year review, an estimated 11 populations had a total of more than 5,000 individuals. While these populations are scattered and usually not locally abundant, this distribution reflects a wider range and higher overall abundance than was known at the time of listing. Further, most of the known populations of Kuenzler hedgehog cactus occur on Federal lands. Federal land management agencies have inventoried most of the Kuenzler hedgehog cactus habitats within their jurisdictions in order to consult with the Service and avoid serious impacts to occupied habitats.

Threats to the future of the species may be more than 5,000 individuals. While these populations are scattered and usually not locally abundant, this distribution reflects a wider range and higher overall abundance than was known at the time of listing. Further, most of the known populations of Kuenzler hedgehog cactus occur on Federal lands. Federal land management agencies have inventoried most of the Kuenzler hedgehog cactus habitats within their jurisdictions in order to consult with the Service and avoid serious impacts to occupied habitats.

The 5-year review for the Kuenzler hedgehog cactus recommended reclassification of the species from endangered to threatened. The primary rationale for this recommendation was that the threats to the species have been reduced as compared to the threats at the time of listing, and the distribution and abundance of the species has increased (Service 2005).

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determine whether the petitioned actions are warranted.

The “substantial information” standard for a 90-day finding, under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations, differs from the Act’s “best scientific and commercial data” standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act’s standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

5-Year Reviews

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the Federal Register announcing those species currently under review. This notice announces our active review of the gypsum wild-buckwheat, black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus.

Request for Information

When we make a finding that a petition presents substantial information indicating that delisting or reclassifying a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on gypsum wild-buckwheat, black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

1. The species’ biology, range, and population trends, including:
   a. Habitat requirements for feeding, breeding, and sheltering;
   b. Genetics and taxonomy;
   c. Historical and current range including distribution patterns;
   d. Historical and current population levels, and current and projected trends;
   e. Past and ongoing conservation measures for the species, its habitat or both.

2. The factors that are the basis for making delisting and downlisting determinations for a species under section 4(a) of the Act (16 U.S.C. 1531 et seq.), which are:
   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;
   e. Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the ADDRESSES section. If you submit information via http://www.regulations.gov, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on http://www.regulations.gov.

Information and supporting documentation that we received and used in preparing this finding is available for you to review at http://www.regulations.gov, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Southwestern Region Ecological Services Office (see FOR FURTHER INFORMATION CONTACT).
References Cited

A complete list of references cited is available on the Internet at http://www.regulations.gov and upon request from the Southwest Region Ecological Services Office (see FOR FURTHER INFORMATION CONTACT).

Authors

The primary authors of this notice are the staff members of the Southwest Region Ecological Services Office.

Authority

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

Dated: August 26, 2013.

Rowan W. Gould,
Acting Director, U.S. Fish and Wildlife Service.

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