

Dated: January 18, 2005.

**James Jones,**

Director, Office of Pesticide Programs.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Gentry Indigo Bush as Endangered

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), announce a 90-day administrative finding on a petition to list the Gentry indigo bush (*Dalea tentaculoides*) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that listing the Gentry indigo bush may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

**DATES:** The administrative finding announced in this document was made on January 25, 2005. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by April 4, 2005.

**ADDRESSES:** Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021-4951. The petition, administrative finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mima Falk, Plant Ecologist, at the Tucson Sub-Office, 201 North Bonita Ave, Suite 141, Tucson, Arizona, 85745, or at 520-670-6150 x 225.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that

we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). This finding summarizes information included in the petition and information available to us at the time of the petition review. Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our finding considers whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous, critical analysis of the best available scientific and commercial information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and Information Quality Act.

On January 7, 2002, we received a petition dated January 2, 2002,

requesting that we list the Gentry indigo bush (*Dalea tentaculoides*) as an endangered species, and that critical habitat be designated concurrently with the listing. The petition, submitted by the Center for Biological Diversity (Center), was clearly identified as a petition for a listing rule, and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated April 25, 2002. In that letter, we also advised the petitioners that due to funding constraints in fiscal year (FY) 2002, we would not be able to begin processing the petition in a timely manner.

On January 21, 2003, the Center sent a Notice of Intent to sue for violating the Act by failing to make a timely 90-day finding on the petition to list the Gentry indigo bush. On September 17, 2003, the Center filed a complaint against the Secretary of the Interior and FWS for failure to make a 90-day petition finding under section 4 of the Act for the Gentry indigo bush. In a Stipulated Settlement Agreement, signed June 14, 2004, we agreed to submit a 90-day finding to the **Federal Register** by January 31, 2005 [*Center for Biological Diversity v. Norton*, CV 03-473-TUC-FRZ (D. Az)]. This notice constitutes our 90-day finding for the petition to list the Gentry indigo bush.

##### Biology and Distribution

Gentry indigo bush is an erect perennial shrub that grows from a woody root crown and can be up to 1 meter (m) (3.2 feet (ft)) tall. It is a member of the Leguminosae (Pea) Family. The leaves are compound, 3-6 centimeters (cm) (1.2-2.4 inches (in)) long with 9-17 pairs of leaflets. The leaflets are hairless, notched at the tip, and dotted with punctuate (translucent pitted glands or colored dots) glands on the lower surface. The flowers are sessile (lacking a stalk), 6 millimeters (mm) (0.24 in) in length, and are presented in oblong clusters. The flower petals are rose-purple. Plants flower in the spring, from late March to mid-May. They may produce a second set of flowers in late summer and fall in response to monsoon precipitation.

Howard S. Gentry originally described the species in 1950. It is a distinctive member of the genus *Dalea* with no closely related species (Gentry 1950, Barneby 1977). The main distinguishing character that serves to separate this

species from other sympatric species is the presence of elongate, brown tentacle-like glands on the calyx (the outer whorl of flowering parts) lobes, floral bracts (the reduced or modified leaf subtending a flower), and branches.

Gentry indigo bush has been known historically from only three areas in southern Arizona: the west and north sides of the Baboquivari Mountains (Tohono O'odham Nation), the Coyote Mountains (Mendoza Canyon), and Sycamore Canyon (Coronado National Forest) in the Atascosa Mountains. Today, the only known extant population in the United States is in Sycamore Canyon. The plant was located in Mexico (NE of Huasabas in the State of Sonora) in 1995, and in 2004, the species was reported from Sierra El Humo, SSW of Sasabe, Arizona, in northwestern Sonora, Mexico (L. Hahn, pers. comm., 2004). (The 2004 location information was not included in the petition.) There was no population information provided on the Mexican locations.

It is likely that the species still persists in the Baboquivari Mountains, but there have been no recent surveys to verify the presence of the species. These sites are within the Tohono O'odham Nation, and surveys could only be conducted by Tribal members or with permission from the Tribe. A status report for Gentry indigo bush was completed in 1992 (Gori *et al.*), and all of the known historical locations (except on the Tohono O'odham Nation) were surveyed. Areas of suitable habitat were also surveyed. No plants were found in the Coyote Mountains, and the authors surmised in the status report that the population was extirpated, possibly due to past grazing practices. In the status report the authors stated, "Mendoza Canyon was heavily grazed by cattle and dominated by *Acacia greggii* (catclaw acacia) to an extent we have rarely encountered in Southern Arizona. Such heavy cover of invasive shrubs is indicative of a long history of overgrazing." No plants were located in any of the other areas surveyed, including canyons in the following mountain ranges in Sonora, Mexico: Sierra Cibuta, La Colorada, Sierra el Tigre, Sierra los Ajos, Sierra Azul, Arroyo Las Fresnos, Sierra San Diego, La Angostura, and Sierra San Luis (Gori *et al.* 1992).

Gentry indigo bush grows in scattered patches at elevations of 1,097 to 1,219 m (3,600 to 4,000 ft) in Sycamore Canyon and several side channels. Plants are usually found on floodplain terraces in sandy or gravel soils, or, less commonly, on talus slopes close to the floodplain. The usual tree canopy for

Gentry indigo bush consists of Arizona sycamore (*Platanus wrightii*), Arizona ash (*Fraxinus velutina*), Arizona walnut (*Juglans major*), and several oak species. Plants can be found growing under these trees or out in the open. Gentry indigo bush grows in the semi-active floodplain, meaning they are exposed to periodic flooding and scouring events. Observations made by Gori *et al.* (1992) and Falk (1993) support the idea that plants are adapted to periodic, low-intensity floods. Plants that had been covered with sediment were found to be growing up through the deposited material. The plants reproduce vegetatively (asexually) and roots almost always connect young plants to nearby larger clumps. To date, there has been no documented sexual reproduction in the field. In fact, plants rarely, if ever, have been observed to produce seed (Falk 1993, Gori *et al.* 1992). Staff from the Desert Botanical Garden collected approximately 50 seeds from plants they assumed to be Gentry indigo bush in 1998, but no germination tests have been conducted (K. Rice, pers. comm. 2004).

This species has adaptations to withstand periodic, low-intensity flooding, but the population in Sycamore Canyon has experienced population fluctuations, some of those associated with flood events. Following severe winter flooding in 1993, a large portion of a monitoring plot that had been established on a floodplain terrace washed away and the population declined to 15–30 plants (Falk 1993). Gori *et al.* (1992) estimated that there were 1,400 "individuals" in Sycamore Canyon before the heavy rains of 1993.

#### Previous Federal Actions

Gentry indigo bush was determined to be a candidate species as published in the 1980 Plant Notice of Review (45 FR 82480). A species with candidate status is one for which we have collected and assessed information sufficient to propose listing the species. The removal of candidate status for Gentry indigo bush was published on April 2, 1998 (63 FR 16217). The reasons supporting removal from the candidate list were (1) the taxon was more abundant or widespread than previously believed or not subject to any identifiable threats; and (2) the FWS had insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. However, as described below, subsequent information from the U.S. Forest Service describes a significant decline in the only known U.S. population.

#### Status Concerns

Gentry indigo bush has always been considered rare. Gori *et al.* (1992) refer to the species as "extremely rare." The loss of the population documented from Mendoza Canyon in the Coyote Mountains increased concerns regarding this rare taxon. Gentry indigo bush was once collected on the west slope of the Baboquivari Mountains. Toolin (1982) was unable to locate the species in 1981 and observed that the habitat had been "exceedingly modified" by overgrazing. This observation lends some uncertainty to the status of the populations on the Tohono O'odham Nation as the grazing regime is unknown in this area. Given these circumstances, attention on this species in the United States has been focused on the remaining population in Sycamore Canyon. As stated earlier, numbers of that population fluctuated dramatically between 1992 and 1993; numbers dropped from 1,400 to between 15–30 plants. Additional survey work in Mexico has documented at least two locations of Gentry indigo bush from Mexico, but we have no information on the size of those populations. Also, we have no information related to the threats to these populations and are unaware of any protection for these sites.

A status report (Toolin 1982) documented only 100 plants from Sycamore Canyon. The Sycamore Canyon population was assessed in 1997 (Bertelsen), and 499 individuals were located. A survey by Brooks (1999) found 194 plants in Sycamore and Penasco Canyons (a tributary to Sycamore). Since that time, there has been no systematic survey of Sycamore Canyon to determine the status of this population. A Forest Service biologist reported seeing some patches of Gentry indigo bush while surveying for Sonora chub in the canyon (2000, 2001).

An internal memorandum to our files (Roller 1998) concluded "the species capacity to recover does not negate the threat of extirpation to this extremely localized endemic, as it relates to extreme flood events within the watershed." We also expressed concern with the observed lack of seed production as this leaves the species without an effective seed bank that would be needed in order to recover from a catastrophic flood event.

#### Conservation Status

Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: "(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; (E) other natural or manmade factors affecting its continued existence.” The petitioners contend that four of the five factors (A, C, D, and E) are applicable to the Gentry indigo bush (see below). A brief discussion of how each of the five listing factors applies to the Gentry indigo bush follows:

Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range.

With respect to Factor A, the petitioners cite the loss of plants and alteration of habitat associated with livestock grazing as threats to the Gentry indigo bush. The petitioners note that Gentry indigo plants are palatable to livestock, subject to trampling, and that livestock grazing may alter the stream dynamics associated with Gentry indigo bush habitat. The alteration of stream habitat includes soil compaction, streambank erosion, and removal of riparian vegetation. Although the Gentry indigo bush may benefit from some disturbance due to its ability to reproduce asexually, increased surface runoff, higher intensity floods, stream downcutting, and increased scouring and deposition could contribute to the elimination of populations.

Information currently available indicates that the loss of plants and habitat to these causes may be a significant threat to the status of this species. Toolin (1982) states, “Habitat of this species in canyons on the west slope of the Baboquivari Mountains where this species formerly occurred has been exceedingly modified by overgrazing by livestock, and that population has apparently been extirpated.” Gori *et al.* (1992) concluded, “Our surveys of Sycamore and Mendoza Canyons lead us to believe that grazing constitutes a threat to *D. tentaculoides*. We observed direct evidence of livestock browsing on, and even uprooting, the species in lower Sycamore Canyon where trespass cows from Mexico enter the canyon up to an impassable narrows.”

Sycamore Canyon is within the boundaries of the Coronado National Forest, Nogales Ranger District. It is also within a designated Research Natural Area (Goodding RNA). Livestock grazing is not permitted within the boundaries of the RNA, but trespass cattle use has been a sporadic problem (U.S. Department of Agriculture 1998). Cattle have been observed in the upper reaches of the canyon (Falk pers. observation, Brooks 1999), and Brooks noted heavy cattle use below “the narrows,” most likely attributable to trespass livestock

from Mexico. In 1997, the Forest Service proposed a set of actions in Sycamore Canyon to protect the federally threatened Sonora chub (*Gila ditaenia*). One of those actions included building a fence at the northern portion of the canyon to restrict livestock access to the riparian areas. If this fence is maintained, it could help alleviate problems with cattle in the upper reaches of Sycamore Canyon. However, trespass cattle from Mexico are another problem. Sycamore Canyon extends south into Mexico. Historically, the border fence has been in a state of continual disrepair. In the fall of 1998, 2.4 kilometers (km) (1.5 miles (mi)) of fence along the border was repaired. We do not know the current condition of this fence. Recent increases in undocumented U.S. and Mexico border crossing activity contribute to the fence being continually cut.

Watershed degradation maybe a concern in this canyon. The Bear Valley allotment surrounds Sycamore Canyon. It is 9,197.5 hectares (ha) (22,710 acres (ac)) in size. Site-specific soil surveys (2002) indicated that 75 percent of the allotment is in satisfactory condition, 16 percent impaired, 8 percent unsatisfactory and 1 percent is unsuitable condition. A Forest Service hydrologist (Lefevre 2000) concluded, “Mankind’s influence on Sycamore Canyon is mostly related to downcutting of the channel system, sediment movement, and sediment yield to the stream. Human settlement and cattle grazing, and the roads associated with these activities, has resulted in erosion rates above that which would be expected under unroaded, unmined and ungrazed conditions. The effects of this additional sediment may be seen in the reaches of the channel where deposits of gravel have filled pools. Downcut channel reaches may also be attributed to mankind’s effects on the uplands because peak flows were artificially increased during the past century.”

The movement of water and sediment in Sycamore Canyon may have affected the plants. After the 1993 El Niño winter rains, most of the monitoring plot had been washed away and the plant population had experienced a dramatic decline, with more than 90 percent of the known individuals washed away or covered with sediment. Recovery has been slow; at last count there were only 194 plants in Sycamore Canyon (Brooks 1999). That is only 14 percent of the 1,400 plants documented in 1992. The watershed conditions in the Sycamore Canyon drainage may have contributed to the current status of Gentry indigo bush.

Factor B: Overutilization for commercial, recreational, scientific, or educational purposes.

With respect to Factor B, the petitioners did not provide information. We also have no information on the overutilization of this plant species for commercial, recreational, educational, or scientific purposes.

Factor C: Disease or predation.

With respect to Factor C, the petitioners again referred to the plant’s palatability, both to livestock and rabbits. They provided one observation of a plant being almost totally eaten by a rabbit (Brooks 1999). We acknowledge that rabbits may eat plants, but do not think this constitutes a major threat to the species because of the size of mature plants. We have already discussed the effects of livestock grazing on Gentry indigo bush under Factor A.

Factor D: The inadequacy of existing regulatory mechanisms.

With respect to Factor D, the petitioners cite the inadequacies of the protections put forth by the Forest Service for the Goodding RNA and Sycamore Canyon. The Forest Service has stated that Gentry indigo bush is afforded a high level of protection because it shares its habitat with critical habitat of the federally listed Sonora chub. The Forest Service has done much work to improve the habitat of Sonora chub, including removal of a road at the mouth of Sycamore Canyon, protection of riparian areas at the northern end of Sycamore Canyon, and the expansion of the Goodding RNA. These actions have contributed to improvement of Sonora chub habitat and perhaps to Gentry indigo bush habitat.

There are several other possible management concerns in the canyon. The cutting of the border fence with Mexico continues to be an issue. Until this is resolved, cattle from Mexico will continue to enter Sycamore Canyon and graze on Gentry indigo bush. Undocumented migrants crossing the border into the United States also use this area. Human traffic associated with this activity in the canyon bottom may directly trample plants and is likely contributing to Gentry indigo bush habitat degradation.

The amount of sediment and surface runoff within the Sycamore Canyon watershed may continue to affect Gentry indigo bush. The plants have adaptations for persisting with flood events, but it is unknown when the threshold will be crossed, in terms of the magnitude of flows, that will likely remove the population from the canyon. Recovery may be hampered by the seemingly low reproductive potential of this plant. The Forest Service maintains

a road density of 0.58 km/km<sup>2</sup> (0.93 mile/mi<sup>2</sup>) within the watershed and considers these roads to be “a primary source of erosion and sediment” (Lefevre 2000). The Forest Service has no plans to address the effects of roads in Sycamore Canyon watershed; thus there will continue to be sediment deposition and scouring in and along the stream channel.

Sycamore Canyon is a very popular place for recreation. The petitioners cite trampling and compaction of soils from foot traffic as negatively affecting the Gentry indigo bush in Sycamore Canyon. Gentry indigo bush plants grow on the floodplain terraces where hikers often create trails to avoid walking in the stream (Falk, pers. observation). Due to its narrow width, there are limited terraces in the canyon intensifying the use of Gentry indigo bush habitat as places to create trails. These activities degrade habitat and may reduce the areas occupied by Gentry indigo bush. We know of no plan to address the effects of recreation in this area.

The Forest Service has not systematically monitored the species on its land. While lack of monitoring is not a direct threat to the species, it does prevent us from adequately assessing the current status of the population. New information would greatly enhance our status review.

Two locations have been noted in Mexico. We have no information on population status or threats at these sites. We are not aware of any protection for these areas. As such, until further information is provided, we do not know how the Mexican populations will contribute to the status of this species.

Factor E: Other natural or manmade factors affecting its continued existence.

With respect to Factor E, the petitioners cite the rarity of the species and the possible extinction risk associated with stochastic events such as drought, flood, and wildfire. This species would most likely be negatively affected by environmental stochasticity (variations over time in the population's operational environment) and natural catastrophes (Menges 1991). We agree, based both on information presented by the petitioner and other information in our files. The most likely scenario is that of catastrophic flooding. Increased rainfall combined with an altered hydrograph in Sycamore Canyon may result in the species being washed out. Long-term drought (as the one we are currently in) may affect the species' ability to recover. The combination of small population size, reduced reproductive potential, and isolation makes this species vulnerable to extinction.

### Finding

On the basis of our review, we find that the petition presents substantial information indicating that listing the Gentry indigo bush may be warranted. The main potential threat to the species appears to be loss of plants and habitat associated with heavy livestock use, an altered hydrograph in Sycamore Canyon, sediment loads in the Sycamore Canyon watershed, and the effects of recreation and other human uses of the drainage. There is also a possible increased risk of extinction associated with small, isolated populations from stochastic events.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that an emergency listing is not warranted at this time, because the population has recovered in some degree, the population is within a RNA with some protections, and the potential exists for additional populations in Mexico. However, if at any time we determine that emergency listing of the Gentry indigo bush is warranted, we will seek to initiate an emergency listing.

The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the Gentry indigo bush is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

### Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Gentry indigo bush. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Gentry indigo bush. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat, especially where it occurs in Mexico.

If you wish to comment or provide information, you may submit your comments and materials concerning this

finding to the Field Supervisor (*see ADDRESSES* section).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

### References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (*see ADDRESSES* section).

### Author

The primary author of this document is Mima Falk, Tucson Sub-Office (*see ADDRESSES* section).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 2005.

**Marshall Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 05–1905 Filed 2–1–05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AU12

### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) and Proposed Delisting of the Preble's Meadow Jumping Mouse

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

**ACTION:** Notice of 12-month petition finding and proposed rule.