

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 1, 2016.

#### H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016-30052 Filed 12-14-16; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2016-0110; FXES1113090000 178 FF09E42000]

RIN 1018-BB79

#### Endangered and Threatened Wildlife and Plants; Removing the Black-Capped Vireo 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 black-capped vireo (*Vireo atricapilla*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery (“delist”). This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been eliminated or reduced to the point that the species 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 species from endangered to threatened on the List.

**DATES:** We will accept comments received or postmarked on or before February 13, 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 **FOR FURTHER INFORMATION CONTACT** by January 30, 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-2016-0110, 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-

0110, 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 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 Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Arlington, TX 76006; telephone 817-277-1100.

**FOR FURTHER INFORMATION CONTACT:** Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006; telephone 817-277-1100; or facsimile 817-277-1129. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Requested

##### *Public Comments*

We want any final rule resulting from this proposal to be as accurate and effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

We are specifically requesting comments on:

(1) New information on the historical and current status, range, distribution, and population size of the black-capped vireo, including the locations of any additional populations.

(2) New information on the known and potential threats to the black-capped vireo.

(3) New information regarding the life history, ecology, and habitat use of the black-capped vireo.

Please note that 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, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) 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 comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Public Hearing

Section 4(b)(5)(E) of the Act provides for 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 places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

#### Peer Review

In accordance with our policy, “Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,” which was published on July 1, 1994 (59 FR 34270), we solicited the expert opinion

of at least three appropriate independent specialists regarding scientific data and interpretations contained in the Species Status Assessment Report (SSA report) (Service 2016; available at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2016-0110) supporting this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. The peer reviewers had no significant objection to the analysis provided in the SSA report. In general, the peer-review comments were largely minor (editorial) or easily addressed. Substantive comments were specifically addressed, and did not involve changes to the viability analysis of the SSA report.

#### Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that reclassifying a species may be warranted, we make a finding within 12 months of the date of receipt of the petition (“12-month Finding”). In this finding, we determine whether the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but immediate proposal of a regulation 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. We must publish these 12-month findings in the **Federal Register**.

This document represents:

- Our 12-month warranted finding on a July 16, 2012, petition to reclassify the black-capped vireo from endangered to threatened (“downlist”);
- Our determination that the black-capped vireo no longer meets the definition of endangered or threatened under the Act; and
- Our proposed rule to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife (“delist”) due to recovery.

#### Previous Federal Action

The black-capped vireo was determined to be a candidate for listing under the Act on December 30, 1982 (47 FR 58454). On October 6, 1987, the species was listed as endangered, due to various threats including nest parasitism by brown-headed cowbirds and loss of habitat from urbanization,

grazing, removal of vegetation for range improvement, and succession (52 FR 37420). Succession is a natural process of change in vegetation over time and black capped vireo habitat is lost when there are fewer wildfires maintaining the vegetation in an early successional stage. Critical habitat was not designated because there was no demonstrable benefit from the potential designation of critical habitat to the vireo and such designation was not considered prudent because additional harassment potentially affecting reproductive success could occur if critical habitat was designated (52 FR 37420). In addition, the habitat of the black-capped vireo occurs in scattered, small patches and occupied habitat would vary over time due to succession of vegetation, and would therefore be difficult to delineate and provide no benefit to recovery (52 FR 37420). A status review (“5-year review”) under section 4(c)(2)(A) of the Act was completed for the species on July 26, 2007. The 5-year review recommended that the species be reclassified (“downlisted”) from endangered to threatened given the increased numbers of known individuals and populations, the reduction in the magnitude of the threats since the time of listing, and the effects of conservation measures on the major threats to the species (USFWS 2007). 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 black-capped vireo be reclassified as threatened based on the analysis and recommendation contained in the 5-year review. The Service published a 90-day finding on September 9, 2013 (78 FR 55046) stating that the petition contained substantial scientific or commercial information indicating that the petitioned action may be warranted. On November 20, 2015, the Service received a complaint (New Mexico Cattle Growers’ Association et al. v. United States Department of the Interior et al., No. 1:15-cv-01065-PJK-LF (D. N.M.)) for declaratory judgment and injunctive relief from the New Mexico Cattle Growers’ Association, Jim Chilton, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau to, among other things, compel the Service to make a 12-month finding on the species.

#### Species Information

A thorough review of the taxonomy, life history, ecology, and overall

viability of the black-capped vireo is presented in the SSA report for the black-capped vireo (Service 2016; available at <http://www.regulations.gov> and posted at <https://www.fws.gov/southwest/es/ArlingtonTexas/>). The SSA report documents the results of the comprehensive biological status review for the black-capped vireo and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2016, entire). In the SSA report, we summarize the relevant biological data and a description of past, present, and likely future stressors to the species, and conduct an analysis of the viability of the species. The SSA report provides the scientific basis that informs our regulatory determination regarding whether this species should be listed as an endangered or a threatened species under the Act. This determination involves the application of standards within the Act, its implementing regulations, and Service policies (see *Finding and Proposed Determination*, below). The SSA report contains the analysis on which this finding is based, and the following discussion is a summary of the results and conclusions from the SSA report. We solicited peer review of the draft SSA report from three objective and independent scientific experts. We received responses from all three of the reviewers, and we modified the SSA report as appropriate.

#### *Species Description and Needs*

The black-capped vireo is a migratory songbird that breeds and nests in south central Oklahoma, Texas, and the northern states of Mexico (Coahuila, Nuevo León, Tamaulipas), and winters along Mexico's western coastal states. In general, black-capped vireo breeding habitat is categorized as shrublands and open woodlands.

The resource needs of the black-capped vireo are described not only for individuals and populations, but also for the species rangewide in the SSA report. Life-history needs are generally categorized as breeding, feeding and sheltering; for migratory species this may also include habitat for migration and wintering. Individual black-capped vireos need a suitable breeding habitat patch of at least 1.5 hectares (ha) (3.7 acres (ac)) of shrublands with between 35 and 55 percent shrub cover that consists largely of deciduous shrubs, often oaks in mesic areas, and with a low proportion of junipers. Within breeding habitat patches, shrubs mottes (groups of shrubs) with deciduous foliage from ground level to 3 meters (0

to 9.8 feet) in height are needed for nest concealment and foraging.

Populations of black-capped vireos are described based on the number of adult males the breeding habitat can support. Those sites (defined as geographical areas with suitable breeding habitat) capable of supporting at least 30 adult males are considered "manageable populations." Those sites with suitable breeding habitat capable of supporting 100 or more adult males are considered "likely resilient populations," that have the ability to withstand disturbances of varying magnitude and duration. Brown-headed cowbird (*Molothrus ater*) parasitism rates below 40 percent (Tazik and Cornelius 1993, p. 46; Wilsey et al. 2014, p. 568) are necessary to sustain and expand vireo populations.

Information on use of habitat during migration is sparse. In general, black-capped vireos require airspace for movement and woody vegetation for stopovers extending from the northernmost portion of the breeding grounds to the extent of the known wintering grounds.

The winter range of the black-capped vireo occurs entirely on the slopes of Mexico's Pacific coast. Arid and semi-arid scrub and secondary growth habitat, generally 0.6 to 3.0 m (2 to 10 ft) in height, is needed for feeding and sheltering.

Across its range, the black-capped vireo needs suitable breeding habitat to support manageable and likely resilient populations that are geographically distributed to allow gene flow and dispersal; low brown-headed cowbird parasitism rates to allow sufficient productivity; sufficient airspace and stopover sites (=areas) for migration; and wintering areas of arid and semi-arid scrub and secondary growth habitat along the Pacific slopes of western Mexico. During the breeding season, habitat requirements appear to be more specialized than during wintering and migration. Given the potential for black-capped vireos to use a wide range of habitat types during migration and wintering, much of the subsequent analysis is focused on breeding habitat.

#### *Species Current Conditions*

There are no available rangewide population estimates of breeding black-capped vireos. However, reported occurrences (sightings) of black-capped vireos are available for comparing abundance and distribution across timeframes (but see section 4.1, "Assumptions," in the SSA report; Service 2016 regarding inherent differences in survey effort and the differences between reported

occurrences and population estimates). At the time of listing in 1987, there were approximately 350 reported black-capped vireo occurrences. From 2009 to 2014 there were 5,244 adult males reported, a 17.5 percent increase from data used for the last review period (2000 to 2005).

At the time of listing in 1987, approximately 350 individual birds were known from 4 Oklahoma counties, 21 Texas counties and 1 Mexican state. The consistency of survey effort has varied throughout the years; however, it represents the best information available to evaluate abundance and distribution rangewide. The known breeding distribution now occurs in 5 Oklahoma counties, 40 Texas counties, and 3 states in Mexico.

Information from 2009 to 2014 indicates there are 14 known populations with 100 males or more (defined as a likely resilient population) throughout the breeding range, 9 of which occur on managed lands (under Federal, State, or municipal ownership, or under conservation easement) in the United States. An additional 20 manageable populations (30 or more adult males, but fewer than 100), 10 of which occur on managed lands, are distributed throughout the range in the United States.

Information gathered from annual black-capped vireo monitoring at four publically-managed areas containing the largest known black-capped vireo populations represents some of the best data available on the species' population trends. These four regularly surveyed areas (Fort Hood Military Installation, Fort Sill Military Installation, Kerr Wildlife Management Area, and Wichita Mountains Wildlife Refuge) show stable or increasing population estimates since 2005. Data reported from 2000 to 2005 indicate these populations represented 64 percent of the known population. From 2009 to 2014 these four major populations accounted for 40 percent of the known rangewide breeding population, which occurs on approximately 27,930 ha (69,000 ac) of habitat. The difference in percentage suggests the black-capped vireo's distribution is more diverse and occurs more on private lands than known from the previous timeframe (2000–2005), indicating that additional unknown populations likely exist on private lands throughout the breeding range. The largest increase in known abundance is an additional large population documented in Val Verde County, Texas. Together, these five large populations were estimated to consist of 14,418 adult males in 2013–14.

The levels of gene flow between extant populations indicate adequate genetic diversity (Vazquez-Miranda et al. 2015, p. 9; Zink et al. 2010, entire) despite some variation in studies with respect to genetic diversity, gene flow, and population structuring (e.g., Barr et al. 2008; Zink et al. 2010; Athrey et al. 2012).

Little is known about the habits of black-capped vireos during migration; however, most evidence suggests that there is a southerly, central Mexican migratory route following the Sierra Madre Oriental (Marshall et al. 1985, p. 4; Farquhar and Gonzalez 2005, entire).

Birds banded on the breeding grounds that return in following years suggest adequate availability of resources during wintering and migration. Survival rates (estimated from return rates) for black-capped vireos at Fort Hood are comparable to the rates of other passerines (Ricklefs 1973; Martin 1995; Kostecke and Cimprich 2008, p. 254).

Information on migration and wintering of black-capped vireos in Mexico is limited to a few studies that document the extent of the wintering range and estimate habitat areas. Winter habitat utilized is more general and diverse than that of the breeding grounds. While specific requirements of winter habitat are unknown, tropical dry forests (areas where arid and semi-arid winter habitats occur) exist in areas normally inaccessible to development. Habitat modelling has suggested wintering areas in Mexico occur across 103,000 to 141,000 square kilometers (km<sup>2</sup>) (39,769 to 54,440 square miles (mi<sup>2</sup>)) and extend further than previous records have identified, including the states of Guerrero and Chiapas (Vega Rivera et al. 2010, p. 101; Powell 2013, pp. 34–38). Of this area, approximately 7.1 percent (1,000,000 ha (2,471,053 ac)) occurs on natural protected areas (National parks, reserves, etc.) (Vega Rivera et al. 2010, pp. 98–102). Additionally, there are approximately 1,492,400 ha (3,687,801 ac) of lands designated as “important bird areas” in the estimated winter range that receive varying levels of protection (Vega Rivera et al. 2011, p. 103).

The U.S. portion of the black-capped vireo's range is comprised of a diversity of landownerships, from private lands to several forms of public ownership. Various conservation actions and programs have been developed and implemented in an effort to recover the species. These conservation actions implemented on publically-managed and private lands throughout the species' current range have reversed black-capped vireo declines within several populations. Ongoing active

management on publically-managed lands and those under conservation easements has resulted in 40 managed populations in Oklahoma and Texas, varying in size from a single adult male to an estimated 7,478 adult males. Of these, 9 are considered likely resilient populations and another 10 are considered manageable populations. Although information on breeding vireos in Mexico is limited, the vireo is afforded protected status (SEMARNAT 2015, p. 79), known threats appear to be of less magnitude than those in the United States, and densities of known populations have been documented up to six times as high as populations in the United States (Farquhar and Gonzalez 2005, p. 25; Wilkins et al. 2006, p. 28).

The contribution of prescribed fire and wildfire to the development of suitable breeding habitats in Oklahoma and the eastern portion of the species' Texas range is well documented (USFWS 1991, p. 22; Campbell 1995, p. 29; Grzybowski 1995, p. 5), although in the western portion of the species' breeding range in Texas and in Mexico, fire is not as essential in maintaining habitat suitability. The use of prescribed fire as a habitat management tool is increasing or remains constant across most of the United States (Melvin 2015, p. 10). More than 3,156 ha (7,800 ac) in Oklahoma and more than 48,562 ha (120,000 ac) in Texas have been burned annually (2004–2014) with prescribed fire, and much additional acreage is burned by unplanned wildfire (Oklahoma's annual average is approximately 63,940 ha (158,000 ac); Texas' annual average is approximately 322,939 ha (798,000 ac)) (NIFC 2014). Although the majority of these burns were on Federal lands outside of the black-capped vireo's range, there has been an overall increase in the use of prescribed fire as a cost effective tool for range and wildlife management.

Reduction of brood parasitism by brown-headed cowbirds through management programs increases black-capped vireo breeding success (Eckrich et al. 1999, pp. 153–154; Kostecke et al. 2005, p. 57; Wilkins et al. 2006, p. 84; Campomizzi et al. 2013, pp. 714–715). Brown-headed cowbird parasitism rates below 40 percent are vital to sustaining and expanding black-capped vireo populations. The continuation of brown-headed cowbird trapping on Federal and private properties and expansion of this practice to other properties would help reduce parasitism rates and improve black-capped vireo breeding success. In an effort to manage the brown-headed cowbird populations in Texas, the Texas Parks and Wildlife

Department has implemented a cowbird trapping program, which provided participating landowners a training and certification process.

Section 10 of the Act provides a regulatory mechanism to permit the incidental take of federally-listed fish and wildlife species by private interests and non-Federal government agencies during otherwise lawful activities. Take, as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Section 10(a)(2)(A) of the Act requires an applicant for an incidental take permit to submit a “conservation plan” that specifies, among other things, the impacts that are likely to result from the taking and the measures the permit applicant will undertake to minimize and mitigate such impacts. Conservation plans under the Act have come to be known as “habitat conservation plans” (HCPs). There have been eight approved HCPs addressing the “incidental take” of black-capped vireos for project-related impacts during the 29 years the species has been listed, all of which are in Texas. In total, approximately 7,843.2 ha (19,381 ac) of black-capped vireo habitat may be impacted, either directly or indirectly, resulting from activities authorized through HCPs. To mitigate black-capped vireo habitat loss, the permittees must preserve and provide funding for approximately 8,239.4 ha (20,360 ac) of habitat restoration and management for off-site black-capped vireo habitats as conservation actions under these HCPs.

#### Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans identify site-specific management actions that will achieve recovery of the species and objective, measurable criteria that set a trigger for review of the species' status. Methods for monitoring recovery progress may also be included in recovery plans.

Recovery plans are not regulatory documents; instead they are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer

need the protections of the Act. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The black-capped vireo recovery plan was approved by the Service on September 30, 1991 (USFWS 1991). The prospect of complete recovery of the species was indeterminable at that time, and therefore, an interim objective of reclassification from endangered to threatened status was used to develop recovery criteria (USFWS 1991, p. 36). The recovery plan includes the following reclassification criteria:

(1) All existing populations are protected and maintained.

(2) At least one viable breeding population exists in each of the following six locations: Oklahoma, Mexico, and four of six Texas regions.

(3) Sufficient and sustainable area and habitat on the winter range exist to support the breeding populations outlined in (1) and (2).

(4) All of the above have been maintained for at least 5 consecutive years and available data indicate that they will continue to be maintained.

When the recovery plan was approved in 1991, a viable population was estimated, using population viability analysis, to be at least 500 pairs of breeding black-capped vireos. The recovery plan was intended to protect and enhance the populations known at that time, while evaluating the possibility of recovery and developing the necessary delisting criteria if recovery is found to be feasible. The rangewide population was unknown, but the Oklahoma population was thought to be fewer than 300 individual birds. During the 2007 5-year review of the status of the species, it was determined that the 1991 recovery plan was outdated and did not reflect the best available information on the biology of the species and its needs (USFWS 2007, p. 5). Therefore, rather than use the existing outdated recovery criteria, the Service assessed the species' viability, as summarized in the SSA report (Service 2016; available at <http://www.regulations.gov>, Docket No. FWS-R2-ES-2016-0110) to inform the process of making the determination that the black-capped vireo has recovered.

### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part

424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. 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. A species may be reclassified or delisted on the same basis. Consideration of these factors was incorporated in the SSA report (Service 2016; available at <http://www.regulations.gov>, Docket No. FWS-R2-ES-2016-0110) as "causes and effects," and projected in future scenarios to evaluate viability of the black-capped vireo. The effects of conservation measures currently in place were also assessed as part of the current condition of the species in the SSA report and those effects were projected in future scenarios.

### Causes and Effects

When the black-capped vireo was listed in 1987, the known threats influencing its status were the loss of suitable breeding habitat (Factor A) and parasitism by brown-headed cowbirds (Factor E). These continue to be the primary factors affecting the species' viability. The loss of breeding habitat in the United States has been linked to changes in vegetation due to fire suppression (vegetational succession), grazing and browsing from livestock and native and nonnative ungulates, and the conversion of breeding habitat to other land uses. In addition, we considered the effects of climate change on available breeding and wintering habitat and other potential habitat impacts in the winter range in order to assess the status of the species throughout its range.

### Habitat Loss (Factor A)

Black-capped vireo breeding habitat most likely occurs on lands categorized in agricultural census data by landowners as "rangeland." Therefore, trends in lands categorized as rangeland is a useful indirect measure for estimating the effects of land use changes on the black-capped vireo. There has been a general increasing trend since 1987 for occurrence of rangeland within the black-capped vireo's U.S. breeding range, based on available Agricultural Census data. That is, there has been an increase in the

amount of lands reported as rangeland. Since 2002, Oklahoma has reported a 36 percent increase and Texas has reported a 4.4 percent increase in rangeland (USDA 2002a, 2002b, 2012a, and 2012b).

The prevalence of goats in Texas was specifically considered a threat to the black-capped vireo in 1987. Goat browsing can eliminate shrub foliage necessary for black-capped vireo nest concealment. Since that time, sheep and goats within the U.S. range of the vireo have dramatically decreased, largely attributed to the repeal of the National Wool Act of 1954 (7 U.S.C. 1781 *et seq.*; repealed by Pub. L. 103-130 (dated November 1, 1993), with an effective date of December 31, 1995, under section 3(a) of Pub. L. 103-130). From 1987 to 2012, reported numbers of goats decreased by 46.8 percent in counties where black-capped vireos are known to occur (USDC 1987a, 1987b; USDA 2012a, 2012b).

Cattle, white-tailed deer, and nonnative ungulates are also known to impact black-capped vireo habitat by browsing and eliminating shrub foliage necessary for nest concealment; however, this impact is to a lesser extent than the impacts of goats (Graber 1961, p. 316; Shaw et al. 1989, p. 29; Guilfoyle 2002, p. 8; Wilkins et al. 2006, pp. 52-54). Cattle numbers reported by county have also decreased across the black-capped vireo's range from 1987 to 2012 by 37.2 percent (USDC 1987a, 1987b; USDA 2012a, 2012b). While livestock numbers have decreased, rangeland acres have increased. Wilcox et al. (2012) attribute this apparent discrepancy to reductions in stocking density. This overall decline in livestock density has been driven by changing land ownership and the increasing importance of wildlife conservation (Wilcox et al. 2012). White-tailed deer densities in the species' range in Texas have increased by 18.3 percent from 2005 to 2014 (TPWD 2015, p. 27), leading to increased deer browsing, but this increase is considerably less than the decreases in goats and cattle. In Mexico, a primary economic activity is livestock ranching within the breeding range (Morrison et al. 2014, p. 37), although trend data are not available. In some areas of Mexico, livestock appears to be at low densities (small scale) (Morrison et al. 2014, p. 37) and may be separated from breeding vireos by elevation and, therefore, may not be in direct contact with habitat (Farquhar and Gonzalez 2005, p. 30).

Vegetational succession, or the change in species composition over time, continues to affect the black-capped

vireo habitat in the eastern portion of the range in Texas and in Oklahoma. Habitat that is considered to be early successional in the eastern portion of the range is created naturally or artificially by disturbance, usually by fire. In the absence of wildfire or prescribed fire, early successional habitats in the eastern portion of the range grow into wooded habitat that provides unsuitable structure for vireo nesting. In the western portion of the range in Texas and Mexico, suitable black-capped vireo habitat does not typically grow into wooded habitat, and succession management is less important (Hayden et al. 2001, p. 32; Farquhar and Gonzalez 2005, p. 32; McFarland et al. 2012, p. 5).

Overall, the reduction in numbers of goats and cattle compensates for any increase in deer browsing and contributes to a net increase in available breeding habitat. Likewise, the increasing amounts of rangelands also contribute to increased available breeding habitat. In the eastern portion of the range, breeding habitat is considered early successional habitat and associated with disturbance such as fire. Because land managers in the eastern portion of the range are increasingly using fire as a management tool, available breeding habitat has likely increased in this portion of the range. In the western portion of the range, such disturbance is not necessary to maintain suitable habitat and much of the area is currently considered suitable breeding habitat.

#### *Winter Range (Factor A)*

Black-capped vireos are more general in habitat selection for wintering, and can use scrub, disturbed habitats, secondary growth habitats, and tropical dry forests as well as shrubs. Although threats to the species on its wintering grounds were not identified at the time of listing or during the 2007 5-year review, they were considered as part of the species status assessment process to determine whether winter habitat availability could be a limiting factor. Dry forests in Mexico are a conservation concern (Miles et al. 2006, p. 502) and have historically been modified for agricultural and other purposes (Powell 2013, p. 100). The majority of impacts to tropical dry forests (greater than 55 percent) occurred prior to the listing of the black-capped vireo (Powell 2013, pp. 101–102). Habitat loss still occurs (Powell 2013, pp. 101–102), but the extent of habitat specifically important to wintering vireos is unknown, but likely diverse, considering the variety of habitats used. Habitat models have suggested the winter range may be as

large as 141,000 km<sup>2</sup> (54,440 mi<sup>2</sup>) in size (Vega Rivera et al. 2010, p. 101). The remaining habitat may be inaccessible to most anthropogenic impacts, and thus removed from many potential stressors, because it occurs on canyons and slopes.

#### *Brood Parasitism (Factor E)*

Brown-headed cowbirds are brood parasites; females remove an egg from a host species nest, lay their own egg to be raised by the adult hosts, and the result usually causes the death of the remaining host nestlings (Rothstein 2004, p. 375). Brood parasitism by brown-headed cowbirds has been documented to affect more than 90 percent of black-capped vireo nests in some Texas study areas (Grzybowski 1991, p. 4). Control of cowbirds through trapping has been shown to significantly reduce parasitism and increase population productivity of vireos (Eckrich et al. 1999, pp. 153–154; Kostecke et al. 2005, p. 28). An evaluation of Breeding Bird Survey data shows brown-headed cowbird detections have been decreasing in Texas and Oklahoma since 1967, specifically in ecoregions where black-capped vireos are known to occur (Sauer et al. 2014, entire).

Furthermore, available data suggests geographic differences in the impact cowbirds have on breeding vireos. Cowbird abundance and parasitism appears to be less prevalent on the western portion of the black-capped vireo's range and in Mexico (Bryan and Stuart 1990, p. 5; Farquhar and Maresh 1996, p. 2; Farquhar and Gonzalez 2005, p. 30; Smith et al. 2012, p. 281; Morrison et al. 2014, p. 18).

Although cowbird abundance appears to be declining and the effects of parasitism are reduced in portions of the vireo's range, cowbird control continues to be necessary to maintain the current number of black-capped vireo populations and individuals in the eastern portion of the range in Texas and in Oklahoma.

#### *Climate Change (Factor E)*

The effects of climate change are a concern in ecosystems that are sensitive to warming temperatures and decreased precipitation, such as arid and semi-arid habitats where the black-capped vireo resides. In Texas, climate change models generally predict a three to four degree Fahrenheit (1.6 to 2.2 °C) increase in temperature between 2010 and 2050 (Nielsen-Gammon 2011, p. 2.23; Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire). Predictions on precipitation trends over Texas are not as clear (Nielsen-Gammon 2011, p.

2.28), but the models tend to suggest that Texas weather will become drier (Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire).

Although the impact from the effects of climate change on shrubland habitat required by the black-capped vireo for breeding is uncertain, shrub encroachment into grasslands in North America, primarily due to fire suppression and livestock grazing, is well documented (Van Auken 2000, entire; Briggs et al. 2005, entire; Knapp et al. 2007, p. 616). Projected warming temperatures and dry conditions will likely influence future shrubland dominance (Van Auken 2000, p. 206). Evidence suggests that within the far west portion of the black-capped vireo's range, the effects of climate change and fire suppression would result in a shrubland-dominated landscape (White et al. 2011, p. 541). In this scenario, the availability of shrub habitat would be the least affected, and potentially more prevalent on the landscape which may increase the available amount of suitable breeding habitat.

#### *Species Future Conditions and Viability*

We evaluated overall viability of the black-capped vireo in the SSA report (Service 2016; available at <http://www.regulations.gov>, Docket No. FWS–R2–ES–2016–0110) in the context of resiliency, redundancy, and representation. Species viability, or the ability to survive long term, is related to the species' ability to withstand catastrophic population and species-level events (redundancy), the ability to adapt to changing environmental conditions (representation), and the ability to withstand disturbances of varying magnitude and duration (resiliency). The viability of a species is also dependent on the likelihood of new stressors or continued threats now and in the future that act to reduce a species' redundancy, representation, and resiliency.

In the SSA report, we forecast the persistence of known populations of black-capped vireos over the next 50 years. We chose 50 years to reflect specific climate change models that are relevant to the black-capped vireo and its habitat. The 50 year timeframe also reflects our ability to project land management decisions. We developed multiple future conditions scenarios for the known manageable and likely resilient populations based on both continued management (*i.e.*, continuing the current conditions of habitat and cowbird management) and decreased management (Factor D). For the decreased management scenarios, populations on private lands were

considered to have no management in the future, while habitat and cowbird management on publically-managed lands was projected to diminish in scale or frequency that would not continue to provide for the needs of the species. The decreased management scenario projected the future conditions of the species without the continued protections of the Act. All of the scenarios are considered to be within the realm of reasonable possibility. Even in the worst case scenario, at least 27 of the 34 known manageable and likely resilient populations, have a moderate to high (*i.e.* greater than 50 percent) likelihood of persisting over the next 50 years, indicating adequate redundancy across the species' range. Likewise, those populations projected in the worst case scenario are distributed throughout the range as multiple populations within each of the different areas of representation indicating adequate redundancy within each of the representative areas (as described below).

We evaluated several studies with respect to representation in the black-capped vireo, mostly involving genetic diversity. Although there is discrepancy between studies, there is evidence that adequate gene flow for healthy genetic diversity exists across known breeding populations. Additionally, there is a diversity of habitat types utilized within both the breeding and wintering ranges. For these reasons, the black-capped vireo appears to have adequate representation both genetically and ecologically to allow for adaptability to environmental changes.

Resiliency, in terms of habitat capable of supporting greater than 100 adult males, for the eastern portion of the black-capped vireo's breeding range is dependent on vegetation and cowbird management. In the western portion of the range, populations are more resilient, because management is not required to maintain suitable breeding habitat and threats related to cowbirds are less severe. Since 2005, resiliency has increased in regularly monitored populations and under future scenarios the number of likely resilient populations either increases or remains close to current levels (Service 2016), therefore, we expect that trend in increasing resiliency to continue into the future.

Currently, we consider the black-capped vireo to be a conservation-reliant species meaning it is likely that conservation actions, in the form of habitat and cowbird management, are needed for persistence of breeding populations in a portion of its range. This is because many populations

require management activities, especially in the eastern portion of the breeding range, to persist. In considering its management needs, the forecast of future conditions includes scenarios based on the needs of the species, stressors, identification of additional populations, and restoration efforts. Our forecasts that produce stable or increasing resiliency and redundancy reflect the differences in the current conditions of the species compared to the status assessment that was conducted 30 years ago, which led to the species' listing in 1987.

We consider active management of threats, where necessary, to be essential to the persistence of the species, as evidenced by the historical increases in the known population and distribution. Prescribed fire as a management tool is a cost effective way to restore prairies and shrublands, reduce impacts of invasive juniper, and often used to benefit game species (*e.g.*, deer, wild turkey). Such management actions may directly and indirectly benefit black-capped vireos when they occur within the breeding range. The Service believes our Federal and State conservation partners, who are largely responsible for the recovery of the species, will continue to manage black-capped vireo populations on publically-managed lands and promote management actions across the breeding range of the species, particularly given these compatible goals. In particular, the Integrated Natural Resource Management Plans for Fort Hood and Fort Sill will continue management actions that directly benefit black-capped vireos. Likewise, prescribed fire is being used as a management tool for a variety of species at most publically-managed areas within the current breeding range of the black-capped vireo, and those management actions will continue regardless of the listing status of black-capped vireos. Black-capped vireo populations existing on properties under management through public ownership (Federal, state, municipal) or easement are generally projected to persist under short and long term conditions. Even under diminished management specific to black-capped vireos, many of these locations are better suited to provide resources for the black-capped vireo, often due to the conservation mission of the property (*e.g.*, state parks).

#### **Finding and Proposed Determination**

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the black-capped vireo. Our analysis indicates the known threats at the time of listing, habitat loss

(Factor A) through land use changes, livestock grazing, and vegetation succession, and brown-headed cowbird parasitism (Factor E), are reduced or adequately managed. Regardless of the listing status of the black-capped vireo, we expect prescribed fire and other management actions to continue in the eastern portion of the range because they represent actions that are necessary for landscape and rangeland management and are aligned with the conservation mission of many landowners where large populations of black-capped vireos currently exist (Factor D). Additionally, no new threats have been identified (Factors B and C). We find that the species has recovered so that it no longer meets the definition of endangered or threatened under the Act.

Since the black-capped vireo was listed, its known abundance and distribution have increased. Currently, we know of 20 manageable and 14 likely resilient populations (as those terms are defined in the SSA report) across the species' breeding range. We assessed the likelihood of persistence of these populations over the next 50 years. In the worst case scenario, the black-capped vireo would be expected to diminish, but still remain above the level reported from 2000 to 2005. The black-capped vireo appears to have adequate redundancy, representation, and resiliency to persist over the next 50 years.

The primary threats to the species continue to be habitat loss through land use conversion and vegetational succession, and brown-headed cowbird parasitism, although most threats have decreased in magnitude or are adequately managed, particularly through the use of prescribed fire for various habitat restoration purposes not directly related to black-capped vireo management. Nevertheless, under current management, these threats are mitigated such that vireo numbers are robust and increasing. The wintering area for the black-capped vireo occurs entirely in Mexico, but many of the existing habitat areas are buffered from degradation due to limited accessibility and rugged terrain, so we do not anticipate significant reductions in habitat quality or quantity even without specific management assurances.

Based on the analysis in the SSA report (Service 2016; available at <http://www.regulations.gov>, Docket No. FWS-R2-ES-2016-0110), and summarized above, the black-capped vireo does not currently meet the Act's definition of endangered in that it is not in danger of extinction throughout all of its range. In addition, the black-capped vireo is not

a threatened species because it is not likely to become endangered in the foreseeable future throughout all of its range.

#### *Significant Portion of the Range Analysis*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Having determined that the black-capped vireo is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the black-capped vireo is in danger of extinction or likely to become so. 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.

We identified portions of the black-capped vireo’s range that may be significant, and examined whether any threats are geographically concentrated in some way that would indicate that those portions of the range may be in danger of extinction, or likely to become so in the foreseeable future. Within the breeding range, distinctions can be made between Mexico, Texas, and

Oklahoma, based on vegetation types and, in Mexico, based on observed higher densities of birds. Additionally, a distinction could be made between the eastern and western portion of the breeding range, based on the importance of the threats of cowbird parasitism and vegetational succession (both more impactful in the eastern range). As noted above, observed trends in these threats have been reduced or are adequately managed. While these geographic distinctions may be significant, information and analysis indicates that the species is unlikely to be in danger of extinction or to become so in the foreseeable future in these portions, given that the increases in reported rangeland statistics, decreases in cattle and goats, and ongoing management of cowbirds have occurred across the range, including within the eastern portion of the range. Therefore, these portions do not warrant further consideration to determine whether they are a significant portion of its range.

We also evaluated representation across the black-capped vireo’s range to determine if certain areas were in danger of extinction, or likely to become so, due to isolation from the larger range. Several studies have addressed genetic diversity of the black-capped vireo, particularly due to its fairly restricted breeding range both historically and currently, and due to the ephemeral nature of its habitat in portions of its range and its patchy distribution in the breeding range. Evidence exists that population differentiation has occurred over the black-capped vireo’s breeding range due to limited gene flow between breeding populations (Barr et al. 2008, entire). However, other studies have shown no differentiation of populations and that adequate gene flow exists (Vazquez-Miranda et al. 2015, p. 9; Zink et al. 2010, entire). Adult black-capped vireos show strong site fidelity to territories between breeding seasons, especially in larger populations (USFWS 1991, p. 19). Gene flow between populations is largely dependent on the proximity of populations, in order to facilitate dispersal of breeding birds. Dispersal distances for adults is generally 0.14 to 0.41 kilometers (km) (0.09 to 0.25 miles (mi)) (DeBoer and Kolozar 2001, entire); however, long dispersal distances have been recorded up to 12.8 km (8 mi) (USFWS 1991, p. 19). Natal dispersal, the movement from hatch site to breeding site, is known to be much greater, generally from 21 to 30 km (13 to 19 mi) (Grzybowski 1995, p. 18; Cimprich et al. 2009, p. 46). The longest



dispersal distance of a banded nestling re-sighted as a breeding adult was 78 km (48.5 mi) (Cimprich et al. 2009, entire). The known populations of black-capped vireos are geographically spread widely across the species' historical range and habitat types, ensuring that the global population is not singular and isolated. Additionally, the known distribution demonstrates robust representation when considering genetic heterozygosity and lack of genetic structuring across these populations.

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.

#### *Conclusion*

We have determined that none of the existing or potential stressors cause the black-capped vireo to be in danger of extinction throughout all or a significant portion of its range, nor is the species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that: (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. On the basis of our evaluation, we conclude that, due to recovery, the black-capped vireo is not an endangered or threatened species. We therefore propose to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

#### **Effects of the Rule**

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, 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 the black-capped vireo. There is no critical habitat designated for this species; therefore, this proposed rule would not affect 50 CFR 17.95.

Removal of the black-capped vireo from the List of Endangered and Threatened Wildlife would not affect the protection given to all migratory bird species under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712). The take of all migratory birds, including the black-capped vireo, is governed by the MBTA. The MBTA makes it unlawful, at any time and by any means or in any manner, to pursue, hunt, take, capture, attempt to take or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C. 703(a)). The MBTA regulates the taking of migratory birds for educational, scientific, and recreational purposes. Section 704 of the MBTA states that the Secretary of the Interior (Secretary) is authorized and directed to determine when, and to what extent, if at all, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that any take is compatible with the protection of the species. Modification to black-capped vireo habitat would constitute a violation of the MBTA only to the extent it directly takes or kills a black-capped vireo (such as removing a nest with chicks present).

#### **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. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act 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 post-delisting

monitoring (PDM) plan for the black-capped vireo. We plan to publish a notice of availability of a draft PDM plan by June 30, 2017 and include the final PDM plan should this proposed delisting be finalized. The PDM plan will build upon current research and effective management practices that have improved the status of the species since listing. Ensuring continued implementation of proven management strategies, such as prescribed fire and cowbird control, that have been developed to sustain extant populations will be a fundamental goal for the PDM plan. The PDM plan will identify measurable management thresholds and responses for detecting and reacting to significant changes in the black-capped vireo's populations, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. The investigation will be to determine if the black-capped vireo warrants expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act.

#### **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 numbers of the sections or paragraphs 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 authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. 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 proposed rule is available at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2016-0110, or upon request from the Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are staff members of the Service's Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### 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; and 4201–4245, unless otherwise noted.

#### § 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for “Vireo, black-capped” under “BIRDS” from the List of Endangered and Threatened Wildlife.

Dated: November 30, 2016.

**Stephen Guertin,**

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

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