

Dated: August 28, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2013-0102;
FXES1113090000C6-123-FF09E32000]

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 yerbabuena*), *Echinocereus fendleri* var. *kuenzleri* (Kuenzler hedgehog cactus), and *Sclerocactus brevihamatus* ssp. *tobuschii* (Tobusch 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.

ADDRESSES: *Document availability:* You may obtain copies of the July 11, 2012, petition and the 5-year reviews for petitioned species on the internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2013-0102.

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 Shaughnessy, 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 in our files. 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 yerbabuena*), *Echinocereus fendleri* var. *kuenzleri* (Kuenzler hedgehog cactus), and *Ancistrocactus tobuschii* (an accepted synonym for *Sclerocactus brevihamatus* ssp. *tobuschii*)—Tobusch fishhook

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, 1985. 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.

Species 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 Castile 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 Peñasco 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 Eckrant 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

(Bandera, Edwards, Kerr, Kimble, Kinney, Real, Uvalde, and Val Verde). For more information on the life history, biology, and distribution of Tobusch fishhook cactus, see the 2010 5-year review of the species.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct,

(2) The species has recovered and is no longer endangered or threatened, or

(3) The original scientific data used at the time the species was classified were in error.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding

that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of 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 now 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 be 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 do not appear to 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 of that 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 information indicates the species may be more abundant than was known at the time of listing (Service 2007c).

At the time of listing, the lesser long-nosed bat occurred at relatively low population numbers (about 500 individuals in Arizona) and exhibited a declining trend (Service 2007c). Information gathered since the listing shows higher population numbers and a generally stable-to-increasing trend (Service 2007c).

The primary threats identified at the time of listing were habitat destruction and disruption, disturbance of roosting sites, loss of food sources, and direct

killing by humans. Information in the 5-year review suggests that these threats persist and may actually be increasing in some areas. However, the severity of these threats may be reduced as a result of the increased abundance of the species.

In summary, we found that, while threats to the lesser long-nosed bat persist, the magnitude of these threats may be reduced due to the potential increased abundance of the species since the time of listing. 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 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 the review.

Kuenzler Hedgehog Cactus

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).

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 at the time of listing were collection and habitat degradation due to road improvements, grazing, and real estate development. As discussed in the 5-year review, collection of Kuenzler hedgehog cactus from its natural habitats has not had a significant observable impact on the known populations. The potential threat of collection is likely mitigated to some extent by the fact that most populations are relatively remote and less likely to be impacted by casual collectors.

Further, commercial growers are offering greenhouse-grown plants and seeds to hobbyists who might have otherwise obtained their plants or seeds from natural populations.

Habitat destruction due to road construction and home building has affected a very small portion of the area occupied by Kuenzler hedgehog cactus. At the time of the 5-year review, no significant mining or oil and gas production activities took place within the habitat of this cactus. Most of the known occupied habitats occur in relatively remote areas, which are unlikely to be converted to land uses other than open range for livestock grazing. Evidence continues to indicate that livestock grazing may continue to impact Kuenzler hedgehog cactus through increased erosion and removal of insulating cover that may affect the success of seedling establishment.

In summary, we found that, while livestock grazing may continue to affect the species, collection and habitat modification due to development do not appear to be as severe as they were thought to be at the time of listing. Further, the range of the species appears to have expanded, and some level of management occurs 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 analyses found in the 2005 5-year review, which was based on the best scientific information available at that time. Since the time of that 5-year review, we have received no readily available information that would conflict with the conclusions found in the review.

Tobusch Fishhook Cactus

The 5-year review for the Tobusch fishhook cactus recommended reclassification from endangered to threatened. The primary rationale for this recommendation was that the primary threats to the species at the time of listing have been reduced or were not as severe as originally determined, and that the distribution and abundance of the species have increased (Service 2010).

At the time of listing, only 200 individuals were known. The status of Tobusch fishhook cactus is now thought to be significantly more secure than when it was listed. The cactus has been documented at 10 protected sites, and its known range now extends to eight counties in the Edwards Plateau of central Texas.

The threats identified at the time of listing were collection and habitat

modification and loss due to real estate development, livestock damage, and other natural factors. As discussed in the 2010 5-year review, legally propagated Tobusch fishhook cactus are now available, which suggests the threat of illegal collection may no longer be as severe a threat as it was at the time of listing. Further, livestock trampling and herbivory were not identified as significant causes of mortality or damage to Tobusch fishhook cactus plants. While a significant ongoing trend of subdividing large ranches persists in Texas, relatively little urban or industrial development was occurring within the range of the species at the time of the 5-year review. However, information discussed in the 5-year review indicates that the Tobusch fishhook cactus weevil parasitizes and kills plants, and further suggests that the weevil may have caused significant declines in some populations.

In summary, we found that, while development and weevil parasitism may continue to impact the species, collection and livestock grazing do not appear to be acting on the species as severely as they were thought to be at the time of listing. Further, the range of the species appears to have expanded. 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 analyses found in the 2010 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 readily available information that would conflict with the conclusions found in the review.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that information in the petition and readily available in our files presents substantial scientific or commercial information indicating that delisting the gypsum wild-buckwheat and reclassifying black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus from endangered to threatened may be warranted.

Because we have found that the petition presents substantial information indicating that delisting the gypsum wild-buckwheat, and reclassifying black-capped vireo, lesser long-nosed bat, Kuenzler hedgehog cactus, and Tobusch fishhook cactus may be warranted, we are initiating status reviews for each taxon to

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; and

(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; or

(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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