

(i) If pricing for services is no longer evaluated as part of the contract award, can a fair and reasonable determination still be made for other items? If not, then how would the lack of determination of price reasonableness at the FSS contract-level still support FAR 12.209?

(ii) Would it be possible for FSS contractors submitting offers involving services to submit price or cost information in response to solicitation for award of a task or delivery order in order to support a fair and reasonable determination being made by the ordering activity? What if there ends up being no other competition on the agency order?

(c) FAR 8.401 states, “Multiple Award Schedule (MAS) means contracts awarded by GSA . . . for similar or comparable supplies, or services, established with more than one supplier, at varying prices . . .”

(i) If pricing is no longer established at the FSS contract-level since it is no longer being evaluated, then would the language “at varying prices” still be accurate or even necessary?

(ii) Since similar language concerning ‘pricing’ can be found throughout FAR subpart 8.4 (e.g., FAR 8.402), are other changes to the FAR necessary?

(d) FAR 12.207(c)(1) provides that indefinite-delivery contracts (see subpart 16.5) may be used when—(1) The prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or (2) are established for commercial services acquired on a time-and-materials or labor-hour basis.

(i) Is the language in either paragraph still sufficient in light of the statutory language using “an hourly rate basis”? If not, please provide suggested language.

##### 5. GSAR Changes Necessary

GSA welcomes the public’s insight into the potential impact to the GSAR in relation to the FSS program as a result of implementation of this authority. The following are areas of particular interest in terms of impact: (a) Price reductions, (b) transactional data reporting, (c) evaluation and use of options, (d) economic price adjustment, (e) price list, and (f) others.

##### 6. Updated GSA Guidance

GSA would appreciate any thoughts about the potential impact to FSS solicitation and ordering requirements and what changes should be made in FSS solicitations, instructions, ordering guidance, and training. What, if any type, of pricing information for services should be requested as part of an offeror’s response to a FSS solicitation?

Even though pricing would not be evaluated at the contract-level for hourly rate services, should GSA still ask for pricing as part of the solicitation?

##### 7. Regulatory Cost Impacts

GSA would appreciate any thoughts about how GSA should think about the regulatory cost increase or decrease associated with moving to unpriced hourly rate Schedule contracts. GSA is particularly interested in the following:

(a) Confirmation of GSA’s belief that this change will result in a net burden reduction;

(b) The type of (e.g., accountants or program managers) and number of employees used to develop and prepare cost or price information in response to a solicitation seeking to award a FSS contract, a solicitation seeking to award a task/delivery order under a FSS contract, and requests where cost or pricing information is required/ requested under the FSS program;

(c) The number of hours (in a range) that would be spent by each type of employee to develop and prepare the cost or price information;

(d) The average hourly rate for each type of employee used to develop and prepare the cost or price information, or the total average amount spent for each type of employee to develop and prepare the cost or price information for such a proposal;

(e) The types of services organizations typically submit responses for and whether or not efforts/costs to provide cost or price information vary depending on different factors such as the solicitation (e.g., contract type, type of service), the mix and type of supplies and services being offered, or request/ requirement (e.g., complying with GSAR clause, 552.238–81 Price Reductions);

(f) To the extent possible, a description of any variations in efforts and costs; and

(g) Other possible areas of savings that an offeror or FSS awardee may see as a result of implementation of this authority for the FSS program.

##### Jeffrey A. Koses,

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2019-0113; FF09E22000 FXES11130900000 201]

RIN 1018-BE64

#### Endangered and Threatened Wildlife and Plants; Reclassification of Stephens’ Kangaroo Rat From Endangered To Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Stephens’ kangaroo rat (*Dipodomys stephensi*) from endangered to threatened under the Endangered Species Act (Act). This proposed action is based on a thorough review of the best scientific and commercial data available, which indicates that the Stephens’ kangaroo rat no longer meets the definition of endangered under the Act. If this proposal is finalized, the Stephens’ kangaroo rat would remain protected as a threatened species under the Act. We also propose a rule under section 4(d) of the Act that provides for the conservation of the Stephens’ kangaroo rat. This document constitutes our proposed rule.

**DATES:** We will accept comments on this proposed rule that are received or postmarked on or before October 19, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) are to be received by 11:59 p.m. Eastern Time on the closing date. Submit requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 5, 2020.

**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-2019-0113, which is the docket number for this rulemaking. Then, 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: Public Comments Processing, Attn: FWS-R2-ES-2019-0113, U.S. Fish and Wildlife Service Headquarters, MS:

JAO/1N, 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).

**FOR FURTHER INFORMATION CONTACT:**

Scott Sobiech, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760-431-9440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Information Requested**

*Public Comments*

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We specifically request comments on:

(1) New information on the historical and current status, range, distribution, population size, life history, ecology, and habitat use of the Stephens' kangaroo rat, including the locations of any additional populations.

(2) New information on the known, potential, and future threats to the Stephens' kangaroo rat, particularly any projected quantities and locations of potential threats to the Stephens' kangaroo rat or its habitat.

(3) Any available data on the effects that climate change may have on the ecosystem on which this species depends, particularly information related to temperature and precipitation changes; and

(4) Information on regulations that may be necessary and advisable to provide for the conservation of the Stephens' kangaroo rat and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific

journal articles or other publications) to allow us to verify any scientific or commercial information you include.

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 directs that determinations as to whether any species is an endangered or a 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 this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

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>.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposed rule, if requested. Requests are to be received by the date specified in **DATES**. Send requests to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if any are requested, and announce the date, time, and place of those hearings, as well as how to obtain reasonable accommodation, in the **Federal Register** at least 15 days before the first hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain endangered,

threatened as proposed, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

**Previous Federal Actions**

The Stephens' kangaroo rat was listed as an endangered species under the Act on September 30, 1988 (53 FR 38465). We issued a draft recovery plan in April of 1997 (Service 1997, entire). On August 19, 2010, we published a 12-month finding (75 FR 51204) on two petitions (received May 1, 1995, and February 25, 2002) to delist the Stephens' kangaroo rat, where we concluded that the threats had not been sufficiently removed or their imminence, intensity, or magnitude had not been reduced to the extent that the species would no longer require the protections of the Act. On July 22, 2011, we completed a status review ("5-year review") under section 4(c)(2)(A) of the Act for the species (Service 2011, entire). The 5-year review recommended that the Stephens' kangaroo rat be reclassified as threatened. On November 10, 2014, we received a petition again requesting that Stephens' kangaroo rat be removed from the Federal List of Endangered and Threatened Wildlife, based on a new analysis of the species' dispersal ability. We published a 90-day finding on September 18, 2015 (80 FR 56423), where we found the petition did not contain substantial scientific or commercial information indicating that the petitioned action to delist may be warranted. This document serves as our proposed rule on the information outlined and recommendation found in our 2011 5-year review to reclassify the Stephens' kangaroo rat from endangered to threatened.

**Species Report for Stephens' Kangaroo Rat**

We prepared a report for the Stephens' kangaroo rat (Species Report) (Service 2020, entire), which includes a thorough review of the species' taxonomy, natural history, habitats, ecology, populations, range, and threats facing the species or its habitat to assist us in determining the status of the species. We have solicited and incorporated peer review of the Species

Report from objective and independent scientific experts. The report concludes with a discussion of the species' viability in terms of resiliency, redundancy and representation. We define viability as the ability of a species to persist and to avoid extinction over the long term (Service 2016, p. 9). Resiliency refers to the population size and demographic characteristics necessary to endure stochastic (random) environmental variation (Shaffer and Stein 2000, pp. 308–310; Smith *et al.* 2018, pp. 5–7). Redundancy refers to a species' ability to withstand catastrophic events (Shaffer and Stein 2000, pp. 308–310; Smith *et al.* 2018, pp. 5–7). As defined here, catastrophic events are rare occurrences, usually of finite duration, that can cause severe impacts to one or more populations. Species that have multiple resilient populations distributed over a larger landscape or a species having a single population with a broad geographic distribution are more likely to survive catastrophic events, because not all individuals within the population(s) would be affected. Representation refers to the genetic diversity, both within and among populations, necessary to conserve long-term adaptive capability (Shaffer and Stein 2000, pp. 307–308; Smith *et al.* 2018, pp. 5–7).

The Act directs us to determine whether any species is an endangered species or a threatened species because of factors affecting its continued existence, as set forth in section 4(a)(1) of the Act. The Species Report documents the biological information relating to the Stephens' kangaroo rat, including an assessment of the potential threats to the species. It does not represent a decision on whether the species should remain classified as an endangered species or reclassified as threatened under the Act. The Species Report (Service 2020) along with the 5-year Review (Service 2011, entire), and draft Recovery Plan (Service 1997, entire) provide the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and Service policies.

### I. Proposed Downlisting Determination Background

As discussed, a thorough review of the biological information including taxonomy, life history, ecology, and conservation activities for the Stephens' kangaroo rat as well as threats facing the species or its habitat is presented in the Species Report (Service 2020) and is

available at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2019–0113. The following is a summary of the key results and conclusions from the Species Report. Please refer to the Species Report for additional discussion and background information.

#### *Species Description, Habitat, Range, and Distribution*

The Stephens' kangaroo rat is a small, nocturnal mammal, with external cheek pouches, large hind legs, relatively small front legs, a long tail, and a large head (Service 1997, p. 1; Service 2020, Chapter 2). The total adult body-plus-tail length ranges between 9–12 inches (in.) (23–30 centimeters (cm)) (Service 1997, p. 2). The Stephens' kangaroo rat has a dusky cinnamon buff overfur, pure white underfur, and a lateral white tail band. The tail is crested and bicolored (Service 1997, p. 2). Kangaroo rats possess a number of behavioral, morphological, and physiological adaptations that allow them to inhabit warm, arid environments (Service 2020, pp. 2, 25).

Stephens' kangaroo rat habitat generally consists of open grasslands and sparsely vegetated scrub (Moore-Craig 1984, p. 6; O'Farrell and Uptain 1987, p. 44). Populations of the Stephens' kangaroo rat reach their highest densities in grassland communities dominated by forbs and characterized by moderate to high amounts of bare ground, moderate slopes, and well-drained soils (Bontrager 1973, p. 100; O'Farrell and Uptain 1987, pp. 39, 45; Burke *et al.* 1991, p. 22; Andersen and O'Farrell 2000, p. 12). In general, areas with high perennial shrub cover and dense grasses restrict the presence of Stephens' kangaroo rat (O'Farrell 1990, p. 80; Service 1997, p. 9; Shier 2009, p. 4). The Stephens' kangaroo rat lives in underground burrows that serve as resting and nesting sites (Service 1997, p. 13). For additional information on the Stephens' kangaroo rat, see the Species Report (Service 2020, Chapters 2–4).

Populations of the Stephens' kangaroo rat occur in three geographic regions of southern California. These regions are western Riverside County, western San Diego County, and central San Diego County. At the time of listing in 1988, the known geographic range of the species included 11 general areas in Riverside and San Diego Counties, California (Service 1988, entire; Service 2020, Chapter 3). As noted in our 2010 12-month finding (Service 2010, 75 FR 51206, August 19, 2010), the species was known from 13 geographical areas in two counties (two additional areas were considered nonviable) (75 FR

51205–51206; Table 1). Since 1988, additional populations have been found due to increased survey efforts as a result of listing the species. Currently the species is extant or presumed extant in 18 areas (12 areas in Riverside County and 6 areas in San Diego County) (Service 2020, Table 1, p. 5). Based on our analysis of recent detections and observations, the Stephens' kangaroo rat continues to be found in a patchy distribution in suitable (*e.g.*, grasslands, open areas with forbs) habitat in western-southwestern Riverside County and central-northwestern San Diego County.

#### *Population Trend and Demographic Information*

Exact population trends and density estimates for the Stephens' kangaroo rat are not determinable at this time given the incomplete surveys of all potentially occupied areas and variable information collected during those surveys. Field investigation reports sometimes present incomparable results, with some reporting density estimates and others reporting potential occupancy, or both. In addition, studies have found that the abundance of the Stephens' kangaroo rat and its probability of capture are highly variable, making it difficult to detect demographic trends (Brehme *et al.* 2017, p. 8).

The Stephens' kangaroo rat occurs in dispersed patches within suitable habitat in western-southwestern Riverside and northern San Diego Counties, with a few locations containing high densities of animals (Service 2020, Figures 5 and 6, pp. 35–36). However, based on the survey information that is available, we conclude that the Stephens' kangaroo rat continues to occur in suitable habitat across its range with some areas having relatively abundant seemingly stable populations.

Since population trends have not been determinable for Stephens' kangaroo rat, suitable habitat was modeled to provide an estimate of currently available habitat (Service 2020, Table 4, p. 54). This potentially suitable modeled habitat is used in lieu of rangewide occupied habitat estimates or rangewide population estimates. This is used in conjunction with current and historical survey reports that provide population level occupancy throughout the range (Service 2020, Table 1, pp. 5–6).

#### *Current Conservation Efforts*

Two large-scale habitat conservation planning efforts have been implemented in Riverside County (the Stephens' kangaroo rat Habitat Conservation Plan

(Riverside Habitat Conservation Agency [SKR HCP] 1996, entire) and the Western Riverside County Multi-Species Habitat Conservation Plan (Western Riverside MSHCP) (Dudek and Associates 2003, entire)) since listing. The implementation of these conservation plans has helped to offset potential losses of habitat from urban and agricultural development.

Three military installations also occur within the range of the species in western San Diego County. These DoD facilities (Marine Corps Base Camp Pendleton (Camp Pendleton); Naval Base Coronado Remote Training Site Warner Springs (Warner Springs); and Naval Weapons Station Seal Beach Detachment Fallbrook (Detachment Fallbrook)) have developed Service-approved INRMPs and are committed to actively managing their activities and habitat for the conservation of the Stephens' kangaroo rat. These DoD facilities have implemented numerous actions to manage and conserve areas occupied by Stephens' kangaroo rat.

Implementation of these conservation efforts has greatly reduced the impact of loss and degradation of habitat for the species on the lands conserved under the two HCPs and managed at three installations. See Draft Recovery Plan Implementation and Status Criteria below, for how these efforts are assisting conservation and reducing threats for the species.

#### *Draft Recovery Plan Information*

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 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, measurable criteria that set a trigger for review of the species' status, and methods for monitoring recovery progress. However, recovery plans are not regulatory documents; instead they are intended to establish goals for long-term conservation of listed species and define measurable 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, as well as actions that may be employed to achieve reaching the criteria.

A draft Recovery Plan for the Stephens' Kangaroo Rat was developed in 1997 (Service 1997, entire). Although it was never finalized, the draft Recovery Plan is part of the public record on the Service's views on

recovery for the species at that time. The objective of the draft Recovery Plan is to protect and maintain sufficient populations of Stephens' kangaroo rat and its habitat. The plan states this objective can be accomplished by: (a) Establishing ecosystem-based conservation units; (b) preventing destruction and degradation of habitat; (c) managing use of rodenticides and pesticides; (d) reducing nonnative predators such as domestic cats; (e) establishing research programs to examine the species' biological and ecological needs; and (f) developing and implementing a proactive outreach program for the public and landowners.

The draft plan also identifies several downlisting and delisting criteria (Service 1997, pp. 52–60) for the species. The downlisting criteria include: (1) Establishment of four reserves, which encompass at least 15,000 acres (ac) (6,070 hectares (ha)) of occupied habitat and are permanently protected, funded, and managed, in western Riverside County (inside or outside any habitat conservation planning area) (Service 1997, pp. 39–40); and (2) establishment of one ecosystem-based reserve in either western or central San Diego County that is permanently protected, funded, and managed.

The delisting criteria for the Stephens' kangaroo rat identified in the draft Recovery Plan (Service 1997, pp. 53–60) are: (1) Establish a minimum of five reserves in western Riverside County, of which one is ecosystem based, and that encompass at least 16,500 ac (6,675 ha) of occupied habitat that is permanently protected, funded, and managed; and (2) establish two ecosystem-based reserves in San Diego County. One of these San Diego County reserves needs to be established in the Western Conservation Planning Area, and one reserve needs to be established in the Central Conservation Planning Area. These reserves are to be permanently protected, funded, and managed.

While the criteria in the draft Recovery Plan appropriately indicate the need for habitat protection and management of reserves, the criteria do not reflect the species' current conservation status and no longer adequately identify the current threats to the species. At the time the draft Recovery Plan was developed, habitat loss was the major concern for the species. Due to the implementation of land conservation and management actions (see *Current Conservation Efforts*), other threats may now need greater attention and be a focus for recovery actions (see Summary of Factors Affecting the Species below). As

a result, the downlisting and delisting criteria in the draft Recovery Plan may not reflect the only means to achieving recovery for the species. However, we still agree with the conservation objectives outlined in the draft Recovery Plan regarding ecosystem reserves and other protected areas (such as those on Department of Defense (DoD) facilities being managed by Service-approved integrated natural resources management plans (INRMPs)) being important for the long-term persistence of Stephens' kangaroo rat throughout its range.

#### *Draft Recovery Plan Implementation and Status Criteria*

As stated above, the draft Recovery Plan identifies several criteria for determining when and if downlisting and delisting are appropriate for the Stephens' kangaroo rat (Service 1997, pp. 52–60).

Currently, under the SKR HCP and Western Riverside MSHCP, eight reserves have been established for Stephens' kangaroo rat in Riverside County. This number exceeds the four reserves identified by criterion 1 of the draft Recovery Plan (Service 1997, p. 52). Criterion 1 of the draft Recovery Plan also identifies that the reserve lands should total approximately 15,000 ac (6,070 ha). We estimate that, of the 69,104 ac (27,966 ha) of modeled potentially suitable habitat for Stephens' kangaroo rat in Riverside County, approximately 16,438 ac (6,652 ha) of the modeled habitat is considered within conserved lands (including reserves) in Riverside County. This total includes Federal, State, local, tribal, and private lands (Service 2020, Appendix D). Although the draft recovery plan identifies the 15,000 ac ((6,070 ha) of conserved lands be in just four reserves, the majority of the eight reserves currently conserved occur in four main reserves, with the additional four reserves being smaller but still providing conservation for the Stephens' kangaroo rat. In addition, three of the four smaller reserves have the opportunity for expansion due to the surrounding lands not being developed or in agricultural use (Service 2020, Appendix F).

We estimate that approximately 22,434 ac (9,079 ha) of modeled Stephens' kangaroo rat suitable habitat occurs in San Diego County (Service 2020, Appendix D). Over 50 percent (12,129 ac (4,908 ha)) of this area is located on lands that have been either conserved, are in conservation easement, or are located on public or DoD lands. Criterion 2 for downlisting states that one ecosystem-based reserve

be established in San Diego County. Current efforts are under way to develop an HCP for San Diego County that would benefit Stephens' kangaroo rat and other listed species. Though surveys are being conducted in a reserve near Ramona Grassland, the HCP for San Diego County is not yet finalized, and no ecosystem-based reserve has been established on private lands in San Diego County. However, active Service-approved INRMPs for the species have been developed and implemented at three military installations (Camp Pendleton, Detachment Fallbrook, and Warner Springs). These provide ongoing management and include actions to provide for the long-term conservation of Stephens' kangaroo rat on DoD lands. The amount of modeled habitat at each installation is approximately 2,275 (921 ha) for Camp Pendleton, 2,994 ac (1,212 ha) for Detachment Fallbrook and 1,012 ac (409 ha) for Warner Springs. INRMPs are based, to the maximum extent practicable, on ecosystem management principles and provide for the management of Stephens' kangaroo rat and its habitat while sustaining necessary military land uses. As described in the Species Report (Service 2020, pp. 40–44). Therefore, the INRMPs effectively meet the intent of the draft recovery plan's Criterion 2 for downlisting by providing long-term management for the conservation of Stephens' kangaroo rat with one ecosystem-based reserve in western San Diego County.

We conclude that the number and amount of reserved lands being protected, funded, and managed in Riverside and San Diego Counties provide conservation benefits equivalent to the requirements of downlisting from endangered to threatened according to the criteria in the Draft Recovery Plan.

The delisting criteria for the Stephens' kangaroo rat includes: (1) Establishment of a minimum of five reserves in western Riverside County, of which one is ecosystem based, and that encompass at least 16,500 ac (6,675 ha) of occupied habitat that is permanently protected, funded, and managed; and (2) establish two ecosystem-based reserves in San Diego County.

The amount of land conserved in Riverside County (16,438 ac (6,652 ha) for delisting has mostly been met and we expect additional lands will be conserved through further implementation of the two HCPs. However, the number of ecosystem-based reserves in San Diego County (currently one) does not meet the criteria identified in the draft recovery plan for delisting for having two

ecosystem reserves, with one being in central San Diego County. Therefore, we will not meet all of the delisting criteria in the draft recovery plan until: (1) Additional lands are conserved in Riverside County to meet the 16,500-ac (6,675-ha) threshold; and (2) at least one additional ecosystem-based reserve that is occupied, permanently protected, funded, and managed is established in central San Diego County.

#### 5-Year Review

In our 2011 5-year review, we recommended Stephens' kangaroo rat be reclassified from endangered to threatened (Service 2011, p. 4). We based our recommendation on the reduction of threats associated with habitat loss and destruction, and on the establishment of reserves for the species in portions of its range. As a result, we changed the recovery priority number of the species from 2C (a full species facing a high degree of threat but with a high potential for recovery, if appropriately managed, and with recovery that may be in conflict with construction or other forms of economic activity) to a recovery priority number 11 (a full species facing a moderate degree of threat and low potential of recovery, because of poorly understood limiting factors and poorly understood or pervasive and difficult-to-alleviate threats, with intensive management needed) (Service 2011, p. 7).

#### Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. The Act defines an endangered species as a species that is "in danger of extinction throughout all or a significant portion of its range," and a threatened species as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act requires we determine whether any species is an "endangered species" or a "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. A species may be reclassified or delisted on the same basis.

These factors represent broad categories of natural or human-caused

actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or that may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition, or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of

confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

The Species Report (Service 2020) represents a compilation of the best scientific and commercial data available concerning the current status of the species, including the past, present, and future threats. We used this information to evaluate the current and future viability of the Stephens' kangaroo rat. The effects of conservation actions were also assessed as part of the current condition of the Stephens' kangaroo rat. The Species Report identified the following factors as threats to Stephens' kangaroo rats: Habitat loss, fragmentation, and modification (Factor A), predation (Factor C), rodenticides, and the effects of climate change (Factor E). Below we discuss these threats and their relationship to Stephens' kangaroo rat current and future persistence.

#### *Habitat Loss*

In our 1988 listing determination, we determined one of the primary threats and main factors leading to our endangered status determination for Stephens' kangaroo rat was the permanent loss of habitat resulting from urbanization and other land uses (53 FR 38468, September 30, 1988). In our 2010 12-month finding, we estimated the amount of occupied habitat (54,909 ac (22,221 ha)) for the Stephens' kangaroo rat, and compared that estimate to developed and conserved lands in Riverside and San Diego Counties (75 FR 51210–51211). We estimated a total of 3,494 ac (1,414 ha) of occupied habitat was lost to development from 1984 to 2006, while 19,237 (7,785 ha) of baseline occupied habitat was conserved over this same period (75 FR 51211, Table 2; Service 2020, pp. 48–49). The majority of the lands conserved occurred after the implementation of the two habitat conservation plans (HCPs) for the species in 1996 and 2003 (see *Current Conservation Efforts* above).

In order to determine the current extent and impact of loss of habitat for

the Stephens' kangaroo rat, we developed a model to estimate areas that could be considered as potentially suitable habitat for the species; we spatially modeled habitat using suitable vegetation, detections/observations, elevation, and slope, and removed areas that were considered urbanized or otherwise unsuitable (Service 2018, entire; Service 2020, pp. 52–56). We then evaluated those areas with regard to their current status of conservation and protection. Based on this information, we have determined that the threat from habitat loss due to development and land conversion has been mostly ameliorated.

Our modeling efforts identified approximately 69,104 ac (27,966 ha) of potentially suitable, modeled habitat for the Stephens' kangaroo rat in Riverside County and 22,434 ac (9,079 ha) in San Diego County. Of the modeled suitable habitat approximately 16,438 ac (6,652 ha) in Riverside County and 12,129 ac (4,908 ha) in San Diego County is considered to be conserved. Therefore, a total of 28,567 ac (11,560 ha) of 91,538 ac (37,044 ha) of modeled habitat is conserved (31.2 percent). In Riverside County, approximately 3 percent of the modeled habitat occurs on Federal lands, 7 percent occurs on State lands, nearly 16 percent on local lands, 1 percent on tribal lands, and 72 percent occurs on private lands. In San Diego County, approximately 28 percent occurs on Federal lands, more than 2 percent on State lands, 21 percent on local lands, 1 percent on tribal lands, and nearly 48 percent occurs on private lands (Service 2020, Section 3.3.3).

To determine land conservation status and protection, we combined several data sets to estimate the "Current Conserved Lands" for the species. For western Riverside County, this includes those areas identified with conservation easements, conserved lands, public lands, and Public/Quasi-Public lands as identified in data from the Western Riverside MSHCP (as of July 2018). For San Diego County, we combined information from several data sources such as the Conserved Lands database (Sandag/SanGIS, February 2017) as well as all Federal, State, and DoD lands that are not likely to be impacted by urban development or agricultural conversion. A total of 16,438 ac (6,652 ha) of modeled habitat in Riverside County is considered within the Current Conserved Lands (23.8 percent). The majority of this modeled habitat is conserved through the two HCPs in Riverside County (15,563 ac (6,298 ha)) (Service 2020, p. 93). In San Diego County, roughly 54 percent (12,129 ac, (4,908 ha)) of the potentially suitable

habitat for the Stephens' kangaroo rat is conserved (Service 2020, Appendix D). Approximately half of this modeled habitat (6,281 ac, (2,542 ha)) is considered conserved through management of INRMPs at the three military installations (Service 2020, Appendix D). See Appendices D and E of the Species Report for more information on modeled habitat and land ownership.

As stated above, and in our 2010 12-month finding (75 FR 51204, August 19, 2010) and 2011 5-year Review (Service 2011, entire), habitat loss to Stephens' kangaroo rat has been mostly ameliorated in Riverside County through the protections afforded by the conservation measures contained in the two HCPs developed by the County of Riverside since listing the species. These measures implement long-term conservation and adaptive management principles applicable to large habitat blocks. The implementation of the two HCPs for the Stephens' kangaroo rat has resulted in a more controlled development pattern and the creation/conservation of eight reserves in western Riverside County. The established eight reserves exceed the four reserves (in number) identified as one of the criteria for downlisting by the draft Recovery Plan for the Stephens' Kangaroo Rat (Service 1997, p. 52). Without these two geographically comprehensive plans, unregulated habitat loss would likely have continued, and more individual or localized conservation measures or plans may have been developed but they would be less effective and comprehensive for accomplishing an organized conservation strategy for the Stephens' kangaroo rat in Riverside County. Because of these two HCPs, we conclude that direct habitat loss of Stephens' kangaroo habitat in western Riverside County from large-scale development is no longer the predominant threat to the species. Habitat loss from development is still occurring, but it is on a smaller scale and at a slower rate when compared to the timeframe prior to the implementation of the two HCPs. However, the effects of past habitat loss and future habitat loss is still a concern. Previous and current development has led to extensive habitat fragmentation, which has reduced connectivity and isolated Stephens' kangaroo rat populations (see *Habitat Fragmentation* section below).

As stated above, for downlisting the draft Recovery Plan for the Stephens' Kangaroo Rat recommended four reserve areas (encompassing at least 15,000 ac (6,070 ha)) be established in western

Riverside County and one ecosystem-based reserve be established in San Diego County (either western or central). Under the SKR HCP and Western Riverside MSHCP, a total of 15,563 ac (6,298 ha) including eight reserves (encompassing 9,029 ac (3,654 ha)) have been established for Stephens' kangaroo rat in western Riverside County. This number exceeds the four reserves and amount of area identified by criterion 1 of the draft Recovery Plan for the Stephens' Kangaroo Rat (Service 1997, p. 52).

In addition, active Service-approved INRMPs for the species have been developed and implemented at Camp Pendleton, Detachment Fallbrook, and Warner Springs, and include actions to provide for the long-term conservation of Stephens' kangaroo rat and its habitat on Federal military lands (U.S. Navy 2013, entire; U.S. Navy 2016, entire; U.S. Marine Corps 2018, entire). The INRMPs are based, to the maximum extent practicable, on ecosystem management principles and provide for the management of Stephens' kangaroo rat and its habitat while sustaining necessary military land uses. In our 2010 12-month finding (75 FR 51210, 51215, August 19, 2010), we stated that these INRMPs may meet the intent of the draft Recovery Plan to establish one ecosystem-based reserve in western San Diego County. We further stated that, in consideration of some occupied habitat within Camp Pendleton and Detachment Fallbrook that may be in decline, in combination with a lack of a second ecosystem-based reserve in central San Diego County (75 FR 51210, 51223), that delisting criteria had not been met. Since that time, we have been working closely with the military installations on conservation of Stephens' kangaroo rat and its habitat through additional consultations and continued refinement and development of the conservation measures identified in the INRMPs, and now confirm these plans effectively meet the intent of the draft recovery plan's Criterion 2 for downlisting by establishing one ecosystem-based reserve in western San Diego County.

Although great strides have been made in implementing the two HCPs in western Riverside County and working to curtail large-scale development and conserve lands, the two conservation plans are not fully implemented and some threats facing Stephens' kangaroo rat still remain. We have determined that approximately 13 percent (9,029 ac (3,654 ha)) of all the suitable habitat (modeled large and small patch habitat) available to Stephens' kangaroo rat occurs in the SKR HCP core reserves in

Riverside County (Service 2020, Appendix C). Some impacts from development or land conversion continue to occur throughout the range in occupied and suitable habitat that is not conserved.

The indirect effect of past habitat loss—fragmentation and isolation of populations—continues to threaten the species by curtailing opportunities for dispersal, reducing connectivity between populations, and may place limits on the ability to develop larger scale species' and habitat conservation strategies. We expect these indirect effects will continue into the future. This is especially true in San Diego County outside of Department of Defense lands, where conservation efforts have not kept pace with development or other land use conversion, leaving large areas of Stephens' kangaroo rat habitat subject to future loss. We expect this rate and level of loss to continue rangewide for the species into the future, especially in areas in the southern portion of the species' range in San Diego County.

#### *Habitat Fragmentation*

Historically, Stephens' kangaroo rat was considered a single population. Stephens' kangaroo rat habitat has been largely fragmented as a result of urban and agricultural development. The current distribution of the species as a result of this habitat loss and fragmentation has resulted in the species functioning more as a metapopulation (a regional group of connected populations of a species), in which numerous populations have some interchange between populations where connectivity and habitat remain. Habitat fragmentation reduces connectivity, which in turn can result in a loss of local populations, increases the isolation of populations, and decreases the potential for persistence over time. Analysis of the genetic makeup of individuals across the range of the species has identified recently occurring genetic differences between populations, potentially as a result of the species' populations being fragmented and isolated from each other (Service 2020, pp. 28–30).

Based on habitat modeling, we determined that there are approximately 69,104 ac (27,966 ha) in Riverside County and 22,434 ac (9,078 ha) in San Diego County of potentially suitable habitat for the Stephens' kangaroo rat (see Species Report section 6.2 Habitat Fragmentation (Service 2020, pp. 51–56)). We determined that 76 percent of this habitat in Riverside County exists in larger continuous patches greater than 247 ac (100 ha), and nearly 24

percent occurs as small patches less than 247 ac (100 ha). A patch size of 247 ac (100 ha) has been determined to be the minimum patch size required to reasonably expect long-term survival of an isolated population of the species (Price and Endo 1989, p. 299). In San Diego County, nearly 70 percent of the modeled habitat occurs in larger continuous patches greater than 247 ac (100 ha), and 30 percent of habitat occurs as small patches less than 247 ac (100 ha). Current data suggest that management actions to restore connectivity and/or continuing ongoing translocation efforts may be needed in the future to reduce the effects of habitat fragmentation, to ensure gene flow between reserves and other occupied areas, and to assist in the recolonization of unoccupied areas.

Translocation efforts are underway and have been successful in maintaining populations and at providing for interchange between populations. However, these efforts have been local and are not occurring throughout the range of the species. As a result, impacts from habitat fragmentation (*i.e.*, isolation, limited genetic exchange) are still occurring and will continue to impact the species. Based on the best available data, we have determined that habitat fragmentation remains a moderate- to high-level threat to the Stephens' kangaroo rat and its habitat, and we can reliably predict that these habitat conditions are likely to remain into the future based on the level of small, isolated, unmanaged areas currently occupied by the species.

#### *Habitat Modification*

In our 2010 12-month finding, we identified habitat modification from wildfire (direct effects from uncontrolled wildfire) and wildfire suppression (effects resulting from activities to suppress uncontrolled wildfire (*e.g.*, dozing, vehicle access, staging area construction)), nonnative and invasive plants, grazing activities, and unauthorized off-highway vehicle use as threats to Stephens' kangaroo rat.

*Wildfire:* Uncontrolled wildfire and prescribed fire can modify habitat for Stephens' kangaroo rat. Large uncontrolled wildfires, depending on severity and intensity, can remove habitat and promote the spread and introduction of invasive nonnative plant species resulting in modification or loss of habitat for the Stephens' kangaroo rat. However, prescribed fire can provide important benefits in maintaining suitable habitat for the Stephens' kangaroo rat and is regularly used on both reserve lands in Riverside County and on military installations in San

Diego County to reduce fuel loads and to manage invasive nonnative plants (see section 6.4.3 of the Species Report (Service 2020, pp. 61–62)). Both wildfire and prescribed fire have been shown to cause mortality in small mammal species, and lead to a loss of important resources such as nest sites (Price *et al.* 1995, p. 52). However, studies of fire impacts on areas occupied by Stephens' kangaroo rat showed little direct impacts to individuals due to their ability to survive intense fires by moving to underground burrows where temperatures remain cool and the ambient air remains clean (Bond 2015, p. 95).

Based on the best available information, the effects of wildfire or prescribed fire, despite causing either direct loss or indirect effects to Stephens' kangaroo rat, can also provide important benefits in maintaining suitable habitat for the species. Though impacts to some individuals may occur, effects of wildfire or prescribed fire are not currently a significant threat at the population- or species-level. Wildland fire management plans and wildfire suppression/prevention activities are being implemented (on DOD, HCP, and other conserved lands) as part of a habitat management tool (see section 6.4.3 of the Species Report (Service 2020, pp. 61–62)) within large portions of the current range of the species. These actions (such as vegetation management and firebreak development) reduce the potential for and the impact of wildfire and help protect and enhance natural resources by removing excess vegetation and invasive plants. We expect wildfires to continue to occur in areas occupied by the species, but the effects of wildfire have been greatly ameliorated through land management activities.

*Nonnative and invasive plant species:* Nonnative and invasive plant species occur throughout the range of Stephens' kangaroo rat. Nonnative and invasive plant species (*e.g.*, foxtail fescue (*Vulpea megalura*) great brome (*Bromus diandrus*), red brome (*B. madritensis ssp. rubens*), and wild oat (*Avena fatua*)) outcompete native vegetation and cause excessive vegetation buildup, which reduces or removes the open spaces preferred by the Stephens' kangaroo rat (Service 1997, p. 9). However, on reserve lands or lands being managed for Stephens' kangaroo rat, nonnative and invasive plants are being managed through a variety of techniques to reduce their impact on the species and its habitat. Management actions to control these species are ongoing and include studies to identify better control measures and techniques.

As a result, the impacts from this threat are localized and not acting on Stephens' kangaroo rat at the population- or species-level. Given the ongoing management actions to control these species, the threat from nonnative and invasive plants is considered a low-level threat. We expect this situation to remain the same into the future.

*Grazing:* At the time of listing (1988), commercial grazing occurred in areas occupied by Stephens' kangaroo rat year-round at high densities, using both sheep and cattle, and was not managed in a manner compatible with conservation of the species. Commercial grazing has since been reduced, and where grazing still exists, impacts have been lessened compared to when the species was listed. In our 2010 12-month finding, we determined that grazing practices no longer represented a rangewide threat to the Stephens' kangaroo rat (75 FR 51216, August 19, 2010). Grazing continues to be used to assist in habitat restoration and management for some populations of the Stephens' kangaroo rat. Based on the best available information, we affirm our previous determination that grazing practices do not represent a rangewide threat to the Stephens' kangaroo rat. Impacts from grazing are localized and not impacting Stephens' kangaroo rat at the population- or species-level.

*Unauthorized Off-Highway Vehicles (OHVs):* OHV activity can result in both direct (mortality or injury) and indirect (damage to burrow systems, rutting of habitat) effects to the Stephens' kangaroo rat and its habitat. To manage unauthorized OHV use on reserve lands in Riverside County, the Reserve Management Coordinating Committee, since 2007, has successfully implemented coordinated security efforts for the Reserve system, and this has resulted in a noticeable decline in unauthorized OHV activity within Stephens' kangaroo rat reserves. For example, one core area (Potrero) is completely fenced, limiting the possibility of OHV activity. Therefore, we have determined that habitat modification or destruction due to OHV activity is limited in scope and scale, and this activity is currently being managed within the reserves established under conditions set out in the 1996 SKR HCP.

#### *Predation*

As noted in the Species Report (Service 2020, pp. 64–65), the Stephens' kangaroo rat is prey to a number of native species as well as nonnative species. In our 1988 final listing rule (53 FR 38467, September 30, 1988) and 2010 12-month finding (75 FR 51218,

August 19, 2010), we stated that predation from feral and domesticated cats (*Felis catus*) was expected within areas of occurrence located adjacent to urban areas. However, no supporting information was presented regarding the incidence or levels of predation from cats. Our review of the information available and discussion with managers of preserve areas adjacent to residential areas has identified predation by cats as only occasional and so is not a significant threat to the Stephens' kangaroo rat (Shomo 2018, entire). Predation from native species has not been discussed in the literature and is not likely to cause or lead to significant declines for the species. Therefore, based on the best available information, predation, whether by native or nonnative animals, represents a low-level impact to individuals of the species and is not likely to be a population- or species-level impact at the present time or in the future.

#### *Rodenticides*

In our 2010 12-month finding, we determined that, while we did not know the magnitude of the threat of rodenticide exposure, rodenticide use was a rangewide threat to the Stephens' kangaroo rat, especially because second-generation anticoagulants were commonly used by the public as rodenticides targeting rats, mice, ground squirrels, and other rodents. Anticoagulant rodenticides target an animal's ability to clot blood. Although first generation (which required multiple feedings) and second generation (required only one feeding) anticoagulant rodenticides are both toxic to nontarget species, the second-generation anticoagulant rodenticides are more so because of their higher toxicity (Khan and Schell 2020, unpaginated). However, since that time new Federal and State regulations (Environmental Protection Agency (EPA), California State Department of Pesticide Regulation (CDPR)), restrictions, and management practices have been put into place. These include changes to the formulation of the pesticides available to the public to first-generation rodenticides in paste or block type form (as opposed to pelleted form, which could be more widely broadcast) (EPA 2018, p. 1). Now the more toxic rodenticides are only available and can only be used by licensed pesticide applicators (see Species Report sections 6.8 Use of Rodenticides and 7.2.3 California Environmental Protection Agency—Department of Pesticide Regulation (Service 2020, pp. 65–67, 85–86)). In addition, a majority of the lands

formerly used as orchards surrounding areas occupied by Stephens' kangaroo rat have been converted to other nonagricultural land uses, mainly urbanized areas, which do not require use of rodenticides (Service 2020, pp. 49, 65–66), and use of rodenticides on State Park lands at Lake Perris State Recreation area has been eliminated (Service 2020, pp. 65–66). These changes in the use restrictions and land use changes have most likely reduced the incidence of exposure of Stephens' kangaroo rats to rodenticides and as a result reduced the magnitude of this threat now and into the future. As a result, we have determined that rodenticides may still impact individuals, but the level of impact does not rise to a rangewide-level threat.

#### *Effects of Climate Change*

The effects of climate change due to global warming is influencing regional climate patterns that may result in changes to the habitat and habitat conditions for the Stephens' kangaroo rat in the future (Hall *et al.* 2018, p. 9; Kalansky *et al.* 2018, p. 23). Downscaled climate model projections (mid- and late-century) (Representative Concentration Pathways (RCP) 4.5 or RCP 8.5) for the South Coast and Southern Interior regions of California occupied by the Stephens' kangaroo rat indicate low to moderate increases in temperature and a slight increase (RCP 4.5) or decrease (RCP 8.5) in precipitation (He *et al.* 2018, pp. 8–9) with these increases being more frequent than the current conditions (Service 2020, pp. 69–75; U.S. Global Change Research Program (USGCRP) 2017, p. 139). Increases in temperature may hamper vegetation growth and exacerbate drought conditions (Hall *et al.* 2018, p. 13; Kalansky *et al.* 2018, pp. 24, 25) thereby potentially increasing bare ground patches preferred by the species. However, higher temperatures and greater precipitation events may also increase vegetation and wildfire frequency and severity causing potential habitat loss and, depending on fire severity, loss of individuals (see section 6.10 in the Species Report).

Based on the best available regional downscaled data on the current effects related to climate change (precipitation and temperature changes) within locations occupied by the Stephens' kangaroo rat, we have determined that the effects of climate change on the species' habitat are a low to moderate threat to Stephens' kangaroo rat at the present time. Based on model projections, we have concluded that potential effects to the habitat occupied by the Stephens' kangaroo rat from

climate change from temperature and precipitation changes appear to be minimal due to the species' capability of inhabiting dry environmental conditions and represent a low-moderate threat to the Stephens' kangaroo rat and its habitat, and the level is likely to remain there to the 2060s.

#### *Existing Regulatory Mechanisms*

Section 4(b)(1)(A) of the Act requires that the Service take into account “those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .” In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. We give the strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. For additional information on the existing regulatory mechanisms see section 7 of the Species Report (Service 2020, pp. 75–89).

*Endangered Species Act.* As an endangered species, the Stephens' kangaroo rat is currently provided all the protections as described under section 9(a) of the Act. This includes all forms of “take” of the species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. The regulations adopted as part of the Stephens' kangaroo rat being an endangered species under the Act have helped conserve the species and its habitat. The Act would continue to provide protection to the Stephens' kangaroo rat after reclassification to threatened status because the proposed 4(d) rule would maintain all section 9 prohibitions for the species with only those activities which benefit the species or its habitat being excepted. See Provisions of the Proposed 4(d) Rule.

In addition, section 10 of the Act allows for exceptions to section 9 prohibitions if a Service-approved conservation plan (Habitat Conservation Plan (HCP)) is developed for management and conservation of a

species or its habitat. As described above, two HCPs have been developed for conservation of the Stephens' kangaroo rat or its habitat in western Riverside County (1996 SKR HCP and the 2003 Western Riverside MSHCP). These two HCPs have greatly reduced the amount and rate of habitat loss for the species and implemented numerous conservation actions for management and conservation of the Stephens' kangaroo rat and its habitat in the area of coverage of these two HCPs.

*Sikes Act.* Under section 101 of the Sikes Act (16 U.S.C. 670a), the Department of Defense is required to carry out programs to provide for the conservation and rehabilitation of natural resources on military installations. To facilitate this program, each military department is required to prepare and implement an integrated natural resources management plan (INRMP) for each military installation in the United States unless deemed inappropriate. Section 201 of the Sikes Act states that the military facilities are required to cooperate and coordinate with the Secretary of Interior on conservation and rehabilitation programs including specific habitat improvement projects and related activities and adequate protection for threatened or endangered wildlife and plants. Each INRMP is reviewed and or revised every 5 years.

As stated above, three military installations occur within the range of the species in western San Diego County. These DoD facilities have developed Service-approved INRMPs and actively manage their activities and habitat for the conservation of the Stephens' kangaroo rat. The implementation of these conservation efforts has greatly reduced the impact of loss and degradation of habitat for the species on the lands managed by the DoD. The INRMPs effectively meet the intent of the draft recovery plan's Criterion 2 for downlisting by establishing an ecosystem-based reserve in western San Diego County.

*Environmental Protection Agency (EPA) and California State Department of Pesticide Regulation (CDPR).* As stated above, Federal and State regulations implemented by EPA and the CDPR have limited the exposure of wildlife to anticoagulant rodenticides. These include restrictions and changes on application, use and availability for the public. These restrictions have reduced the impact of nontarget poisoning toward wildlife including the Stephens' kangaroo rat.

*National Environmental Policy Act (NEPA).* All Federal agencies are required to adhere to the NEPA of 1970

(42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. Prior to implementation of such projects with a Federal nexus, NEPA requires the agency to analyze the project for potential impacts to the human environment, including natural resources.

Although NEPA requires full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats, it does not by itself regulate activities that might affect the Stephens' kangaroo rat; that is, effects to the species and its habitat would receive the same scrutiny as other plant and wildlife resources during the NEPA process and associated analyses of a project's potential impacts to the human environment.

#### *California Endangered Species Act.*

The Stephens' kangaroo rat is designated as threatened under the California Endangered Species Act (CESA), which prohibits the take of any species of wildlife designated by the California Fish and Game Commission as endangered, threatened, or candidate species (CDFW 2018a). Additionally, permits are required to take or possess any and all plants and animals in the state, and as noted above, the CDFW may authorize the take of any such species if certain conditions are met through the issuance of permits (*e.g.*, research permits, Incidental Take Permits) (CDFW 2018b). The Stephens' kangaroo rat was identified as important to the State's biodiversity and was therefore listed as a Species of Greatest Conservation Need (SGCN) in the State's Wildlife Action Plan (CDFW 2015, pp. C-1, C-24; Appendix C). State lands within the range of the Stephens' kangaroo rat are being managed for the protection and conservation of the species.

#### *California Environmental Quality Act.*

The California Environmental Quality Act (CEQA) (California Public Resources Code 21000–21177) is the principal statute mandating environmental assessment of projects in California. The purpose of CEQA is to evaluate whether a proposed project may have an adverse effect on the environment and, if so, to determine whether that effect can be reduced or eliminated by pursuing an alternative course of action, or through mitigation. CEQA applies to certain activities of State and local public agencies; a public agency must comply with CEQA when it undertakes an activity. As with NEPA, CEQA does not provide a direct regulatory role for the CDFW relative to activities that may affect the Stephens' kangaroo rat. However, CEQA requires a complete

assessment of the potential for a proposed project to have a significant adverse effect on the environment. Among the conditions outlined in the CEQA Guidelines that may lead to a mandatory finding of significance are where the project “has the potential to . . . substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species” (14 CCR § 15065(a)(1)). If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or to decide that overriding considerations make mitigation infeasible.

*The Natural Community Conservation Planning Act.* The Natural Community Conservation Planning Act (NCCCP) program is a cooperative effort between the State of California and numerous private and public partners with the goal of protecting habitats and species. The NCCCP program identifies and provides for the regional or area-wide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity. The program uses an ecosystem approach to planning for the protection and continuation of biological diversity. Regional NCCPs provide protection to federally listed and other covered species by conserving native habitats upon which the species depend. Many NCCPs are developed in conjunction with habitat conservation plans (HCPs) developed under section 10 of the ESA (CDFW 2020, unpaginated) as is the case of the 2003 Western Riverside MSHCP.

The existing HCPs on private lands, management plans of State lands, and INRMPs on DoD facilities in western Riverside and western San Diego Counties are being implemented as intended and are assisting to conserve and protect the Stephens' kangaroo rat and its habitat by providing for a reduction of threats from development, military training, and wildfire. Additional regulatory mechanisms have reduced the threat from rodenticides. Commitment to management actions for the benefit of Stephens' kangaroo rat is strong among the various partnerships; nevertheless, uncertainty of future condition of the species does exist. Currently, resource conditions and management are adequate in western Riverside and western San Diego Counties. However, conservation measures being implemented outside these areas are limited, especially in central San Diego County, an area

identified as being the location of a second ecosystem reserve for the species. Although the current risk of extinction has been reduced, there is enough risk associated with habitat fragmentation, loss of habitat connectivity, and population isolation such that the species is vulnerable and likely to become endangered throughout all of its range within the foreseeable future despite existing regulatory mechanisms.

#### *Cumulative Effects*

In general, threats acting on a species or its habitat may operate independently of each other or they may impact the species or its habitat in conjunction with each other. Some individually identified threats may not rise to a level of concern or be insignificant in nature and not influence a decline in the species' status on the landscape. However, combined these threats may result in a greater overall cumulative impact to a species or its habitat. In our analysis of the Stephens' kangaroo rat, the status of the species was determined by evaluating the cumulative effects of all the threats, along with the effects of all regulatory mechanisms and conservation efforts, to arrive at our final determination. We use this analysis to weigh the overall impacts from all threats against the overall impact of all ameliorating efforts and make a determination on status. In the case of the Stephens' kangaroo rat, the cumulative effect of all ameliorating efforts helping conserve the species have reduced the level of threats currently acting on the species or its habitat.

#### **Determination of Stephens' Kangaroo Rat Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an “endangered species” as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a “threatened species” as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” For a more detailed discussion on the factors considered when determining whether a species meets the definition of “endangered species” or “threatened species” and our analysis on how we determine the foreseeable future in making these decisions, please see the Summary of Factors Affecting the Species section above.

### Foreseeable Future

To determine if a species is considered a threatened species under the Act, we look to future threats facing the species and how the species will likely respond to those threats. For the Stephens' kangaroo rat, the foreseeable future for the individual threats vary. However, as stated above, the major threat driving the overall status of Stephens' kangaroo rat is habitat fragmentation. Based solely on biological factors, we consider 25–30 years to be the foreseeable future within which we can reasonably determine that the future threat and Stephens' kangaroo rat's response to the threat of habitat fragmentation is likely. This time period includes multiple generations of the species and allows adequate time for conservation efforts (such as additional land protections or species' relocation efforts) to be implemented or changes in threats to be indicated through population responses.

Extensive land management planning through development of HCPs in western Riverside County and management and conservation on DoD lands in San Diego County has resulted in large areas being conserved and managed for the species. These efforts have largely ameliorated the threat of unregulated urban development and conversion of lands to agriculture resulting in significant amounts of habitat loss—which was the driving factor for originally listing the species as endangered in 1988. We have determined that the implementation of these conservation measures and management plans, essentially meet the criteria for downlisting relative to our draft Recovery Plan.

While we do not have specific quantified survey information on the status and trends for populations of the species, no significant population declines or extirpations have been observed and it appears that the species remains stable and extant at more locations than were originally identified in the 1988 listing. However, we recognize that localized habitat loss is still occurring and will occur into the future and the impacts from past and future habitat fragmentation continue to impact the species. This continued habitat loss/fragmentation will result in increasing population isolation and habitat dis-connectivity, which we expect will lower the species' resiliency, redundancy, and representation, and thus its viability in the foreseeable future. We expect that additional conservation of lands and management actions will continue to be necessary to

maintain population connectivity now and into the foreseeable future.

### Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats combined under the section 4(a)(1) factors, as well as the factors ameliorating those threats, we have found that the current viability of the Stephens' kangaroo rat is higher now than at the time of listing as an endangered species under the Act, due to implementation of extensive conservation actions and management.

The Stephens' kangaroo rat was listed as endangered in 1988, mostly due to the direct and indirect effects of rapid loss, degradation, and fragmentation of habitat for the species. Since the time of listing, numerous searches and surveys have resulted in the discovery of additional areas where Stephens' kangaroo rat occurs. Currently 18 areas (12 areas in Riverside County and 6 areas in San Diego County) have been identified, 7 more than what was known at the time of listing. Although not considered a population expansion since listing, the discovery of additional occupied areas has reduced the level of threat for the species as a whole and increased the redundancy for the species making it more able to recover from catastrophic events.

Also since the time of listing, several large-scale habitat conservation efforts (SKR HCP, Western Riverside MSHCP) have been implemented. These two conservation efforts have established a total of eight adaptively managed reserves for Stephens' kangaroo rat in Riverside County. In addition, the DoD has developed INRMPs for conserving the species and its habitat on two military facilities in San Diego County. Together, these conservation efforts in Riverside and San Diego Counties have conserved approximately 28,567 ac (11,561 ha) of modeled Stephens' kangaroo rat habitat throughout the species' range. These conservation measures have largely met the intent of the downlisting criteria identified in our draft recovery plan. However, the lingering effects of past development have left the habitat fragmented and populations isolated. We expect this threat to manifest itself in the future if not managed. Therefore, based on the species' continued occupancy and distribution across its range and on the conservation efforts that have been implemented to curtail habitat loss and protect and manage existing populations, we have determined that the current viability of the Stephens' kangaroo rat is higher now than at the time of listing.

Thus, after assessing the best available information, we have determined that because of the large scale implementation of habitat conservation through HCPs and DoD resource management, the Stephens' kangaroo rat is not currently in danger of extinction throughout all of its range, but is likely to become so within the foreseeable future.

### Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for Stephens' kangaroo rat, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered

the time horizon for the threats that are driving the Stephens' kangaroo rat to remain listed as a threatened species throughout all of its range. As stated above, the effects of habitat fragmentation (limiting dispersal and recolonization, reducing genetic exchange, isolating populations) is the greatest future threat to the species. These effects are expected to occur in the future throughout its range in both western Riverside and San Diego Counties. Based on current population sizes, distribution, and trends it appears that the species currently has a relatively stable status. Fragmentation will impact the species in the future as development continues. Existing conserved and managed lands in both western Riverside and San Diego Counties are currently benefiting the species to the level that the species is not now endangered. However, because development and loss of habitat was so extensive and severe in the past, work is needed to reconnect populations in conserved areas currently being managed as ecosystem reserves and for areas outside those considered as ecosystem reserves such as central San Diego County. The impacts from future habitat fragmentation will continue to isolate populations. This is especially true if land conservation efforts are not able to conserve areas between populations for connectivity. In addition, currently occupied lands, both conserved and not conserved, will require ongoing management such as prescribed fire or other measures to reduce vegetation buildup ensuring habitat suitability and persistence of the species. We expect vegetation control will be an ongoing habitat management concern and the species will continue to be reliant to some degree of habitat or species management into the future.

Because the Stephens' kangaroo rat's population structure follows a metapopulation dynamic and is based on the equilibrium between colonization and extirpation of local populations, the importance of habitat and population connectivity is emphasized. Our analysis and modeling of the existing suitable habitat available to the Stephens' kangaroo rat shows the species faces some level of habitat fragmentation in both western Riverside and San Diego Counties; however, the effects of the fragmentation have not yet impacted the species based on the current existing population information. Approximately 75 percent of modeled suitable habitat exists in continuous patches greater than 1 square kilometer (km<sup>2</sup>) (0.4 square mile (mi<sup>2</sup>))—the threshold suggested by at least one

study as necessary for sustainable populations (Price and Endo 1989, p. 299). We expect the effects of habitat fragmentation to impact the species in the future. Future habitat loss will continue to isolate and fragment habitat occupied by the species and reduce connectivity, but at a reduced rate and extent since listing. These analyses indicate that restoring connectivity and/or conducting translocation efforts may be needed to maintain some populations in the future. In addition, although estimates have been made on habitat patch size and its availability, there has been no rangewide systematic assessment of the population structure for the Stephens' kangaroo rat to determine the requirements or characteristics of stable populations or estimate the minimum number of interconnected patches needed to support a potential metapopulation. Without these forms of information, the current and best available information on habitat conditions, species persistence within occupied areas, and species distribution indicates that populations appear stable.

Given this assessment of the current best available information, and recognition that the current amount and type of reserves for Stephens' kangaroo rat does not meet the draft Recovery Plan requirements for delisting, we have concluded that the best scientific and commercial data available indicate that the time horizon on which those threats to the species and the species' responses to those threats are likely to occur is in the foreseeable future in all portions of the species' range. Therefore, we determine that the Stephens' kangaroo rat is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that the Stephens' kangaroo rat meets the definition of a threatened species in accordance with section 3(20) of the Act. Therefore, we propose to reclassify the Stephens' kangaroo rat as a threatened species on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

## II. Proposed Rule Issued Under Section 4(d) of the Act

### Background

Section 4(d) of the Act contains two sentences. The first sentence states that the “Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation” of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.” Additionally, the second sentence of section 4(d) of the Act states that the Secretary “may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.” Thus, the combination of the two sentences of section 4(d) provides the Secretary with a wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or included a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation

of such species.” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising its authority under section 4(d), the Service has developed a proposed rule that is designed to address the Stephens’ kangaroo rat’s specific threats and conservation needs. Although the statute does not require the Service to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Stephens’ kangaroo rat. As explained above, we have determined that the Stephens’ kangaroo rat meets the definition under the Act of a threatened species, in that it is likely to become an endangered species within the foreseeable future throughout its range. As such, we are proposing to reclassify Stephens’ kangaroo rat as a threatened species on the List of Endangered and Threatened Wildlife. We have also determined that it is necessary and advisable to issue protective regulations under section 4(d) of the Act in order to reduce the likelihood of the Stephens’ kangaroo rat becoming an endangered species. Under our proposed section 4(d) rule, except as described and explained below, all prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) of the Act would apply to the Stephens’ kangaroo rat. Applying these section 9(a)(1) prohibitions will help minimize threats that could cause further declines in the status of the species. The provisions of this rule are one of many tools that the Service would use to promote the conservation of this species. This proposed 4(d) rule would apply only if and when the Service makes final the reclassification of the Stephens’ kangaroo rat as a threatened species.

#### Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Stephens’ kangaroo rat by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such

conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. The long-term viability of the Stephens’ kangaroo rat, as with many wildlife species, is intimately tied to the availability and condition of its habitat. As described in our analysis of the species’ status, the primary driving threats to the Stephens’ kangaroo rat’s continued viability is habitat fragmentation and modification. These threats reduce habitat availability and suitability due to a lack of connectivity between areas and buildup of dense vegetation resulting from a lack of disturbance. The Stephens’ kangaroo rat prefers open, annual grasslands and open intermediate-seral-stage (secondary succession) plant communities that are maintained by disturbance. Areas with dense vegetation (grasses or shrubs) are avoided and are not suitable habitat. Therefore, activities that are conducted for the purpose of maintaining, enhancing, or restoring open areas are beneficial for providing the habitat needs of the species. Such activities may include, but are not limited to: nonnative or invasive plant removal, grazing activities used for the purpose of vegetation management, prescribed burns, wildfire suppression activities, mowing, activities designed to promote native annual forbs and maintain or restore open habitat for the species, or other actions related to habitat restoration or species’ recovery efforts.

More specifically, nonnative, invasive, or noxious plant removal includes noxious weed control in the course of habitat management and restoration to benefit Stephens’ kangaroo rat or other sensitive species in the grassland habitat. Livestock grazing includes those grazing activities conducted as part of habitat management and restoration to benefit Stephens’ kangaroo rat or other native species in the grassland habitat as described in a Service-approved plan. Fire and wildfire management and suppression includes activities such as prescribed burns, fuel reduction activities, maintenance of fuel breaks, defensible space maintenance actions, and firefighting activities associated with actively burning fires to reduce risk to life or property.

We believe that actions taken by management entities in the range of the Stephens’ kangaroo rat for the purpose of reducing the risk or severity of habitat modification and designed to promote native annual forbs and maintain or restore open habitat for Stephens’

kangaroo rat, even if these actions may result in some short-term or small level of localized negative effect to Stephens’ kangaroo rats, will further the goal of reducing the likelihood of the species from becoming an endangered species, and will also continue to contribute to its conservation and long-term viability.

We recognize that the types of actions identified above are often undertaken by land management entities or private land owners through inclusion in land management plans, or strategies, or cooperative agreements that are approved by the Service, and that these plans, strategies, and agreements address identified negative effects to Stephens’ kangaroo rat conservation. We believe that such approved plans, strategies, or agreements, developed in coordination with the Service, will adequately reduce or offset any negative effects to Stephens’ kangaroo rat so that they will not result in a further decline of the species. Likewise, actions undertaken by management entities included in formal, Service-approved land management conservation plans (such as INRMPS), where the intended purpose is consistent with the conservation needs of the Stephens’ kangaroo rat, also provide an overall conservation benefit for the species.

We also recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency which is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the Stephens’ kangaroo rat that may result in otherwise prohibited take without additional authorization.

In addition, because the Stephens’ kangaroo rat is an endangered species under the California Endangered Species Act (CESA), there may be other actions undertaken by State natural resource entities, such as the California

Department of Fish and Wildlife (CDFW) under the authority of the CESA, to improve habitat conditions, conduct research, or contribute to the long-term viability of species. We realize these actions may also result in some short-term or small level of localized negative effects to Stephens' kangaroo rats or their habitat. However, we acknowledge that these types of actions are often undertaken through inclusion in land management plans or agreements that are approved by the CDFW, under the authority of the CESA, and that these plans and agreements address effects to the Stephens' kangaroo rat. In our view, actions under such State-approved plans or agreements will adequately reduce or offset any negative effects to the Stephens' kangaroo rat so that they will not result in a further decline of the species, and, therefore, we are excepting take as a result of them from the section 9(a)(1) prohibitions in the 4(d) rule.

While we recognize the potential that the actions identified above may result in some small level of localized disturbance or temporary negative effects to Stephens' kangaroo rat or their habitat, we believe these conservation actions will improve overall habitat conditions or contribute to the species' overall long-term viability. As such, we have determined that any resulting take from these actions do not need to be included in the section 9(a)(1) prohibitions provided for the species.

Therefore, we are proposing to issue protective regulations under section 4(d) of the Act, in which all the prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) of the Act, with the exemptions outlined below, would apply to the Stephens' kangaroo rat.

**Exemptions from prohibitions.** This proposed 4(d) rule would exempt from the general prohibitions in 50 CFR 17.21 take that is incidental to the following activities when conducted within habitats currently or historically occupied by Stephens' kangaroo rat:

(1) Activities conducted in accordance with a permit issued under § 17.32.

(2) Actions taken by the CDFW for conserving Stephens' kangaroo rat under the California Endangered Species Act (CESA).

(3) Actions, approved by the Service and conducted by entities outside those identified in (1) above, that implement measures for maintaining, enhancing, or restoring open habitat areas, such as: livestock grazing, wildfire management and suppression, prescribed fire activities, or nonnative, invasive, or noxious plant removal in the course of

habitat management and restoration for the purpose of Stephens' kangaroo rat conservation;

(4) Actions identified in and conducted as part of a Service- or State-approved plan that are for the purpose of Stephens' kangaroo rat conservation;

While we are providing these exemptions to the prohibitions and provisions of section 9(a)(1) of the Act, we clarify that all Federal agencies (including the Service) that fund, permit, or carry out the activities described above will still need to ensure, in consultation with the Service (including intra-Service consultation when appropriate), that the activities are not likely to jeopardize the continued existence of the species. Private entities who undertake any actions other than those described in the exceptions above that may result in adverse effects to Stephens' kangaroo rat, when there is no associated Federal nexus to the action, may wish to seek an incidental take permit from the Service before proceeding with the activity. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of Stephens' kangaroo rat. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested). Additional details on the proposed 4(d) exemptions are found in Proposed Regulation Promulgation, below.

#### Permits for Threatened Wildlife

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits for threatened wildlife are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance the propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes

of the Act. There are also certain statutory exemptions and prohibitions, which are found in sections 9 and 10 of the Act. Questions regarding whether specific activities would constitute a violation of 50 CFR 17.40 should be directed to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Effects of the Rule

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Stephens' kangaroo rat. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested).

#### 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 (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to

prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

*Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206

of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no federally recognized tribes affected by this proposed rule.

**References Cited**

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2019-0113, or upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are staff members of the Interior’s California Great Basin and Lower Colorado Basin Region and Field Offices.

**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 follows:

**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.

■ 2. Amend § 17.11(h) by revising the entry for “Kangaroo rat, Stephens’” under **MAMMALS** in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
<b>Mammals</b>				
*	*	*	*	*
Kangaroo rat, Stephens’	<i>Dipodomys stephensi</i> (incl. <i>D. cascus</i> ).	Wherever found	T	53 FR 38465, 9/30/1988; [Federal Register citation when published as a final rule]; 50 CFR 17.40(s). <sup>4d</sup>
*	*	*	*	*

■ 3. Amend § 17.40 by adding paragraph (s) to read as follows:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*

(s) Stephens’ kangaroo rat (*Dipodomys stephensi*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Stephens’ kangaroo rat. Except as provided under paragraph (s)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at § 17.21(b).
- (ii) Take, as set forth at § 17.21(c)(1).
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* For Stephens’ kangaroo rat, you may engage in the following actions:

- (i) Activities in accordance with a permit issued under § 17.32.
- (ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.
- (iii) Take, as set forth at § 17.31(b).
- (iv) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(2) for endangered wildlife.
- (v) Actions taken by the California Department of Fish and Wildlife for conserving Stephens’ kangaroo rat under the California Endangered Species Act (CESA).

(vi) Livestock grazing in the course of habitat management and restoration to benefit Stephens’ kangaroo rat or other

native species in the grassland habitat as approved by the Service.

(vii) The following wildfire suppression activities:

(A) Activities necessary to maintain the minimum clearance (defensible space) requirement of 30 meters (100 feet) from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and comply with State of California fire codes to reduce wildfire risks.

(B) Fire management actions (*e.g.*, prescribed burns, hazardous fuel reduction activities) on protected/preserve lands to maintain, protect, or enhance habitat occupied by Stephens’ kangaroo rat. These activities are to be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(C) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(D) Firefighting activities associated with actively burning wildfires to reduce risk to life or property.

(viii) Removal of nonnative, invasive, or noxious plants for the purpose of Stephens' kangaroo rat conservation as approved by the Service. This includes

noxious weed control and other vegetation reduction in the course of habitat management and restoration to benefit Stephens' kangaroo rat, provided that these activities are conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions for pesticide application.

(ix) Activities conducted as part of a Service- or State-approved plan that are for the purpose of Stephens' kangaroo rat conservation.

\* \* \* \* \*

**Aurelia Skipwith,**

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

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