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Raymond P. Martinez,

Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0110; FXES11130900000 178 FF09E42000]

RIN 1018–BB79

Endangered and Threatened Wildlife and Plants; Removing the Black-Capped Vireo From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), remove the black-capped vireo (*Vireo atricapilla,* listed as *Vireo atricapillus*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been reduced or managed to the point that the species has recovered and no longer meets the definition of endangered or threatened under the Act.

DATES: This rule is effective May 16, 2018.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0110 and at *https://www.fws.gov/southwest/es/arlingtontexas/*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Arlington, TX 76006; telephone 817–277–1100; facsimile 817–277–1129; *ARLES@fws.gov.*

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may be removed (delisted) from the Federal List of Endangered and Threatened Wildlife if it is determined it has recovered and is no longer endangered or threatened. Delisting can only be completed by issuing a rule.

This rule removes the black-capped vireo (*Vireo atricapilla,* listed as *Vireo atricapillus*) from the Federal List of Endangered and Threatened Wildlife.

The basis for our action. Under the Endangered Species Act, we determine that a species is an endangered or threatened species based on any of five 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. We must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer threatened or endangered; or (3) the original scientific data used at the time the species was classified were in error. We have determined that the primary threats to the black-capped vireo have been reduced or managed to the point that the species is recovered.

Peer review and public comment. We completed a Species Status Assessment (SSA) to evaluate the species' needs, current conditions, and future conditions to support our proposed rule. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the SSA report. We considered all comments and information we received during the comment period on the proposed rule to delist the black-capped vireo when finalizing our SSA report and this final rule.

Previous Federal Actions

Please refer to the proposed delisting rule for the black-capped vireo (81 FR 90762, December 15, 2016) for a detailed description of previous Federal actions concerning this species.

Background

Please refer to the proposed delisting rule for the black-capped vireo (81 FR 90762, December 15, 2016) for a summary of species information.

Our December 15, 2016, proposed rule was based largely on the SSA report, which characterized the species' overall viability in the future. Please see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report.

Summary of Biological Status and Threats

Species Description and Needs

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

The resource needs of the black-capped vireo are described in the SSA report for individuals, populations, and for the species rangewide. Life-history needs are generally categorized as breeding, feeding, and sheltering; for migratory species, this may also include habitat for migration and wintering. Individual black-capped vireos need a suitable breeding habitat patch of at least 1.5 hectares (ha) (3.7 acres (ac)) of shrublands with between 35 and 55 percent shrub cover that consists largely of deciduous shrubs, often oaks in mesic areas, and with a low proportion of junipers. Within breeding habitat patches, shrub mottes (groups of shrubs) with deciduous foliage from ground level to 3 meters (m) (0 to 9.8 feet (ft)) in height are needed for nest concealment and foraging.

Populations of black-capped vireos are described based on the number of adult males the breeding habitat can support. Those sites (defined as geographical areas with suitable breeding habitat) capable of supporting at least 30 adult males are considered ''manageable populations.'' Those sites with suitable breeding habitat capable of supporting 100 or more adult males are considered ''likely resilient populations,'' that have the ability to withstand disturbances of varying magnitude and duration. Brown-headed cowbird (*Molothrus ater*) brood parasitism rates below 40 percent (Tazik

and Cornelius 1993, p. 46; Wilsey et al. 2014, p. 568) are necessary to sustain and expand vireo populations.

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

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

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

Species' Current Conditions

There are no available rangewide population estimates of breeding black-capped vireos. However, reported occurrences (sightings) of black-capped vireos are available for comparing abundance and distribution across timeframes (but see section 4.1, ''Assumptions,'' in the SSA report (Service 2016) regarding inherent differences in survey effort and the differences between reported occurrences and population estimates). At the time of listing in 1987, there were approximately 350 reported black-capped vireo occurrences. From 2009 to 2014, there were 5,244 adult males reported, a 17.5 percent increase from the prior review period in 2000 to 2005.

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

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

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

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

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

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

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

The U.S. portion of the black-capped vireo's range is comprised of a diversity of landownerships, from private lands to several forms of public ownership. Various conservation actions and programs have been developed and implemented in an effort to conserve the species. These conservation actions implemented on publicly managed and private lands throughout the species' current range have reversed black-capped vireo declines within several populations. Ongoing active management on publicly managed lands and those under conservation easements has resulted in 40 populations in Oklahoma and Texas, varying in size from a single adult male to an estimated 7,478 adult males. Of these, 9 are considered likely resilient populations and another 10 are considered manageable populations. Although information on breeding vireos in Mexico is limited, the vireo is currently afforded protected status (SEMARNAT 2015, p. 79), known threats appear to be of less magnitude than those in the United States, and densities of known populations have been documented up to six times as high as populations in

the United States (Farquhar and Gonzalez 2005, p. 25; Wilkins et al. 2006, p. 28).

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

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

When the proposed rule was completed, there were eight Service-approved Habitat Conservation Plans addressing the ''incidental take'' of black-capped vireos for project-related impacts since the species was listed, all of which are in Texas. In total, approximately 7,843.2 ha (19,381 ac) of black-capped vireo habitat may be impacted, either directly or indirectly, resulting from activities authorized through HCPs. To mitigate black-capped vireo habitat loss, the permittees must preserve and provide funding for approximately 8,239.4 ha (20,360 ac) of habitat restoration and management for off-site black-capped vireo habitats as conservation actions under these HCPs. Since the publishing of the December 15, 2016, proposed rule (81 FR 90762), an additional HCP was completed in June of 2017 for a wind energy project in McCulloch County, Texas. This project documented a previously unknown locality of more than 150 male black-capped vireos, and provides a permanently protected preserve for vireos on over 500 acres.

Recovery Planning and Recovery Criteria

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

Recovery plans are not regulatory documents; instead they are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The black-capped vireo recovery plan was approved by the Service on September 30, 1991 (USFWS 1991). Specific details of recovery for delisting the species was indeterminable 27 years ago; therefore, an interim objective of reclassification from endangered to threatened status was used to develop recovery criteria (USFWS 1991, p. 36). The recovery plan includes the following reclassification criteria:

(1) All existing populations are protected and maintained.

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

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

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

When the recovery plan was approved in 1991, a viable population was estimated, using population viability analysis, to be at least 500 pairs of breeding black-capped vireos. The recovery plan was intended to protect and enhance the populations known at that time, while evaluating the possibility of recovery and developing the necessary delisting criteria if recovery is found to be feasible. The rangewide population was unknown, but the Oklahoma population was thought to be fewer than 300 individual birds.

Comparing the current status of the species to the reclassification criteria provides some information about the health of the populations. Regarding the first criterion, we would not expect that all known populations described in the recovery plan would exist in the same locations today because suitable habitat becomes unsuitable over time while other unsuitable areas become suitable (*e.g.* following shrub encroachment or fire). Regardless, many of the populations identified in the recovery plan continue to thrive, and approximately 67% of known populations of greater than 30 birds are under some form of protection. From 2009 to 2014, the total black-capped vireo counts and estimates in each of the recovery areas, with the exception of Mexico where we have limited information, exceeds 500 males, with four recovery areas numbering in the thousands (Service 2016, p. 85). Multiple populations are present in each of the recovery areas and at least one breeding population with more than 500 males is known from three of the four Texas recovery areas and from Oklahoma (Service 2016, p. 77–79), indicating that criterion (2) has largely been met. Regarding Criterion (3), we can evaluate the numbers of birds banded on the breeding grounds that return in following years as an indicator of the availability of resources on the wintering grounds. In general, black-capped vireo return rates suggest sufficient resources are available during migration and wintering (Service 2016, pp. 88–89). Finally, regarding criterion (4), it appears that those criteria were met at the time of the 2007 5-yr review and continue to be met today.

During the 2007 5-year review of the status of the species, it was determined

that the 1991 recovery plan was outdated and did not reflect the best available information on the biology of the species and its needs (USFWS 2007, p. 5). Therefore, rather than use the existing outdated recovery criteria, the Service assessed the species' viability, as summarized in the SSA report (Service 2016; see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report) to inform the process of making the determination that the black-capped vireo has recovered.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. A species may be reclassified or delisted on the same basis. Consideration of these factors was incorporated in the SSA report (Service 2016; see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report) as ''causes and effects,'' and projected in future scenarios to evaluate viability of the black-capped vireo. The effects of conservation measures currently in place were also assessed as part of the current condition of the species in the SSA report, and those effects were projected in future scenarios.

Causes and Effects

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

Habitat Loss (Factor A)

Black-capped vireo breeding habitat is most likely to occur on lands categorized in the U.S. Department of Agriculture (USDA) Agricultural Census data by landowners as ''rangeland.'' Therefore, trends in lands categorized as rangeland is a useful indirect measure for estimating the effects of land use changes on the black-capped vireo. There has been a general increasing trend since 1987 for occurrence of rangeland within the black-capped vireo's U.S. breeding range, based on available Agricultural Census data. That is, there has been an increase in the amount of lands reported as rangeland. Since 2002, Oklahoma has reported a 36 percent increase and Texas has reported a 4.4 percent increase in rangeland (USDA 2002a, 2002b, 2012a, and 2012b).

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

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

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

Overall, the reduction in numbers of goats and cattle compensates for unanticipated increases in deer browsing and contributes to a net increase in available breeding habitat. Likewise, the increasing amount of reported rangeland acres since listing have likely improved habitat conditions within the breeding range. In the eastern portion of the range, breeding habitat is considered early successional habitat and associated with disturbance such as fire. Because land managers in the eastern portion of the range are increasingly using fire as a management tool, available breeding habitat has likely increased in this portion of the range. In the western portion of the range, such disturbance is not necessary to maintain suitable habitat, and much of the available breeding habitat is more stable in the long term.

Winter Range (Factor A)

Black-capped vireos are more general in habitat selection for wintering, and can use scrub, disturbed habitats, secondary growth habitats, and tropical dry forests as well as shrubs. Although threats to the species on its wintering grounds were not identified at the time of listing (1987) or during the 2007 5-

year review, they were considered as part of the species status assessment process to determine whether winter habitat availability could be a limiting factor. Dry forests in Mexico are a conservation concern (Miles et al. 2006, p. 502) and have historically been modified for agricultural and other purposes (Powell 2013, p. 100). The majority of impacts (greater than 55 percent) to tropical dry forests occurred prior to the listing of the black-capped vireo (Powell 2013, pp. 101–102). Habitat loss still occurs (Powell 2013, pp. 101–102), but the extent of habitat specifically important to wintering vireos is unknown, but likely diverse, considering the variety of habitats used. Habitat models have suggested the winter range may be as large as 141,000 km^2 (54,440 mi^2) in size (Vega Rivera et al. 2010, p. 101). Much of this habitat occurs on canyons and slopes and may be inaccessible to most anthropogenic impacts.

Brood Parasitism (Factor E)

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

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

Although cowbird abundance appears to be declining and the effects of brood parasitism are reduced in portions of the vireo's range, cowbird control continues to be necessary to maintain the current number of black-capped vireo populations and individuals in the eastern portion of the range in Texas and in Oklahoma. Since the completion of the SSA report, a study was published on the effects of brood parasitism and local populations, which provided additional information indicating some sites with low brood parasitism rates have insufficient reproduction to balance mortality and rely on immigration of individuals from other areas to avoid extirpation (Walker et al. 2016). There are many other factors apart from cowbird brood parasitism that may influence resiliency of localities; however, cowbird management still remains the most effective means of improving reproductive success at numerous localities. We have updated the SSA report to reflect this study, and we address the study's implications below, under Summary of Comments and Recommendations.

Climate Change (Factor E)

The effects of climate change are a concern in ecosystems that are sensitive to warming temperatures and decreased precipitation, such as arid and semi-arid habitats where the black-capped vireo resides. In Texas, climate change models generally predict a 3 to 4 degree Fahrenheit (1.6 to 2.2 degree Celsius) increase in temperature between 2010 and 2050 (Nielsen-Gammon 2011, p. 2.23; Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire). Predictions on precipitation trends over Texas are not as clear (Nielsen-Gammon 2011, p. 2.28), but the models indicate that Texas weather will likely become drier (Banner et al. 2010, p. 8, Alder and Hostetler 2013, entire; Runkle et al. 2017, entire).

Although the impact from the effects of climate change on shrubland habitat required by the black-capped vireo for breeding is uncertain, shrub encroachment into grasslands in North America, primarily due to fire suppression and livestock grazing, is well documented (Van Auken 2000, entire; Briggs et al. 2005, entire; Knapp et al. 2007, p. 616). Projected warming temperatures and dry conditions will likely influence future shrubland dominance (Van Auken 2000, p. 206). Evidence suggests that within the far west portion of the black-capped vireo's range, the effects of climate change and fire suppression would result in a shrubland-dominated landscape (White et al. 2011, p. 541). In this scenario, the availability of shrub habitat would be the least affected, and potentially more prevalent on the landscape, which may increase the available amount of suitable breeding habitat. Following the publication of the December 15, 2016, proposed rule (81 FR 90762), an additional study was published on the effects of extreme drought on a black-capped vireo location in Texas (Colón et al. 2017). This study provides evidence that extreme conditions of drought may reduce reproductive success, increase cowbird brood parasitism, and influence choice of vegetation substrate. The effects appear to be regional, since another well-studied Texas population did not suffer these effects; impacts to the affected population appear to be limited to the specific drought year, that is, the affected population appears to have recovered the following year. We have updated the SSA report to reflect this information, and we address its relevance to this rule below, under Summary of Comments and Recommendations.

Species Future Conditions and Viability

We evaluated overall viability of the black-capped vireo in the SSA report (Service 2016; revised 2017 based on information provided during the comment period and included in the docket for the final rule; see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report) in the context of resiliency, redundancy, and representation. Species viability, or the ability to sustain populations long term, is related to the species' ability to withstand catastrophic events (redundancy), the ability to adapt to changing environmental conditions (representation), and the ability of populations to withstand disturbances of varying magnitude and duration (resiliency). The viability of a species is also dependent on the likelihood of new stressors (processes or events with a negative impact on the species) or continued threats (a stressor and its source) now and in the future that act to reduce a species' redundancy, representation, and resiliency and the species overall ability to withstand such stressors.

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

no management in the future, while habitat and cowbird management on publicly managed lands was projected to diminish in scale or frequency that would not continue to provide for the needs of the species. The decreased management scenario projected the future conditions of the species without the continued protections of the Act. All of the scenarios are considered to be within the realm of reasonable possibility. Even in the worst case scenario, at least 26 of the 34 known manageable and likely resilient populations have a moderate to high (*i.e.,* greater than 50 percent) likelihood of persisting over the next 50 years, indicating adequate resiliency of those populations and redundancy across the species' range. Likewise, those populations projected in the worst case scenario are distributed throughout the range as multiple populations within each of the different areas of representation, indicating adequate redundancy within each of the representative areas (as described below).

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

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

The recovery of the black-capped vireo is due, in part, to conservation actions, in the form of habitat and cowbird management in parts of the species' breeding range. Many localities of vireo habitat, especially in the eastern portion of the breeding range, will require continued management activities to persist. In considering its management needs, the forecast of future conditions includes scenarios based on the needs of the species, stressors, identification of additional populations, and restoration efforts. Our forecasts that produce stable or increasing resiliency and redundancy reflect the differences in the current and projected future conditions of the species compared to the status assessment that was conducted to support the 1987 listing decision.

The future persistence of the species in some places will require active management of threats. Prescribed fire as a management tool is a cost effective way to restore prairies and shrublands and to reduce impacts of invasive juniper, and is often used to benefit game species (*e.g.,* deer, wild turkey). Such management actions may directly and indirectly benefit black-capped vireos when they occur within the breeding range. The Service has obtained commitments from our key Federal, State, and private conservation partners (included in the docket with this final rule), who are largely responsible for the recovery of the species, to continue to manage black-capped vireo populations on publicly managed lands and to promote management actions across the breeding range of the species. For example, the Integrated Natural Resource Management Plans for Fort Hood and Fort Sill will continue management actions that directly benefit black-capped vireos. Likewise, prescribed fire is being used as a management tool for a variety of species at most publicly managed areas within the current breeding range of the black-capped vireo, and those management actions will continue regardless of the listing status of black-capped vireos. Black-capped vireo populations existing on properties under management through public ownership (Federal, State, municipal) or easement are generally projected to persist under short- and long-term conditions. Even under diminished management specific to black-capped vireos, many of these locations are expected to be better suited than unmanaged lands to provide resources for the black-capped vireo, often due to the conservation mission of the property (*e.g.,* state parks).

Summary of Updates to SSA Report and Post-Delisting Monitoring Plan

As discussed in this rule, two recent studies have been published relevant to the status of the black-capped vireo. We have updated the SSA report (included in the docket with this final rule) to reflect this information. Additionally, we corrected errors in Table 14 of the SSA report. This table summed the forecasted scenarios of Table 13, which was correct.

Based on comments received, we have clarified the role of management for the species as it pertains to ''conservation reliance'' and worked with our Federal, State and private partners to develop the post-delisting monitoring (PDM) plan and commitments to managing the species on lands under their authority. Specifically, in the SSA report, as well as the December 15, 2016, proposed rule (81 FR 90762), the impact of brown-headed cowbird brood parasitism on certain locations was expressed in terms of sustainability and expansion of populations. Additionally, the species was identified as ''conservation-reliant'' due to successful recovery actions, largely cowbird management, being implemented. The Service concludes that cowbird management was a major factor leading to the recovery of the species. Thus, the importance of cowbird management was discussed in the SSA report and proposed rule. Particularly, the black-capped vireo population in Oklahoma and localities in the eastern portion of the Texas range may be reliant on cowbird management periodically, or perpetually, to ensure minimal losses of current population numbers. In this regard, we believe the species may be ''conservation reliant,'' due to efforts necessary to retain healthy shrublands and reduce brown-headed cowbird brood parasitism under certain conditions in portions of the range. However, the proposal to remove the species from the Federal List of Endangered and Threatened Wildlife was not made on the condition of continued management. The future scenarios forecast in the SSA report included a ''worst case'' scenario in which all management for the species would cease. In the worst case scenario, we acknowledge that the species' resiliency, redundancy, and representation over the next 50 years would likely decline, but would not meet the definition of endangered or threatened. We therefore proposed to delist the species.

Based on the comprehensive information collected for the SSA report, there is inherent uncertainty in forecasting future threats and population status scenarios over a 50-year timeframe. To address this uncertainty and ensure that the black-capped vireo continues to prosper, the SSA report and proposed rule noted the importance of continued management of known populations of the species. To

further this recommendation, the Service has obtained mutual commitments with many of our partners in the form of cooperative management agreements or other strategies to continue to manage known populations of the black-capped vireo and implement the PDM plan (see draft PDM plan: 83 FR 11162; March 14, 2018). These cooperative management agreements are included the docket with this final rule and in the PDM plan, and provide assurances that post-delisting monitoring will detect trends in the black-capped vireo's status and threats. Please see **ADDRESSES**, above, for information on how to obtain a copy of the PDM plan.

Summary of Comments and Recommendations

In the proposed rule published on December 15, 2016 (81 FR 90762), we requested that all interested parties submit written comments on the proposal by February 13, 2017. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the San Angelo Standard-Times, Alpine Avalanche, Lawton Oklahoma Constitution, and the Austin American Statesman. We did not receive any requests for a public hearing. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

State and Peer Reviewer Comments

Section 4(b)(5)(A)(ii) of the Act states that the Secretary must give actual notice of a proposed regulation under section 4(a) to the State agency in each State in which the species is believed to occur, and invite the comments of such agency. Section 4(i) of the Act directs that the Secretary will submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition. We solicited and received comments from both the Oklahoma Department of Wildlife Conservation (ODWC) and the Texas Parks and Wildlife Department (TPWD). Both agencies supported the delisting of the black-capped vireo, acknowledged the significant progress on private lands that have improved range conditions, and offered to continue to assist in post-delisting monitoring and other partnership opportunities.

TPWD expressed concern about the lack of information from Mexico, and suggested that the species continues to be threatened in that country by development and some forms of incompatible agriculture. However, TPWD stated that the extent of impact to the vireo is essentially unknown. Even with the limited information available, the SSA analysis indicated continued persistence over the 50-yr projected timeframe. Black-capped vireo return rates generally suggest sufficient resources are available during migration and wintering, but we agree with TPWD that additional study in this portion of the species' range is important and support efforts to obtain information related to the status of the vireo from Mexico.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals regarding the scientific data and interpretations contained in the SSA report supporting this final rule. We received responses from all three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the black-capped vireo. The peer reviewers had no significant objection to the analysis provided in the SSA report. In general, the peer-review comments were largely minor (editorial) or easily addressed. Substantive comments were specifically addressed, and did not involve changes to the viability analysis of the SSA report. A summary of the substantive peer reviewer comments and responses are available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0110.

Public Comments

We received comments from 32 respondents. We reviewed all comment letters provided and addressed the substantive comments. Those substantive comments are grouped together in related categories below.

(1) *Comment:* Two commenters suggested the use of resiliency, redundancy, and representation (the 3Rs) to characterize viability for the black-capped vireo is not appropriate. They noted the lack of citations and methodology in the SSA report, as well as the 3R model being insufficiently tested for use in assessing species' viability.

Our Response: There are many publications in the scientific literature that explore the use of the conservation biology principles of resiliency, redundancy, and representation to characterize viability (*e.g.,* Shaffer and Stein 2000; Svancara et al. 2005; Carroll et al. 2010; Redford et al. 2011; Waples et al. 2013; Neel et al. 2014; Wolf et al. 2015). We have often used this conservation planning framework in our recovery plans, and this is a fundamental concept applied explicitly in our species status assessments. We consider our reliance on the 3Rs to be use of the best available scientific and commercial information. We recognize that appropriate citations were not initially included in the SSA report and have now added them to the updated report.

(2) *Comment:* One commenter stated that the threat of climate change should include increasing frequency and severity of drought, wildfires, and flooding.

Our Response: We evaluated the concern of climate change on the species by reviewing relevant studies on the species and potential habitat factors that could occur in the next 50 years. Flooding does not appear to be a stressor for black-capped vireos, with the possible exception of the population occurring near Independence Creek in Texas, which, unlike most other localities, utilizes the riparian corridor for nesting.

In the SSA report, we discuss the issue of wildfire largely in terms of historical suppression leading to the threat of vegetational succession in habitats within the eastern portion of the species' range. We acknowledge that wildfire is a stressor to the species; however, it generally results in temporary impacts and is generally believed to have an overall positive effect to the species over time. As a result of historical fire suppression, land managers use prescribed fire to promote ecosystem health, and in the case of the black-capped vireo, as a tool to sustain high-quality breeding habitat.

We discuss drought effects within the SSA report, specifically regarding a future model that suggests an increase in shrubland habitats within the breeding range of the species, which may be beneficial since the black-capped vireo nests in shrubland habitats.

The ability to predict and associate drought with climate change is complicated. A new study was published in 2017 (Colón et al. 2017) that evaluated the effects of the extreme drought of 2011 on a large population of black-capped vireos in Texas. This study provides evidence that extreme conditions of drought may reduce reproductive success, increase cowbird brood parasitism, and influence choice of vegetation substrate. The effects appear to be localized, since another well-studied Texas population did not

suffer these effects; impacts to the affected population appear to have been limited to the specific drought year, that is, the affected population appears to have recovered the following year.

A study evaluating the 2011 drought, which is the driest consecutive 12-month period in Texas records, surmises that the heatwave and drought were not consistent with regional trends (since the mid-1900s) and were largely attributed to anomalous sea surface temperatures related to La Niña conditions in the Pacific Ocean, rather than anthropogenic effect on climate (Hoerling et al. 2013, entire). Global climate models do predict increasing drought severity and frequency for most of North America; however, past trends over the central United States, including portions of Texas, have shown decreasing frequency and intensity of droughts (Pan et al. 2004, entire; Hoerling et al. 2013, p. 2812). Regional-scale feedback processes that lead to replenishment of seasonally depleted soil moisture, thereby increasing late-summer evapotranspiration and suppressing daytime maximum temperatures may partly explain the observed late 20th century temperature trend in the central U.S. and these effects may reduce the magnitude of climate change effects within the species' range (Pan et al. 2004, p. L17109). We have updated the SSA report to reflect the new study (Colón et al. 2017); however, the information does not change the analysis.

(3) *Comment:* Several commenters discussed the issue of brown-headed cowbird brood parasitism. The majority commented that cowbird management continues to be necessary and will likely be curtailed following the black-capped vireo's delisting. A recently published study was also provided (Walker et al. 2016), with new information regarding vireo populations and brood parasitism.

Our Response: The SSA report identifies the threat of brown-headed cowbird brood parasitism, as well as the management actions that have been successfully implemented to reduce the impacts on populations of black-capped vireos. We recognize the efforts of our conservation partners in managing the threat, which is partly responsible for the recovery of the species. Our analysis in the SSA report includes a scenario in which cowbird management did not occur and the effect it may have on vireo populations up to 50 years in the future. Based on the criteria we established under several assumptions, we predict the scenario would result in the reduction of known populations across the breeding range. However, the status of the species still would not meet the definition of endangered or threatened.

The assumptions of this analysis, as with any forecast of future conditions, are accompanied by uncertainty, which we acknowledge in the SSA report. To reduce uncertainty, the Service has obtained commitments from key conservation partners to continue to manage localities for the benefit of the black-capped vireo under their authorities. These commitments, included in the PDM plan, further acknowledge the partnerships of State and Federal entities who have worked to recover the species.

A recently published paper (Walker et al. 2016) was submitted with comments on the effectiveness of cowbird management and resiliency. In addition to reaffirming the importance of cowbird management on reproductive success, several study sites with low brood parasitism rates were determined to be sites that have insufficient reproduction to balance mortality and rely on immigration of individuals from other areas to avoid extirpation in the 4-year period of observation. The commenter suggests that some populations with cowbird management and low brood parasitism rates may still not be sustainable. Additionally, it was recommended that resiliency for black-capped vireo populations would be better measured by reproductive success and survival. We agree that there are many other factors apart from cowbird brood parasitism that may influence resiliency of localities; however, cowbird management still remains the most effective means of improving reproductive success at numerous localities. We encourage additional study of other factors that contribute to increased resiliency, including those that influence brood parasitism effects on reproductive success. We also agree that demographic factors, such as reproductive success and survival are good metrics for resiliency; unfortunately, those metrics are only available for a small portion of localities within the breeding range.

(4) *Comment:* Two commenters addressed the issue of white-tailed deer browsing in vireo habitat. One provided a different perspective of the deer densities given in the SSA report, while the other stated there was no evidence to indicate deer browsing is less of a threat than goats and cattle.

Our Response: The SSA report includes deer densities in Texas, which are reported on an annual basis by TPWD. While we acknowledge the differing methodology provided by the commenter for calculating the change in these figures, we believe that weighting the average of deer densities would not substantially change the average percent change provided in the SSA report, because of the relatively similar sizes of the Resource Management Units within ecoregions. The SSA report shows the positive trend of estimated deer density numbers in central Texas, which is of concern to black-capped vireos. However, deer are game animals regulated by the States, which provide monitoring and management options similar to other threats to the species that have been managed. The potential impact of deer versus livestock on browse (and thus potential black-capped vireo habitat) is appropriately addressed in the SSA report (Graber 1961, p. 316; Guilfoyle 2002, p. 8).

(5) *Comment:* One commenter noted the lack of records from the vireo's northern range in Kansas and Nebraska, suggesting permanent habitat loss or other issues in those States.

Our Response: The prevalence of the black-capped vireo in Kansas has been reported in only a few publications, notably a regular occurrence in Comanche County. However, the Service noted in its 2007 black-capped vireo 5-year review that the species has not been documented in Kansas since the 1950s, and its range no longer extends past central Oklahoma. The Nebraska records are even more limited, and the species may have only been an accidental summer visitor in that State (Graber 1961, p. 313). For these reasons, the 1991 recovery plan only included the States of Oklahoma and Texas, as well as Mexico, as part of the recovery strategy. The SSA report for the black-capped vireo fully acknowledges the limited northern extent of the breeding range; however, the species has had an increasing population and distribution over the last 10 to 15 years.

(6) *Comment:* One commenter provided an article indicating there could be millions of exotic herbivores within the range.

Our Response: The article cited by the commenter (Texotics, Texas Parks & Wildlife Magazine, April 2007) is not peer reviewed and does not meet the standard for using the best available scientific information. We understand that the prevalence of exotic ungulates within the range of the vireo may have an influence on habitat availability. However, we are unaware of any evidence of their influence or scientific studies that have specifically addressed the impacts of exotic ungulates on habitats used by the black-capped vireo. During development of the SSA report, we reached out to our State partners for information related to trends and

estimates of exotics across the region, and were informed that the States did not track this information and were unaware of reliable estimates.

(7) *Comment:* Two commenters stated that feral hogs are a threat to the species and were not considered in the SSA report.

Our Response: Feral hogs are a problem for land managers across the black-capped vireo's range. They may influence oak recruitment, increase erosion, and damage individual trees. However, there is no evidence suggesting that feral hog prevalence is a threat to the species.

(8) *Comment:* One commenter indicated there were no assurances that Fort Hood Military Installation will incorporate vireo management actions into its integrated natural resources management plan (INRMP).

Our Response: The Army continues to be an important partner in the conservation of the black-capped vireo. In particular, Fort Hood has provided a substantial amount of research and management toward the black-capped vireo, which has had a profoundly positive effect on the population. The Army's commitment to the species has resulted in the largest known population under a single management authority at Fort Hood. The Army strives to sustain native ecosystems at its installations to support military activities, which includes shrubland habitat utilized by the black-capped vireo at Forts Hood and Sill. Therefore it is reasonable to expect that the numerous years of research and management of this species is an investment the Army would maintain. However, to further address this issue, we have obtained a written commitment from the Army that both Fort Hood and Fort Sill will utilize their authorities under the Sikes Act (16 U.S.C. 670 *et seq.*) to ensure the species continues to thrive at those installations after it is delisted. This commitment is included in the PDM plan.

(9) *Comment:* Three commenters stated that the information regarding genetic diversity and structure presented in the SSA report does not reflect the intent or findings of the Vasquez-Miranda et al. 2015 research.

Our Response: We disagree with the commenters. Our SSA report summarizes the available and relevant studies on the genetic variability in the black-capped vireo. The Vasquez-Miranda et al. (2015) paper was the most recent study on the subject, and is summarized to support similar hypotheses that genetic structuring within the breeding range is not apparent, or biologically significant. We contacted the authors of the study and received affirmation that our interpretation of their study is appropriately summarized in the SSA report.

(10) *Comment:* Three commenters stated that, contrary to the data provided in the SSA report, goat densities in Texas are not declining.

Our Response: The data provided in the SSA report were collected from the USDA's Agricultural Census. These statistics show goat densities across the vireo's range have declined since 1992. Another study (Wilcox et al. 2012) of livestock densities in Texas arrives at a similar conclusion. The goat population numbers reported from Texas have continually declined since the repeal of the National Wool Act of 1954.

(11) *Comment:* We received two comments that state that the SSA report does not adequately address habitat loss caused by development in central Texas.

Our Response: The SSA report indirectly addresses habitat loss through an accounting of reported rangeland/pastureland statistics across the breeding range of the black-capped vireo. Black-capped vireo habitat can occur on small patches on undeveloped land throughout the breeding range in the United States. Using the USDA Agricultural Census of land use within the species' range, an indirect measure of land use changes can be tracked over time. The SSA report indicates that reported land use changes within a majority of the species' range do not appear to threaten the availability of habitat. When the species was evaluated in 1985, a population of black-capped vireos in central Texas near Austin, which consisted of approximately 33 pairs, was thought to be the largest known to exist. Currently, it is estimated that more than 200 pairs occur in the area just west of Austin.

(12) *Comment:* One commenter stated that the SSA report provides misinformation concerning juniper trees in relation to black-capped vireo habitat.

Our Response: We believe the SSA report accurately describes the importance of juniper occurring within black-capped vireo habitat. In general, while juniper trees may be used for nesting and foraging, it is not a preferred nesting substrate for the species. Juniper is a problem in large portions of the species' range due to its invasive nature, which often renders breeding habitat unsuitable within just a few years. Except in some cases where preferred nesting substrates are sparse or limited suitable shrub cover exists, the invasive nature of juniper is a more important consideration in managing black-capped vireo breeding habitat.

(13) *Comment:* We received several comments related to livestock browsing of black-capped vireo habitat in the SSA report. Commenters suggested habitat loss would not decrease or be reversed due to a decrease in livestock. Commenters also suggested cattle presence is projected to increase, and drought effects on cattle should be considered and evaluated under future conditions.

Our Response: The SSA report clarifies the influence of livestock on black-capped vireos, which is largely related to effects on habitat and presence of brown-headed cowbirds. Pertaining to direct impacts on habitat, goats are the most detrimental to the species because they browse shrub foliage necessary for nesting. While portions of the breeding range are still influenced by the presence of goats, trends show a decline in goat density across the U.S. portion of the range. Based on this trend and the expiration of previous subsidies for goat ranching in the United States, we did not see a reasonable scenario of expanding goat pressure on black-capped vireo habitat under long-term future conditions.

Cattle decreases are also shown in trend data across the species' range. Cattle have less of an overall impact on habitat, because they generally do not browse on shrub vegetation where vireos nest. In fact, the Service allows cattle grazing on lands approved as compensatory mitigation for the black-capped vireo. Other public lands that manage populations of vireos, such as Fort Hood Military Installation, also manage cattle operations with little impact to the birds nesting in the same area. The primary factor associated with cattle is the presence of brown-headed cowbirds, which can be controlled relatively easily and inexpensively.

Additionally, our analysis addressed cattle on reported acres of rangeland within the breeding range of the black-capped vireo, which is where influence on the species would be expected. These data were collected from the USDA Agricultural Census, which is conducted every 5 years, with the most recent available in 2012. General predictions of cattle increases do not target areas where vireos would be expected to occur.

While our SSA report does not attempt to forecast cattle presence in our future conditions, we believe we captured the primary drivers influencing the species, including cowbird and habitat management, within our predictions influencing the known population. We disagree with

the comment that habitats previously impacted by livestock would not revert back to suitable conditions following a decrease in livestock. Healthy rangeland condition and habitat enhancement is greatly influenced by appropriate grazing management.

(14) *Comment:* Several comments addressed the issue of long-term land management for the black-capped vireo. Commenters stated that management currently occurring on both private and public lands would not continue should the species be delisted. Two commenters suggested we obtain long-term commitments from public land-managing authorities.

Our Response: The recovery of the black-capped vireo is due in large part to our conservation partners, and we are pleased to report that we have those long-term commitments in the PDM plan. The SSA report discusses the effective management actions that have, in part, led to the recovery of the black-capped vireo. Most notably, vegetation and cowbird management within the eastern portion of the species' range has been important to expanding localities. Many such management actions have occurred due to the species being listed under the Act. However, some actions regarding habitat management on private lands are often implemented to improve range conditions for livestock and game animals. Managing for these resources through juniper and mesquite control and use of prescribed fire likely benefits the black-capped vireo when conducted in the species' breeding range. Often these actions are coordinated with the State fish and game agencies and the USDA Natural Resources Conservation Service, which are partners with the Service in conserving fish and wildlife resources. Technical assistance and management plans developed with these partners are largely focused on ecosystem health and native biodiversity, including federally listed species. To further our partnerships, the Service has obtained commitments from key land-managing entities to continue beneficial practices to ensure the black-capped vireo thrives.

(15) *Comment:* We received comments regarding the black-capped vireo's range in Mexico. In general, commenters noted the lack of information from that portion of the range and stated that additional threats should be addressed.

Our Response: We provide a discussion of the importance of the black-capped vireo's range in Mexico in the SSA report, acknowledging the paucity of data available from that country. There is much anecdotal information on threats to the breeding and wintering ranges; however, little quantitative or qualitative data or information exist. Under the Act, we are required to use the best available scientific and commercial information in implementing our responsibilities under the Act. Even in situations where there is little or no information, a determination of a species' status must be made. In this case, our SSA analysis indicates continued persistence over the 50-yr projected timeframe and black-capped vireo return rates generally suggest sufficient resources are available during migration and wintering.

(16) *Comment:* Two commenters stated that the SSA report and proposed rule should provide assurances that existing populations and habitat would be protected in the event the species is delisted.

Our Response: The purpose of the SSA report is to provide a science-based risk assessment of the viability of the black-capped vireo. Following a peer-review process, as well as review of the draft by our State partners, the Service used the SSA report to evaluate the species' status under the Act. There is no direct mechanism for assurances to protect known populations when the species is delisted. However, most known populations occur on lands that are provided some degree of management and protection (*e.g.,* State and Federal lands). Additionally, due to the outstanding efforts of our conservation partners toward recovery of this species and to provide assurances for the species' continued success, the Service has obtained commitments for the largest populations that will further conservation and management of the species. These commitments are included in the docket with this final rule and provided in the PDM plan.

(17) *Comment:* One commenter stated that the Service did not adequately address a peer review comment involving the adequacy of addressing future conditions of habitat loss within the SSA report.

Our Response: We thoroughly and carefully evaluated the responses to the draft SSA report provided by the peer reviewers. We clarified that the SSA report used four criteria to assess the future conditions of the species. While habitat loss was the primary reason the black-capped vireo was listed in 1987, the major sources identified were browsing by goats and vegetational succession. These threat sources, and other relevant threats, have been reduced and managed to the point that we consider the species recovered.

(18) *Comment:* We received several comments regarding the population data provided in the SSA report. Some simply noted that no population estimate is provided. One believed the species could not be delisted without a population estimate. Other comments stated that the census data used are unreliable and not sufficient to support an increase in vireo abundance. One comment suggested Breeding Bird Survey (BBS) data should be used in the SSA report.

Our Response: In the SSA report, we provide a history of population information for the black-capped vireo and the most recent data to summarize the current conditions of the species. We acknowledge that there are no rangewide estimates of the breeding population available; thus, we use the best available information to evaluate the species. A determination regarding the status of a species under the Act does not require a population estimate; under section 4 of the Act, species are assessed under five factors, often referred to as ''threats'' to the species, using the best available information. The census data we used span a 6-year period across the breeding range. While the survey methods used to collect these data vary, we believe this information is of much higher quality than the census data collected in 1985 and used for the original listing determination. Our SSA report also analyzed the species status on the basis of analysis of the 3 R's—resiliency, redundancy, and representation. By that measure as well, we believe the black-capped vireo has recovered to the point the protections of the ESA are no longer necessary. The SSA report also acknowledges the potential for reported increases in the known population under current conditions to be, in part, related to an increase in survey effort generated by the listing. However, it is clear that threats to the species have been reduced and managed, which is the reason the species has recovered.

We do not use BBS data for the black-capped vireo, because only the raw data were available. To estimate population change and annual indexes of species abundance, the U.S. Geological Survey (USGS) statistically analyzes the raw BBS data using a hierarchical model analysis (Sauer et al. 2011, p. 7–9). Although the raw data show a slight increase in black-capped vireo detections since the species was listed, population trends are not available and should not be inferred from the raw data without further statistical analyses given the changes in the number of surveyed routes and other confounding factors.

(19) *Comment:* We received two comments regarding the use of prescribed fire and black-capped vireo

habitat management. One comment suggested prescribed fire is used to promote grasses, not shrubs. The other comment stated fire is used to benefit game species, some of which are a threat to the black-capped vireo.

Our Response: Prescribed fire is used to promote habitat health in a variety of ecosystems, including grasslands, shrublands, and forests. Further, prescribed fire is the most important tool for managing black-capped vireo habitat within the eastern portion of the species' range because of its effectiveness at promoting hardwood shrub mottes and grasses important to breeding habitat. Prescribed fire benefits several game species, some of which may degrade nesting habitat if present in high densities. However, we believe the benefits of prescribed fire on private lands as a tool for ecosystem health within the breeding range of the species far outweigh the adverse effects of deer management, which is generally directed toward increasing animal quality, rather than numbers.

(20) *Comment:* One commenter noted the uncertainty regarding the extent of recovery occurring on private lands, and the limitation of known recovery in only a few well-managed areas.

Our Response: The SSA report for the black-capped vireo acknowledges the extent of information known about the species' numbers across its breeding range. The proportion of the species range and populations for which the data were available for the analysis was significant as compared to the overall range and populations of the species. The Act requires that we use the best available information when determining whether a species should or should not be included on the Federal List of Endangered and Threatened Wildlife. As a result, we provide the most current information known about the species' population across its breeding range.

(21) *Comment:* We received several comments on the use of rangeland as an indicator of habitat potential in the SSA report. Commenters stated that the use of USDA rangeland statistics is not an appropriate indicator for black-capped vireo habitat. One comment recommended the use of TPWD's Texas Ecosystem Analytical Mapper to identify habitat. Another commenter stated Texas A&M University's Institute of Renewable Natural Resources publication, ''Texas Land Trends—Status update and trends of Texas rural working lands,'' forecasts future losses of working lands.

Our Response: TPWD's Texas Ecosystem Analytical Mapper (TEAM) is a good tool for evaluating vegetative communities, but does not identify breeding habitat parameters for the black-capped vireo. Black-capped vireo habitat is characterized by shrub vegetation of irregular height, with foliage reaching ground level, which cannot be identified using TEAM. The data in Texas A&M University's Institute of Renewable Natural Resources publication, ''Texas Land Trends—Status update and trends of Texas rural working lands,'' considers additional data sources but is primarily based on USDA Agricultural Census, that is the same data used in the SSA report. Because of the need for a common data set for both Oklahoma and Texas, and the need to detect land trends across time, we decided to utilize the USDA Agricultural Census reports for both States. One comment referenced that the report, ''forecasts future losses of working lands,'' but did not provide a page number or cite specific information; it is possible that the comment is referring to the Texas Statewide trend, while our analysis focused on the land trends for the counties within the black-capped vireo's range.

(22) *Comment:* Several commenters believe the recovery plan for the black-capped vireo is not adequately addressed or that the SSA report is insufficient to support delisting. Some comments requested clarification of the recommendation for ''threatened'' status in the 2007 5-year review and the delisting proposal.

Our Response: Recovery plans under the Act are intended to establish goals for long-term conservation of listed species; however, they are not regulatory documents. As explained in the SSA report and December 15, 2016, proposed rule (81 FR 90762), the black-capped vireo recovery plan was developed in 1991, and has not been updated. In fact, a complete strategy for recovery had not been conceived at the time the plan was developed, and it only provided interim criteria to downlist the species, precluding any possibility of considering recovery criteria in the recovery plan as a contribution to the current status analysis for delisting the species. There are many paths to accomplishing recovery of a species, which may or may not involve all recovery criteria in a final plan being fully met, but comparing the current status of the species to the reclassification criteria provides some information about the health of the populations. In this case, the reclassification criteria have generally been met. Ultimately, the Service is required to evaluate a species' status with respect to the five factors set forth at section 4(a)(1) of the Act when receiving a petition to downlist or delist, as well as every 5 years for species currently on the List. Our current process uses the SSA framework, which is a comprehensive analysis to evaluate the biological status of the species with respect to its resource needs, current conditions, and forecasted future conditions. We believe this approach is well-suited for addressing the biological status of a species based on scientific information without applying regulatory definitions of the species' status under the Act, which is accomplished through the rulemaking process.

(23) *Comment:* One commenter indicated that Wilcox et al. (2012), cited in the December 15, 2016, proposed rule was not made available, and may have been used inappropriately.

Our Response: Wilcox et al. (2012) was cited in the SSA report and proposed rule, but was inadvertently omitted from the literature cited section in the SSA report. We have added the reference to this section in the SSA report and this rule. We disagree that this study is not applicable in the context in which it is cited in the proposed rule. The article, titled ''Historical Stocking Densities on Texas Rangelands,'' is cited in the discussion on rangelands and livestock. We simply paraphrase a conclusion in the study that references healthier changes in rangelands over time due in part to reduced livestock densities.

(24) *Comment:* We received three comments concerning the provisions of the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712) described in the proposed rule. Commenters stated that the MBTA would not be protective of the black-capped vireo after it is delisted.

Our Response: The reference to the MBTA in the proposed rule is to note that the removal of the black-capped vireo from the List would not affect its status under the MBTA. We did not imply that the MBTA would be a substitute for the Act. The black-capped vireo is being removed from the List due to recovery, not because it will be protected under the MBTA. It will remain listed under the MBTA.

(25) *Comment:* We received two comments on the definition of ''manageable locality'' in the proposed rule and SSA report. The comments stated that the definition is not supported.

Our Response: In the SSA report, we use the best available information to summarize the current conditions of the species across its breeding range. Rather than define what constitutes a population of black-capped vireos, for

the purposes of evaluating redundancy, we define units that are reasonably expected to be manageable and resilient. One comment referred to the SSA report definition as a ''population'' and also refers to the 1991 recovery plan population estimate of 500 pairs for comparison. The SSA report uses the term ''locality'' and provides a definition in order to distinguish it from a ''population,'' similar to the term ''population'' in the recovery plan, which was estimated using a Population Viability Analysis model from data available in 1989. Contrary to the comments, we believe our designations of manageable locality and likely resilient locality are supported as described in the SSA report.

(26) *Comment:* Several commenters did not agree that the SSA report supports a delisting proposal.

Our Response: We disagree with the commenters. The SSA report is a science-based risk assessment. It compiles the best available information and includes a comprehensive analysis of past, present, and forecasted future scenarios of the availability of the resource needs of the species. The report was peer-reviewed, without significant comments on the quality of information or analysis provided.

(27) *Comment:* Several commenters stated that the proposed rule and SSA report do not address specific threats to the black-capped vireo. Commenters noted wind energy, urbanization, oak wilt, and oil and gas development as potential threats to the species.

Our Response: We recognize that there are a variety of stressors that may continue to affect individual black-capped vireos or their habitat. In the SSA report, we evaluate those stressors that are known, or appear to be a threat to the species, and therefore influence the viability of species. Included in our characterization of viability are conservation actions that are known to have a positive influence on viability. We address potential urbanization in another comment, noting that our evaluation of land use trends encompasses this stressor. Oil and gas development is most prominent in the western portion of the species' range; where overlap occurs, we have not identified or been provided information indicating there is a continuing or eminent threat to the species from oil and gas exploration. Wind energy also occurs largely in the western portion of the black-capped vireo's range. At the request of wind energy companies, the Service has reviewed numerous proposed projects in Texas for potential impacts to black-capped vireo. Through this coordination, several large, previously undocumented black-capped vireo localities were discovered and impacts frequently avoided or minimized. Wind energy projects are normally planned on a large landscape, but have a small overall footprint (ground disturbance). Collisions with rotors are expected to be rare, as vireos do not fly within the distance of rotors during the breeding season. Of the numerous projects reviewed for impacts to the species, only one has requested and received an incidental take permit authorizing impacts to the species. This facility also resulted in the documentation of a location with more than 150 male vireos previously unknown, offset the impacts of the project through permanent protection, and will monitor the site for the life of the facility. We do not have evidence that oak wilt is a significant threat to the black-capped vireo. Vegetation composition in areas used by vireos is variable, but the woody vegetation structure generally remains the same. While oak wilt may affect localized areas of habitat, vireos use a variety of hardwood species with the appropriate structure for nesting and foraging.

(28) *Comment:* One commenter stated that the short- and long-term timeframes utilized in the SSA report are not supported.

Our Response: The basis for the use of the short- and long-term timeframes is provided on page 12 of the SSA report. The short-term timeframe reflects the availability of past information for the species since the original assessment in 1985. The long-term timeframe is associated with specific climate change models relevant to the species and its habitat and also reflects our ability to project land management decisions.

(29) *Comment:* Two commenters disagreed with the analysis of the black-capped vireo's winter range in the SSA report. Comments stated that the information is not adequate and the use of return rates of wintering birds is insufficient to address winter range habitat availability.

Our Response: The use of return rates of banded black-capped vireos, by itself, is not an indicator of habitat availability on the winter range. We provided return rates as a part of the information collected to evaluate the potential threats to the winter range. The SSA report acknowledges the limited information available on potential threats to the winter range. There are recent studies on the winter range we summarized in the SSA report that we believe, along with the other information presented, indicate habitat within the winter range is not a limiting factor for species viability.

(30) *Comment:* We received information suggesting that BBS data show brown-headed cowbirds detections are increasing across the vireo's range, rather than decreasing as shown in the SSA report.

Our Response: The information provided to support the comment was USGS BBS raw data, the same source utilized in the SSA report. The difference is the Service's SSA report uses USGS's BBS Regional Trend Analysis data. As noted in an earlier comment response, USGS uses statistical analysis of the raw data to produce trend and annual indices, which is a better estimate of population change. The brown-headed cowbird hierarchical model analysis data we use in our SSA report are available at *https://www.mbr-pwrc.usgs.gov/bbs/bbs.html* and show a decreasing trend in Texas and Oklahoma.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to, or removing species from the Federal List of Endangered and Threatened Wildlife. Under section 4(a)(1) of the Act, we may list or delist a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the black-capped vireo. Our analysis indicates the known threats at the time of listing, habitat loss (Factor A) through land use changes, livestock grazing, and vegetation succession, and brown-headed cowbird brood parasitism (Factor E), are reduced or adequately managed. Under current management, these threats are mitigated such that vireo numbers are robust and increasing. Management actions by our partners on publicly managed and other protected lands will continue based on our shared conservation commitments, which are documented in the PDM plan and included in the docket associated with this final rule. We expect prescribed fire and other management actions to continue in the eastern portion of the U.S. range because the actions are necessary for landscape and rangeland management and are aligned

with the conservation mission of many landowners where large populations of black-capped vireos currently exist. We find that the species has recovered so that it no longer meets the definition of endangered under the Act.

Since the black-capped vireo was listed (1987), its known abundance and distribution have increased. Currently, we know of 20 manageable and 14 likely resilient populations (as those terms are defined earlier in this rule and in the SSA report) across the species' breeding range. We assessed the likelihood of persistence of these populations over the next 50 years based on our ability to reasonably predict climate change outcomes and consistent land management activities. In the worst case scenario, the black-capped vireo would be expected to diminish in range and populations, but still remain above the level reported from 2000 to 2005. The black-capped vireo appears to have adequate redundancy, representation, and resiliency to persist over the next 50 years.

Over the foreseeable future, the primary threats to the species continue to be habitat loss through land use conversion and vegetational succession, and brown-headed cowbird brood parasitism. Most threats have decreased in magnitude or are adequately managed, particularly through the use of prescribed fire for various habitat restoration purposes not directly related to black-capped vireo management and we generally expect those trends to continue throughout the foreseeable future. The wintering area for the black-capped vireo occurs entirely in Mexico, but many of the existing habitat areas in Mexico are buffered from degradation due to limited accessibility and rugged terrain, so we do not anticipate significant reductions in habitat quality or quantity over the foreseeable future even without specific management assurances. We find that the species no longer meets the definition of threatened under the Act.

Based on the analysis in the SSA report (Service 2017; see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report), and summarized above, the black-capped vireo does not currently meet the Act's definition of endangered in that it is not in danger of extinction throughout all of its range. In addition, the black-capped vireo is not a threatened species because it is not likely to become endangered in the foreseeable future throughout all of its range.

Significant Portion of the Range Analysis

Under the Act and our implementing regulations, a species may be listed if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Having determined that the black-capped vireo is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the black-capped vireo is in danger of extinction or likely to become so. We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578; July 1, 2014). Aspects of that policy were vacated for species that occur in Arizona by the United States District Court for the District of Arizona. *CBD* v. *Jewell,* No. CV–14–02506–TUC–RM (Mar. 29, 2017), *clarified by the court,* Mar. 29, 2017. Since the black-capped vireo does not occur in Arizona, for this finding we rely on the SPR Policy, and also provide additional explanation and support for our interpretation of the SPR phrase. In our policy, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.''

Our final policy addresses the consequences of finding that a species is in danger of extinction in an SPR, and interprets what would constitute an SPR. The final policy includes four elements: (1) If a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy applies to analyses for all status determinations, including listing, delisting, and reclassification determinations. As described in the first element of our policy, once the Service determines that a ''species''—which can include a species, subspecies, or distinct population segment (DPS)—meets the definition of ''endangered species'' or ''threatened species,'' the species must be listed in its entirety and the Act's protections applied consistently to all individuals of the species wherever found (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

For the second element, the policy sets out the procedure for analyzing whether any portion is an SPR; the procedure is similar, regardless of the type of status determination we are making. The first step in our assessment of the status of a species is to determine its status throughout all of its range. We subsequently examine whether, in light of the species' status throughout all of its range, it is necessary to determine its status throughout a significant portion of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis is required. The policy explains in detail the bases for this conclusion—including that this process ensures that the SPR language provides an independent basis for listing; maximizes the flexibility of the Service to provide protections for the species; and eliminates the potential confusion is a species could meet the definitions of both ''endangered species'' and ''threatened species'' based on its statuses throughout its range and in a significant portion of its range. *See, e.g.,* SPR Policy, 79 FR 37580–81.

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

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

We also evaluated representation across the black-capped vireo's range to determine if certain areas were in danger of extinction, or likely to become so, due to isolation from the larger range. Several studies have addressed genetic diversity of the black-capped vireo, particularly due to its fairly restricted breeding range both historically and currently, and due to the ephemeral nature of its habitat in portions of its range and its patchy distribution in the breeding range. Evidence exists that population differentiation has occurred over the black-capped vireo's breeding range due to limited gene flow between breeding populations (Barr et al. 2008, entire). However, other studies have shown no differentiation of populations and that adequate gene flow exists (Vazquez-Miranda et al. 2015, p. 9; Zink et al. 2010, entire). Adult black-capped vireos show strong site fidelity to territories between breeding seasons, especially in larger populations (USFWS 1991, p. 19). Gene flow between populations is largely dependent on the proximity of populations, in order to facilitate dispersal of breeding birds. Dispersal distances for adults is generally 0.14 to 0.41 kilometers (km) (0.09 to 0.25 miles (mi)) (DeBoer and Kolozar 2001, entire); however, long dispersal distances have been recorded up to 12.8 km (8 mi) (USFWS 1991, p. 19). Natal dispersal, the movement from hatch site to breeding site, is known to be much greater, generally from 21 to 30 km (13 to 19 mi) (Grzybowski 1995, p. 18; Cimprich et al. 2009, p. 46). The longest dispersal distance of a banded nestling re-sighted as a breeding adult was 78 km (48.5 mi) (Cimprich et al. 2009, entire). The known populations of black-capped vireos are geographically spread widely across the species' historical range and habitat types, ensuring that the global population is not singular and isolated. Additionally, the known distribution demonstrates robust representation when considering genetic heterozygosity and lack of genetic structuring across these populations.

Our analysis indicates that there is no significant geographic portion of the range that is in danger of extinction or likely to become so in the foreseeable future. Therefore, based on the best scientific and commercial data available, no portion warrants further consideration to determine whether the species may be endangered or threatened in a significant portion of its range.

Conclusion

We have determined that none of the existing or potential stressors causes the black-capped vireo to be in danger of extinction throughout all or a significant portion of its range, nor is the species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We may delist a species where the best available scientific and commercial data indicate that the species has recovered and is no longer endangered or threatened. 50 CFR 424.11(d)(2). On the basis of our evaluation, we conclude that, due to recovery, the black-capped vireo is not an endangered or threatened species.

Effects of the Rule

This rule revises 50 CFR 17.11(h) to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species. Federal agencies are no longer required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the black-capped vireo. There is no critical habitat designated for this species; therefore, this rule does not affect 50 CFR 17.95.

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

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to maintain sufficient viability without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

The PDM plan for the black-capped vireo was developed in coordination with our Federal, State, and other partners. The PDM plan utilizes the results from current research and effective management practices that have improved the status of the species and led to its recovery. The PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in the black-capped vireo's populations, distribution, and viability. If declines are detected equaling or exceeding these thresholds, the Service, in combination

with other PDM plan participants, will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. The investigation will be to determine if the black-capped vireo warrants expanded monitoring, additional research, additional habitat protection, additional cowbird trapping, or resumption of Federal protection under the Act. Additionally, the Service has obtained commitments from our key conservation partners to continue to manage for the species on lands under their authorities. We have included these written commitments in the docket along with this final rule, and as an appendix to the PDM plan. The final PDM plan will be made available at *http://www.fws.gov/southwest/es/arlingtontexas/* after comments on the draft PDM have been considered and incorporated as appropriate.

Required Determinations

National Environmental Policy Act

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

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0110, and upon request from the Arlington, Texas, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Service's Arlington, Texas, Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we 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.

§ 17.11 [Amended]

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

Dated: March 8, 2018.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–07350 Filed 4–13–18; 8:45 am]

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