

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[Docket No. FWS-R2-ES-2016-0119;  
FXES11130900000 178 FF09E42000]

RIN 1018-BB87

**Endangered and Threatened Wildlife and Plants; Removing *Eriogonum gypsophilum* From the Federal List of Endangered and Threatened Plants**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and 12-month petition finding; request for comments.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove *Eriogonum gypsophilum* (gypsum wild-buckwheat) from the Federal List of Endangered and Threatened Plants (List) due to recovery. This determination is based on thoroughly reviewing the best scientific and commercial data available, which indicates the species has recovered and no longer meets the Act's endangered or threatened definitions. We are seeking information, data and public comments on this proposed rule. This document also serves as our 12-month finding on a petition to remove *Eriogonum gypsophilum* (gypsum wild-buckwheat) from the Federal List of Endangered and Threatened Plants.

**DATES:** To ensure we can consider your comments on this proposed rule, they must be received or postmarked on or before March 7, 2017. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by February 21, 2017.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2016-0119, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment 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-2016-0119; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

**Copies of Documents:** This proposed rule and supporting documents are available on <http://www.regulations.gov>. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; telephone 505-346-2525.

**FOR FURTHER INFORMATION CONTACT:** Wally Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**); telephone 505-346-2525; facsimile 505-346-2542. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Information Requested**

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and will be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain their basis. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

- (1) New information concerning *Eriogonum gypsophilum*'s general conservation status;
- (2) New information on historical and current *Eriogonum gypsophilum* status, range, distribution, and population size,

including any additional population locations, and;

(3) New information regarding *Eriogonum gypsophilum* life history, ecology and habitat use.

Please note that submissions merely stating support for, or opposition to, the action being considered, without providing supporting information, although noted, will not be considered in making a determination, as the Act (16 U.S.C. 1531 *et seq.*) section 4(b)(1)(A) 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."

Prior to issuing a final rule on this proposed action, we will consider all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email, fax, or to an address not listed in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. Please note that comments posted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver hardcopy comments that include personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection in two ways:

- (1) You can view them on <http://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2016-0119, which is the docket number for this rulemaking.
- (2) You can make an appointment, during normal business hours, to view the comments and materials in person at

the U.S. Fish and Wildlife Service's New Mexico Ecological Services Field Office (see **ADDRESSES**).

### Public Hearing

The Act, Section 4(b)(5)(E) enables one or more public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule public hearings on this proposal, if any are requested, and hearing locations, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

### Background

Section 4(b)(3)(B) (16 U.S.C. 1531 *et seq.*) of the Act requires that any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants must contain substantial scientific or commercial information that the petitioned action may be warranted. We must make a finding within 12 months of petition receipt. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but immediate regulation proposal implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**. This document: (1) Serves as our 12-month warranted finding on a July 16, 2012, petition dated July 12, 2012, from New Mexico Cattle Growers' Association, Jim Chilton, New Mexico Farm and Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau requesting that we "delist" *Eriogonum gypsophilum* (that is, remove *Eriogonum gypsophilum* from the List of Endangered and Threatened Plants (List)) under the Act; and (2) proposes to remove *Eriogonum gypsophilum* from the List due to recovery.

### Previous Federal Actions

*Eriogonum gypsophilum* was listed on January 19, 1981, as a threatened species (46 FR 5730). When the species

was listed, an area that covered 95 percent of the only known population, now known as the Seven Rivers Hills population, was designated as critical habitat (46 FR 5730; January 19, 1981). The written critical habitat description listed two section numbers in the correct township but incorrect ranges. The accompanying map correctly demonstrated the designated lands. On December 21, 1984, we published a correction to the written critical habitat description (49 FR 49639). However, that correction was also incorrect because the range descriptions did not accurately describe the designated critical habitat displayed on the accompanying map. The correct written description should read T20S R25E Section 24: N $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ; and T20S R26E Section 19: N $\frac{1}{2}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ ; gypsum soils.

On February 2, 2005, we initiated a *Eriogonum gypsophilum* 5-year review (70 FR 5460). On November 9, 2007, we completed a 5-year review, which recommended *Eriogonum gypsophilum* be delisted. The 2007 5-year review noted that *Eriogonum gypsophilum* threats identified at the time of listing and in the recovery plan were no longer deemed significant and that two new populations, of between 11,000 and 18,000 plants each, were discovered.

On July 16, 2012, we received a petition dated July 12, 2012, from New Mexico Cattle Growers' Association, Jim Chilton, New Mexico Farm and Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau requesting that we delist *Eriogonum gypsophilum* and other species, under the Act. The petitioners' request to delist *Eriogonum gypsophilum* was based entirely upon the scientific and commercial information contained within our 2007 5-year review.

On May 31, 2013, we received a complaint from the same petitioners alleging we failed to make a 90-day finding on the petition.

On September 9, 2013, we published a 90-day finding (78 FR 55046) that delisting *Eriogonum gypsophilum* may be warranted. This 90-day finding also announced our initiation of an *Eriogonum gypsophilum* 5-year review. Following this 90-day finding, the parties agreed to a stipulated dismissal of the pending lawsuit.

On November 20, 2015, the petitioners filed a second lawsuit. This lawsuit sought to compel the Service to complete a 12-month finding regarding *Eriogonum gypsophilum*, and other species.

On November 4, 2016, we completed our second *Eriogonum gypsophilum* 5-

year review, which also recommended delisting due to recovery. The 2016 five-year review supports this proposed rule. The review concluded that the threats identified at the time of listing and in the recovery plan are no longer deemed significant. In addition, two new populations have been discovered since the listing, thus exceeding the recovery plan's population goals.

### Species Information

#### Species Description

*Eriogonum gypsophilum* is a rare, regionally endemic plant species presently known to occur in three populations in Eddy County in southeastern New Mexico. *Eriogonum gypsophilum* was first collected by Wooten and Standley in 1909, on a hill southwest of Lakewood, New Mexico (Wooten and Standley, 1913). It is a small, erect herbaceous perennial, a member of the knotweed family, and measures about 8 inches high.

#### Distribution

Three *Eriogonum gypsophilum* populations are known and all are located in Eddy County, southeastern New Mexico. Only one population (Seven Rivers Hills) was known at the time of listing and recovery plan development. After *Eriogonum gypsophilum* was listed as threatened, other suitable habitats were surveyed and two additional populations were found in 1985. *Eriogonum gypsophilum* distribution within its populations is patchy and follows suitable gypsum outcrops geographic patterns, which are generally elongated and narrow. The occupied outcrops are approximately 2.7 kilometers (km) (1.7 miles (mi)) long for the Seven Rivers Hills population, 1.6 km (1 mi) long for the Black River population, and 3.5 km (2.2 mi) long for the Ben Slaughter Draw population. *Eriogonum gypsophilum* patches within populations are also relatively small. The occupied habitat is only 16.3 hectares (ha) (40.3 acres (ac)) at Seven Rivers Hills, little more than 11.9 ha (29.5 ac) at Black River, and 66.4 ha (164.1 acres) at Ben Slaughter Draw (including Hay Hollow). Therefore, this species occupies an approximate total range wide habitat of 94.7 ha (233.9 ac) (Sivinski 2005, p. 6; Sivinski 2013, p. 1).

A population of *Eriogonum gypsophilum* was previously reported near Hay Hollow by Knight (1993, p. 34) and then discounted following negative surveys (Sivinski 2000; pp. 2–3). In 2013, Sivinski rediscovered this population, considered an extension of the Ben Slaughter population, and he estimated 1,000 to 1,500 plants across

less than 4 ha (10 ac) (Sivinski 2013, p. 1).

#### Habitat

*Eriogonum gypsophilum* occupies Permian-age Castile Formation gypsum soils and gypsum outcrops. These habitats are dry and nearly barren except for common of gypsophilic (gypsum-loving) plant species, including *Eriogonum gypsophilum*, hairy crinklemat (*Tiquilia hispida*), gypsum blazingstar (*Mentzelia humilis*), and Pecos gypsum ringstem (*Anulocaulis leiosolenus* var. *gypsophilus*) (NMRPTC 2015, <http://nmrareplants.unm.edu>).

#### Biology

*Eriogonum gypsophilum* is a perennial species that reproduces both by producing seed and asexually by producing clone rosettes from rhizomes or root-sprouts. Seed production has been observed (Spellenberg 1977, p. 22), but seedlings are rarely seen and most propagation occurs by asexual reproduction, or during infrequent climatic episodes suitable for seed germination and seedling establishment (Spellenberg 1977, p. 31; Knight 1993, p. 25). Densities within *Eriogonum gypsophilum* patches range from 0.03 to 2.04 individual rosettes per square meter (m<sup>2</sup>) (0.003 to 0.19 per square feet (ft<sup>2</sup>)) (Knight 1993, pp. 28–32). Plant densities within three monitoring plots at the Seven Rivers Hills population indicated a slight increase from 1987 to 1993 (Knight 1993, p. 28).

#### Five Factors Information Summary

Section 4 (16 U.S.C. 1533) of the Act and implementing regulations (50 CFR part 424) set forth procedures to add species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under Section 4(a)(1) of the Act, a species may be determined endangered or threatened based on any of the following five factors, acting alone or in combination:

(A) The present or threatened habitat or range destruction, modification or curtailment;

(B) Commercial, recreational, scientific, or educational overutilization;

(C) Disease or predation;

(D) Inadequate regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

When delisting a species, we must consider both these five factors and how conservation actions have removed or reduced the threats. We may delist a species according to 50 CFR 424.11(d) if

the best available scientific and commercial data indicate 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 erroneous.

In making this finding, *Eriogonum gypsophilum* five factors information provided in the Act, Section 4(a)(1), is discussed below. In considering what factors might constitute threats, we must look beyond mere species exposure to the factor to determine whether the species responds to the factor in a way that causes actual species impacts. 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 if that factor rises to threat level, meaning that it may drive or contribute to species extinction risk such that the species warrants listing as an endangered or threatened species as the Act defines those terms. This does not necessarily require empirical threat proof. Combining exposure and some corroborating evidence indicating how the species is likely impacted could suffice. Merely identifying factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information.

The 1981 *Eriogonum gypsophilum* threatened status listing determination (46 FR 5730; January 19, 1981) cited off-road vehicles (ORVs), grazing, and Brantley Dam project impacts as potential species threats. At the time of listing, the Seven Rivers Hills population was the only known *Eriogonum gypsophilum* population. Losing any plants or habitat from the only known population would have been considered a significant loss at that time, making the species vulnerable to extinction in the near future. However, two additional *Eriogonum gypsophilum* populations have since been documented at Black River and Ben Slaughter Draw, and have been included in this species reassessment. With the discovery of two additional populations and subsequent increase in species

redundancy, combined with the Federal resource management practices implemented since the time of listing (see discussion below), the threats identified at the time of listing and in the recovery plan are no longer considered significant for *Eriogonum gypsophilum*.

#### Factor A. The Present or Threatened Habitat or Range Destruction, Modification or Curtailment

All *Eriogonum gypsophilum* habitat occurs in areas with high potential for mineral extraction and associated development, especially oil and gas. Although the three populations of *Eriogonum gypsophilum* comprise a small geographic area, making the species vulnerable to such land use changes, the majority of remaining suitable habitat is located on Federal lands managed by the Bureau of Land Management (BLM), and significant portions of each *Eriogonum gypsophilum* population have been designated by BLM as Special Management Areas (SMAs). By definition, SMAs are areas where specific management attention is required and can be designated to protect important resources, including special status species like *Eriogonum gypsophilum*. The Seven Rivers Hills SMA includes 95 percent of the Seven River Hills population of *Eriogonum gypsophilum*, the Black River SMA includes 50 percent of the Black River population, and the Ben Slaughter SMA includes 50 percent of the Ben Slaughter population. Potential threats to *Eriogonum gypsophilum* as a result of mineral extraction and oil and gas associated development, such as directly removing occupied habitat during construction or pipeline leaks impacts, have been offset by BLM's designation of significant portions of each *Eriogonum gypsophilum* population as an SMA. Specifically, these SMAs provide management guidance, and in the case of *Eriogonum gypsophilum*, do not allow surface occupancy for most surface-disturbing activities. The Bureau of Land Management has committed to keeping similar protections for special status species and sensitive soil outcrops through a revised resource management plan, which will include specific land designations and the implementation of best management practices. The Service has participated in the development of this resource management plan, and will continue to work closely with BLM throughout the implementation phase. A final resource management plan is expected to be signed by BLM in 2017. As a BLM special status species,

conservation of *Eriogonum gypsophilum* is expected to continue into the foreseeable future as BLM manual 6840, titled Special Status Species Management, directs. BLM special status species are federally listed or proposed and Bureau sensitive species, which include both Federal candidate species and delisted species (BLM 2008, entire).

The area designated as *Eriogonum gypsophilum* critical habitat at Seven Rivers Hills was given BLM SMA status in 1988 (BLM 1988, p. C-2) and protects about 95 percent of the habitat this population occupies. A few hectares of occupied habitat fall outside the SMA boundaries on adjacent BLM and Bureau of Reclamation (BOR) lands. The 1988 BLM Resource Management Plan also created a Springs Riparian Habitat SMA to restrict land use in critical riparian habitat within the Chihuahuan Desert Ecosystem. This SMA includes lands occupied by the Ben Slaughter Draw *Eriogonum gypsophilum* population (BLM 1988, p. C-14). The 1997 BLM Resource Management Plan Amendment included the Black River SMA that covers the Black River *Eriogonum gypsophilum* population (BLM 1997, pp. AP4:9, AP4:15-17). SMA management prescriptions at the three populations on public lands include:

- Apply no surface occupancy stipulation to all future oil and gas leases.
- Avoid future right-of-way actions through SMA area.
- Withdraw from mining claim location, and close to mineral material disposal and solid material leasing.
- Complete limited ORV designation and implementation plan to restrict vehicles to designated routes.
- Restrict fire suppression and geophysical operations to comply with ORV designation.
- Restrict surface disturbance, including plant collections and camping within the area.

Proposed actions related to lease rights acquired prior to the SMA designations are analyzed for impacts and designed to reduce or remove the impacts under BLM Manual 6840 directions, and using conditions-of-approval on the permit. SMA guidance can also affect actions that cross both public lands and adjacent non-Federal lands (e.g., pipelines, power lines), due to the actions being connected through a Federal nexus, thus affording species conservation. The occupied habitats are relatively small in acreage and can typically be avoided by surface disturbing activities.

#### Mineral Extraction and Related Activities

All *Eriogonum gypsophilum* habitats are within areas with high potential for fluid minerals leasing and extraction. Oil and gas well pads, roads, and pipelines are proliferating in this region of New Mexico. The BLM SMA where the Seven Rivers Hills population's designated critical habitat occurs presently eliminates this threat by requiring "no surface occupancy" for mineral leases within the designated critical habitat. If the critical habitat designation were removed, no land use change is expected to occur as BLM has committed to continue protecting sensitive gypsum soils and the special status species that occur there, including *Eriogonum gypsophilum*. Roads and pipelines associated with mineral development also must avoid this area. The Seven Rivers Hills SMA protects about 95 percent of the occupied habitat from this land use. SMAs with "no surface occupancy" stipulations for oil and gas leases were also administratively placed on BLM jurisdictions containing *Eriogonum gypsophilum* habitats at the Black River and Ben Slaughter Draw populations in 1997 (BLM 1988, pp. C-15; BLM 1997, pp. AP4:9, AP4:15-17). These SMAs protect approximately 50 percent of the total habitat at Black River and Ben Slaughter Draw from oil and gas development (Sivinski 2005, p. 6). Approximately 65 percent of total habitat area in all three *Eriogonum gypsophilum* populations is presently protected from surface impacts associated with oil and gas development and these impacts would be avoided into the foreseeable future under BLM manual 6840 direction.

Knight (1993, p. 57) concluded that oil and gas mineral development, and possibly gypsum, were the only serious potential threats to *Eriogonum gypsophilum*. At this time, surface disturbance associated with Federal mineral development is very unlikely to occur on *Eriogonum gypsophilum* habitats within the BLM SMAs. Mineral development could potentially affect nearly 50 percent of the Black River population that occurs on private or State lands. In fact, there is presently an active gas well established within 0.4 km (0.25 mi) of *Eriogonum gypsophilum* habitat on the State trust land portion of this population (Sivinski 2000, p. 2). The private land portion, approximately 20 percent of the Black River population, could also be impacted by future minerals development. However, approximately 50 percent of the Black River habitat, about 95 percent of the

Seven Rivers Hills habitat, and approximately 50 percent of Ben Slaughter Draw habitats are protected by the BLM SMAs "no surface occupancy" stipulation (Sivinski 2005, p. 6). Oil and gas may be leased on these lands, but must be extracted by directional drilling from outside the SMAs. Directional drilling allows a company to develop fluid minerals without being directly above (vertical of) the target, meaning this technology affords greater avoidance options to conserve sensitive habitats. The SMAs require that road and pipeline rights-of-way associated with oil and gas development must also avoid SMA disturbance.

The Seven Rivers Hills and Ben Slaughter Draw SMAs also withdrew minerals, such as gypsum, sulfur, and salts, from claim and mine development, but mineral claims are not specifically withdrawn from the Black River SMA. Chemical analysis found the gypsum outcrops *Eriogonum gypsophilum* occupied to be from the Castile Formation, composed of 85 percent hydric gypsum, which is suitable quality for mining (Weber and Kottowski 1959, p. 52; Knight 1993, p. 42). However, gypsum mining potential for the Castile formation is low because of large deposits of higher quality gypsum presently being mined elsewhere in New Mexico (Knight 1993, p. 42).

Other potential impacts to the Seven Rivers Hills *Eriogonum gypsophilum* population have not occurred, partly due to the Act's protections. Due to the species occurring in three geographically separate populations, there is a lesser potential of a single project affecting the entire population of *Eriogonum gypsophilum*. For example, U.S. Highway 285 widening was accomplished without impacting the plants in or near this right-of-way (Sivinski 2000, pp. 1-2) and would have only affected one of the three populations. Common land use activities, such as mineral development or livestock grazing, are addressed in the BLM resource management plan and would be managed through the BLM permitting process, which considers all sensitive species and their habitats.

#### Reservoir Development and Flooding

The populations at Black River and Ben Slaughter Draw are not near any existing or proposed reservoirs and, therefore, are not threatened by flooding. At the time of listing, we considered the possibility of flooding to the Seven Rivers Hills population from the Brantley Reservoir. However, this impact has not occurred because the dam spillway does not allow the water

level to rise to the level necessary to flood populations (BOR 2009, p. 2). The spillway elevation is 993.5 meters (m) (3,259.5 feet (ft)) mean sea level. Water level peaked on March 29, 2015 (U.S. Geological Survey 2016, <http://waterdata.usgs.gov>), at approximately 4.0 m (13 ft) above the spillway at 997.5 m (3,272.5 ft) elevation. Even at this highest level, the pool remained east of U.S. Highway 285 and the *Eriogonum gypsophilum* population. Knight (1993, pp. 53–54) analyzed potential Brantley Reservoir impacts reaching the maximum flood pool with the assumption that the water level would rise similarly across U.S. Highway 285. Under this assumption, the maximum flood event pool in Brantley Reservoir could temporarily flood a few hectares of *Eriogonum gypsophilum* habitat. He found eight *Eriogonum gypsophilum* plants at or below the 1,002.8 m (3,290 ft) level on the west side of U.S. Highway 285. The soils in this area would become saturated for a time after a flood and could potentially be invaded by salt cedar (*Tamarix* spp.), an invasive tree that often lines reservoir banks. Knight (1993, pp. 53–54) surveyed another 6 m (20 ft) vertical up to the 1,009 m (3,310 ft) level where salt cedar might become established and located an additional 44 *Eriogonum gypsophilum* plants. In 1993, 52 plants were in the hypothetical maximum flood impact zone. A flood event could potentially impact about 100 plants in this population of several thousand plants. However, at the highest water level recorded in 2015, which was at the maximum safe flood control level, the water did not reach U.S. Highway 285 and *Eriogonum gypsophilum* was not impacted. Therefore, flooding from the Brantley Reservoir is not a significant threat to *Eriogonum gypsophilum*.

#### Off-road Vehicle (ORV) Use

ORV traffic is not presently an *Eriogonum gypsophilum* threat. Little to no ORV traffic evidence has been observed in recent years in any of the three *Eriogonum gypsophilum* populations (Knight 1993, pp. 52–53; Sivinski 2000, p. 2; Chopp 2016, p. 1). ORV traffic absence at the Black River and Ben Slaughter Draw SMAs may be attributed to their remote locations and stands of thorny mesquite shrubs surrounding the *Eriogonum gypsophilum* populations (Knight 1993, p. 53). BLM has established SMA restrictions for ORV traffic that protect 95 percent of the Seven Rivers Hills habitat and 50 percent of the Ben Slaughter Draw habitat from this potential impact. These SMA restrictions cannot eliminate occasional

ORV violations, but severe impacts from frequent ORV use will not likely be tolerated by BLM. These protections are likely to continue into the future due to protections described in the resource management plan and BLM manual 6840, which is the principal policy instrument detailing BLM management of special status species (BLM 2008, entire). To prevent unauthorized ORV traffic, in 2010, BLM installed pipe-rail fencing along portions of existing roads and trails at all three known populations, which will continue to be maintained as a condition of the revised resource management plan (BLM 2010, entire). Fencing was not installed at the Ben Slaughter Draw population Hay Hollow portion, but there are no easy access routes to this area (Chopp 2016, p. 1). Therefore, there is little to no ORV threat at this site now or in the foreseeable future.

#### Livestock Grazing

Livestock grazing is the predominant land use in all *Eriogonum gypsophilum* habitats. Cattle will not usually eat *Eriogonum gypsophilum* plants, and grazing does not appear to have a negative effect (Sivinski 2000, p. 2). Forage production on these gypsum outcrops is relatively low and does not attract or concentrate livestock. The *Eriogonum gypsophilum* recovery plan did not identify livestock grazing as a serious potential designated critical habitat threat at Seven Rivers Hills (Service 1984, entire).

Livestock using the habitat in the Black River population has little effect on *Eriogonum gypsophilum*, and the river is remote enough from the gypsum outcrop to preclude concentrated livestock activity (Knight 1993, p. 52; Sivinski 2000, p. 2).

The Brantley Dam conservation pool was anticipated to be in close proximity to the Seven Rivers Hills *Eriogonum gypsophilum* population such that it was expected to concentrate livestock that could trample plants and make erosion-prone trails through this habitat. Over the past 30 years, the actual conservation pool has remained more than 1.6 km (1 mi) away from this population, and livestock have not concentrated in this habitat.

The Ben Slaughter population is immediately adjacent to Ben Slaughter Spring and Jumping Spring, which are water sources that concentrate livestock use. Livestock trailing and trampling *Eriogonum gypsophilum* plants in this population has been reported by Knight (1993, p. 52), especially in the Ben Slaughter Spring immediate vicinity. Knight (1993, p. 54) observed that plants trampled by livestock tended to produce

smaller rosettes than plants not affected, thus shifting that population portion towards higher juvenile form percentages. The Bureau of Land Management has partly mitigated this impact by erecting a livestock-proof fence that encloses 8 ha (20 ac) around Ben Slaughter Spring, including a few hectares of *Eriogonum gypsophilum* habitat with several hundred plants. This fenced enclosure occurs within the 146-ha (360-ac) BLM SMA that protects the spring and surrounding upland from land-use surface occupancy. The Bureau of Land Management enclosure gate is not always closed to livestock entry (Sivinski 2000, p. 2), but does give the opportunity to manage grazing effects.

All three *Eriogonum gypsophilum* populations occur near, or within a few kilometers, of permanent natural waters sources. Therefore, the habitats at these populations have experienced more than a century of livestock use that, at times, could have been very intense and aggressive. In fact, the recent heavy livestock concentrations within the Ben Slaughter Draw population have not likely exceeded the livestock amounts concentrated in this area for many decades. These gypsum outcrop habitats may have been modified by this long history of livestock use, but continue to support large species populations. More than 75 percent of the *Eriogonum gypsophilum* habitats occur on BLM lands. Currently, BLM livestock stocking rates appear to have little, or no, impact on the Seven Rivers Hills and Black River populations. It is also evident that heavy livestock concentrations at Ben Slaughter Draw have not caused the population to decline. It is unlikely that livestock grazing will become a serious species threat in most of its habitats, especially at the Seven Rivers Hills and Black River populations, now or in the foreseeable future.

#### Factor B. Commercial, Recreational, Scientific, or Educational Overutilization

There are no immediate threats from commercial or recreational *Eriogonum gypsophilum* collection. The species has no recreational value, and it is not offered for sale within the horticultural market at this time. It is a handsome plant, with early-season green stems that turn dark red after hoisting bright yellow flowers, which could attract rock garden hobbyists, but may not be suitable for non-gypseous garden soils. Scientific collection permits have been confined to a few vouchered specimens to document new species locations.

In addition to alleviating threats, positive steps have been taken to inform

and educate the public about *Eriogonum gypsophilum*. The New Mexico Rare Plants Web site was established in 1998 by the New Mexico Rare Plant Technical Council (NMRPTC) to provide information to the public on rare, threatened and endangered plant species (NMRPTC 2015, <http://nmrareplants.unm.edu>). This Web site prominently displays descriptive *Eriogonum gypsophilum* information and illustrations. This effort has helped fulfill the intent to provide information to the public and foster *Eriogonum gypsophilum* conservation support.

#### Factor C. Disease or Predation

There are no known documented or anecdotal *Eriogonum gypsophilum* disease or predation reports.

#### Factor D. Inadequate Existing Regulatory Mechanisms

Federal regulatory mechanisms have been effective in removing or managing many *Eriogonum gypsophilum* threats that could threaten extinction now or in the foreseeable future. The previously identified threats are nearly identical between the three populations, and all three populations include Federal and non-Federal lands. The SMAs afford conservation on Federal lands and adjacent non-Federal lands for linear projects such as roads and pipelines. Using the SMA designations, BLM has successfully protected the designated critical habitat at Seven Rivers Hills from mineral development and ORV traffic. BLM also regulates and manages livestock grazing on significant portions of all three of the known populations. These areas will continue to be conserved through implementation of BLM's revised resource management plan.

ORV traffic prohibitions are difficult to enforce because of sign vandalism, for which law enforcement officers cannot keep a continuous watch. However, BLM SMA restrictions on ORV traffic at the Seven Rivers Hills designated critical habitat area and Ben Slaughter Draw appear to be effective at diminishing ORV impacts. BLM further committed its authority by restricting access to the occupied *Eriogonum gypsophilum* habitat by installing protective pipe-rail fences above and beyond the SMA description's land use restrictions.

The Bureau of Land Management SMA at the Black River population requires a "no surface occupancy" stipulation for all oil and gas leases, but does not have prescriptions to protect this area from mineral claims or ORV traffic. All three *Eriogonum gypsophilum* SMA designations in the

BLM Resource Management Plan will remain in effect for the life of that plan and are likely to continue for any future amendments.

The Carlsbad Resource Management Plan does not clearly state that future plan revisions shall continue to maintain *Eriogonum gypsophilum* SMA restrictions if this species is removed from the List. However, due to the species only occurring in gypsum outcrops, which are regarded as a unique resource by BLM, it is expected that BLM would continue to protect this habitat and, therefore, *Eriogonum gypsophilum* in their new resource management plan (BLM 2015, p. 1).

A few hectares of *Eriogonum gypsophilum* habitat in the Seven Rivers Hills population occur on BLM land outside the designated SMA and on Federal land in BOR jurisdiction, which is also not within the SMA. Land uses that may affect *Eriogonum gypsophilum* on these lands must presently be reviewed by the Service. Protections afforded by this review would cease if *Eriogonum gypsophilum* is removed from the List. However, BLM's current resource management plan would continue to provide species protections. The Bureau of Land Management has committed to continuing these land use restrictions in its revised resource management plan to provide species and habitat conservation in the foreseeable future.

There are no regulatory protections for federally listed endangered and threatened plant species from surface-disturbing land uses on private or State-owned lands, unless the activity is authorized, funded, or carried out by a Federal agency. Approximately 50 percent of the *Eriogonum gypsophilum* gypsum habitats at the Black River population occurs on private and State-owned land. About 10 percent of the occupied habitat in the Ben Slaughter Draw population is on private and State-owned land (Sivinski 2005, p. 6). The New Mexico State Land Office is aware of the *Eriogonum gypsophilum* habitats on its State trust lands, and Section 75-6-1 (New Mexico Statutes Annotated 1978 of the New Mexico Administrative Code directs New Mexico's Energy, Minerals and Natural Resources Department to investigate all plant species in the state for the purpose of establishing a list of State endangered plant species. It also authorizes that department to prohibit state endangered species take, with the exception of permitted scientific collections or propagation and transplantation activities that enhance endangered species survival. Should this rule be finalized as proposed, state protections

for *Eriogonum gypsophilum* would remain in place until the state decides to remove the plant from the list of state endangered species.

#### Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Our previous reviews did not analyze climate change as a factor affecting the species. Based on the unequivocal evidence the earth's climate is warming from observing increasing average global air and ocean temperatures, widespread glacier and polar ice cap melting, and rising sea levels recorded by the Intergovernmental Panel on Climate Change (IPCC) Report (IPCC 2007a, entire; 2013, entire), climate change is now a factor in all Federal agency decision-making (Government Accounting Office 2007, entire). The Service has incorporated climate change into its decision-making under the Act (Service 2010, entire). Global climate information has been downscaled to our region of interest, and projected into the future under two different scenarios of possible emissions of greenhouse gases (Alder and Hostetler 2014: 2). Climate predictions for the *Eriogonum gypsophilum* area include a 5 to 6 percent increase in maximum temperature (up to 4 °C (7.2 °F)), 11 percent decrease in precipitation, and a 25 percent increase in evaporative deficit over the next 25 years (National Climate Change Viewer, Eddy County Data [http://www2.usgs.gov/climate\\_landuse/clu\\_rd/nccv/viewer.asp](http://www2.usgs.gov/climate_landuse/clu_rd/nccv/viewer.asp), accessed May 15, 2016). In 11 of the last 15 years, moderate to severe drought conditions existed in the *Eriogonum gypsophilum* occupied area, with 11 percent of the time in exceptional drought (National Drought Mitigation Center 2015, Eddy County Data) with no obvious negative effects on the species.

*Eriogonum* is a highly derived taxon that has undergone rapid evolution in arid western North American regions (Reveal 2005, p. 1). We expect that due to its observable resistance to severe drought periods over the past 30 years, *Eriogonum gypsophilum* is adaptable to climate change, and there is no information to indicate that climate change will have a detrimental effect on the species.

#### Factors A through E Cumulative Effects

*Eriogonum gypsophilum* was known from only a single population on the Seven Rivers Hills when it was listed as a threatened species (46 FR 5730; January 19, 1981). An area covering 95 percent of this population was designated as critical habitat at the time of listing. Population monitoring at this

site from 1987 to 2005 did not reveal any significant increase or decrease in plant numbers since the recovery plan was finalized in 1984. No surface-disturbing activities have occurred in the designated critical habitat since 1984, and this habitat remains unchanged. The Seven Rivers Hills site remained as the only known extant population until 1984. The recovery plan concluded that this threatened species could be delisted (due to recovery) when the designated critical habitat area was designated an area of critical ecological concern (ACEC), or was provided a similar special use designation. The Bureau of Land Management designated the critical habitat as a SMA in 1988, thus fulfilling this recovery plan criterion.

Two additional populations were documented in Eddy County since this plant was listed in 1981. Plant numbers in those populations also appear relatively unchanged since their 1985 discovery; the Black River population has a minimum of 16,660 plants, and the Ben Slaughter Draw population is estimated at around 18,270 plants. Additionally, an estimated 1,000 to 1,500 plants in the Ben Slaughter Draw population were observed in 2013, at the nearby Hay Hollow location. These numbers are estimates, as it is difficult to estimate plant numbers in each population due to variable density and patchy distribution across occupied gypsum outcrops. All previous and current plant numbers estimates lack precision, but adequately demonstrate substantial populations at the three known locations. No *Eriogonum gypsophilum* population extirpations or obvious declines were reported since it was listed as a threatened species in 1981.

Based on extensive survey efforts in New Mexico, it is unlikely that other new populations will be discovered. Potentially suitable habitat exists in Texas on private land, but no surveys have been conducted.

*Eriogonum gypsophilum* is currently listed as threatened with designated critical habitat. Threats identified at the time of listing and in the recovery plan are no longer deemed significant. In addition, two new populations have been discovered which contain between 16,000 and 18,000 *Eriogonum gypsophilum* plants each. The entire known occupied habitat is distributed among three populations totaling 94 ha (239 ac). Because BLM's existing resource management plan provides protections for significant portions of all populations, that are expected to be extended in future versions, lessening the future threat of mineral and oil and

gas development, there are no longer any threats that are expected to cause *Eriogonum gypsophilum* to be in danger of extinction now or in the foreseeable future.

#### Finding

As required by the Act, we considered the 5 factors in assessing whether *Eriogonum gypsophilum* is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats facing *Eriogonum gypsophilum*. We reviewed the petition, information available in our files, and other available published and unpublished information, in addition to consulting with recognized *Eriogonum gypsophilum* experts and other Federal, State, and tribal agencies. Threats identified at the time of listing and in the recovery plan are no longer significant, which can largely be attributed to current BLM land-use restrictions in occupied *Eriogonum gypsophilum* habitat. In addition, two new populations were discovered since the original listing decision. Each of these populations adds between 16,000 and 18,000 plants to the overall population estimate.

Based on our reviewing the best available scientific and commercial information pertaining to the 5 factors, we find that the petitioned action to delist *Eriogonum gypsophilum* is warranted. There is sufficient evidence to indicate that, with ongoing BLM land-use restrictions to avoid and minimize surface-disturbing activities in occupied *Eriogonum gypsophilum* habitat on public lands, which are expected to continue into the foreseeable future, and no information to indicate that there are threats occurring now or in the future on private and State-owned lands, *Eriogonum gypsophilum* should be removed from the Federal List of Endangered and Threatened Plants.

In making this finding, we have followed the procedures set forth in section 4(a)(1) of the Act and our regulations at 50 CFR part 424. We intend that any *Eriogonum gypsophilum* action be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, Native American Tribes, industry, or any other interested party concerning this finding.

#### Delisting Proposal

As noted earlier in this document, Section 4 of the Act and its

implementing regulations at 50 CFR part 424, set forth the procedures for listing, reclassifying or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines "species" as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate fish or wildlife population segment that interbreeds when mature (16 U.S.C. 1532(16)). Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in Section 4(a)(1) of the Act. We must consider these same five factors in reclassifying or delisting a species. For species that are already listed as endangered or threatened, the threat analysis must evaluate both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting (*i.e.*, reclassifying a species from endangered to threatened) and removing or reducing the Act's protections. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate the species is neither endangered or threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were erroneous. We determine that *Eriogonum gypsophilum* should be delisted due to recovery.

We have determined that none of the existing or potential threats is likely causing *Eriogonum gypsophilum* to be in danger of extinction throughout all or a significant portion of its range, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We published a final policy interpreting the phrase "significant portion of its range" (SPR) (79 FR 37578; July 1, 2014). The final policy states that: (1) If a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is "significant" if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable

future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout a significant portion of its range, and the population in that significant portion is a valid distinct population segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

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

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be "significant"; and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of

its range, we do not need to determine if that portion is "significant." In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of "significant" (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions would not warrant further consideration. Our analysis indicates that there is no significant geographic portion of the range that is in danger of extinction or likely to become so in the foreseeable future. Therefore, based on the best scientific and commercial data available, no portion warrants further consideration to determine whether the species may be endangered or threatened in a significant portion of its range.

On the basis of our evaluation, we propose to remove *Eriogonum gypsophilum* from the Federal List of Endangered and Threatened Plants (50 CFR 17.12(h)).

#### Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.12(h) by removing *Eriogonum gypsophilum* from the Federal List of Endangered and Threatened Plants. The Act's prohibitions and conservation measures, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act, in the event that activities they authorize, fund or carry out may affect *Eriogonum gypsophilum*. Critical habitat for the species is designated; therefore, if made final, this rule would also remove this plant's critical habitat designation at 50 CFR 17.96(a).

#### Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. This requirement is to develop a program that detects delisted species failures to sustain itself without the Act's protective measures. If, at any time during the monitoring period, data indicate that protective Act status

should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective *Eriogonum gypsophilum* post-delisting monitoring (PDM) plan.

The PDM plan will build upon current monitoring practices. The PDM plan outlines the monitoring needed to verify that a species delisted due to recovery remains secure from extinction after the protections of the Act no longer apply. The goals of this PDM plan are to: (1) Outline the monitoring plan for species abundance and threats; and (2) identify circumstances that will trigger increased monitoring, or to identify when there are no longer concerns for *Eriogonum gypsophilum* and the PDM plan requirements have been fulfilled. The draft PDM plan will be made available for public comment in a **Federal Register** notice no later than June 30, 2017, and will be finalized concurrently with the final rule should we delist the species.

#### Peer Review

In accordance with our joint peer review policy with the National Marine Fisheries Service, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," was published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek expert opinions from at least three appropriate independent specialists regarding this proposed rule's science. Peer review's purpose is to ensure that our delisting decision is based on scientifically sound data, assumptions and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions in this proposed *Eriogonum gypsophilum* delisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input and any additional information we received as part of our final decision-making process for this proposal. Such communication may lead to a final decision that differs from this proposal.

## Required Determinations

### Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the section or paragraph numbers that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) authority, need not be prepared in connection with regulations pursuant to the Act, Section 4(a). We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

A complete list of all references cited in this final rule is available at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2016-0119, or upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES**).

### Authors

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

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

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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. Amend § 17.12(h) by removing the entry for “*Eriogonum gypsophilum*” from the List of Endangered and Threatened Plants.

■ 3. Amend § 17.96(a) by removing the critical habitat entry for “Family Polygonaceae: *Eriogonum gypsophilum* (Gypsum Wild Buckwheat).”

Dated: December 22, 2016.

**Daniel M. Ashe,**

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

[FR Doc. 2016–31764 Filed 1–5–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0138; FXES11130900000 178 FF09E42000]

**RIN 1018–BB91**

### Endangered and Threatened Wildlife and Plants; Removal of the Lesser Long-Nosed Bat From the Federal List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and 12-month petition finding; request for comments.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the lesser long-nosed bat (*Leptonycteris curasoae yerbabuena*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this subspecies have been eliminated or reduced to the point that the subspecies has recovered and no longer meets the definition of endangered or threatened under the Act. This document also serves as the 12-month finding on a petition to reclassify this subspecies from endangered to threatened on the List. We are seeking information, data, and comments from the public on the proposed rule to remove the lesser long-nosed bat from the List.

**DATES:** We will accept comments received or postmarked on or before

March 7, 2017. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section below by February 21, 2017.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2016–0138, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment 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–2016–0138, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

*Copies of documents:* This proposed rule and supporting documents, including the Species Status Assessment, are available on <http://www.regulations.gov>. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602–242–0210); or by facsimile (602–242–2513). If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

### SUPPLEMENTARY INFORMATION:

#### Information Requested

##### *Public Comments*

Any final action resulting from this proposed rule will be based on the best