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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R2–ES–2013–0025; 4500030113]**

**RIN 1018–AZ43**

### **Endangered and Threatened Wildlife and Plants; Listing as Endangered and Designation of Critical Habitat for Acuña Cactus and the Fickeisen Plains Cactus**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 3, 2012, proposal to add the acuña cactus and Fickeisen plains cactus to the list of endangered species under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of comment on

our October 3, 2012, proposal to designate critical habitat for the acuña cactus and Fickeisen plains cactus and the availability of a draft economic analysis of the proposed designation of critical habitat and an amended required determinations section for the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposals, the associated draft economic analysis for the critical habitat designation, and the amended required determinations. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

**DATES:** We will consider comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

**ADDRESSES:**

*Document availability:* You may obtain copies of the October 3, 2012, proposed rule on the internet at <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0061 or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the draft

economic analysis at Docket No. FWS–R2–ES–2013–0025.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS–R2–ES–2012–0061, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R2–ES–2013–0025. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0061; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comment on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments processing, Attn. FWS–R2–ES–2013–0025; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

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

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We are reopening the comment period for our proposed listing determination and proposed critical habitat designation for *Echinomastus erectocentrus* var. *acunensis* (acuña cactus) and *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus) that was published in the **Federal Register** on October 3, 2012 (77 FR 60509). We are specifically seeking comments on the draft economic analysis, which is now available, for the critical habitat designation; see **ADDRESSES** for information on where to send your comments.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for acuña cactus and Fickeisen plains cactus. The final listing rule will publish under the existing docket

number, FWS–R2–ES–2012–0061, and the final critical habitat designation will publish under docket number FWS–R2–ES–2013–0025.

We request that you provide comments specifically on our listing determination under the existing docket number FWS–R2–ES–2012–0061. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species and ongoing conservation measures for these species and their habitat.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

We request that you provide comments specifically on the critical habitat

determination and draft economic analysis under docket number FWS–R2–ES–2013–0025. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of habitat for acuña cactus or the Fickeisen plains cactus;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of these species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including management for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on these species and their proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas from the proposed designation that are exhibit these impacts.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) Whether the benefits of exclusion outweigh the benefits of including the area proposed as critical habitat for the Fickeisen plains cactus on the Navajo Nation based on the “Navajo Nation Fickeisen Plains Cactus Management Plan” submitted during the

initial comment period.

(13) Whether Department of Defense lands (Barry M. Goldwater Range) proposed as critical habitat for the acuña cactus should be exempted under section 4(a)(3) from the critical habitat designation based on their revised integrated natural resources management plan submitted during the initial comment period.

(14) Additional information from the public as to the current status of the population of acuña cactus in subunit 1b of the proposed critical habitat designation to aid in our determination of whether this subunit meets the definition of critical habitat for the acuña cactus.

(15) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 60509) during the initial comment period from October 3, 2012, to December 3, 2012, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rules. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat designations, find that areas proposed are not essential, are

appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or draft economic analysis by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0061 (for the proposed listings) and Docket No. FWS–R2–ES–2013–0025 (for the proposed critical habitat designations and draft economic analysis), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at

*http://www.regulations.gov* at Docket Number FWS–R2–ES–2012–0061 and the draft economic analysis at Docket No. FWS–R2–ES–2013–0025, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the acuña cactus and the Fickeisen plains cactus in the remainder of this document. For more information on the species, their habitat, and previous Federal actions concerning the species, refer to the proposed listing rule and designation of critical habitat published in the **Federal Register** on October 3, 2012 (77 FR 60509). The proposed rule is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2012–0061) or from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### *Previous Federal Actions*

On October 3, 2012, we published a proposed rule to list as endangered and designate critical habitat for the acuña cactus and the Fickeisen plains cactus (77 FR 60509). For the acuña cactus, we proposed to designate as critical habitat approximately 21,740 hectares (ha) (53,720 acres (ac)) in 6 units located in Maricopa, Pima, and Pinal Counties, Arizona. For the Fickeisen plains cactus, we proposed to designate as critical

habitat approximately 19,901 ha (49,186 ac) in 9 units located in Coconino and Mohave Counties, Arizona. That proposal had a 60-day comment period, ending December 3, 2012. We will publish in the **Federal Register** a final listing determination and critical habitat designation for the acuña cactus and the Fickeisen plains cactus on or before October 3, 2013.

### **Critical Habitat**

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed critical habitat designation is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### *Proposed Changes to Proposed Critical Habitat*

On October 3, 2012, we proposed approximately 1,591 ha (3,931 ac) as acuña cactus critical habitat within Subunit 1b (Dripping Spring; 77 FR 60510, p. 60552). This Subunit was delineated from records of a 1952 collection of this species from an area south of Dripping Spring in Organ Pipe Cactus National Monument. This subunit is located in the southern part of Organ Pipe Cactus National Monument. During the comment period, we received information from the National Park Service indicating this general area has been visited frequently during surveys for cultural and natural resources and no acuña cactus plants were located. We are considering withdrawing this subunit from our final critical habitat designation; however, we are seeking additional information from the public as to the current status of this population and whether this area, if unoccupied, is essential for the conservation of the species.

*Consideration of Impacts under Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. For the Fickeisen plains cactus, we are considering excluding the entirety of Unit 6 (Tiger Wash Unit) and Unit 7 (Little Colorado River Overlook Unit), and a portion of Subunit 8b (Gray Mountain Subunit) that is under the jurisdiction of the Navajo Nation. The Navajo Nation has submitted a management plan for the Fickeisen plains cactus on lands under its jurisdiction. For the acuña cactus, we are considering excluding the entirety of Subunit 3b (Cimarron Mountain Subunit) and a portion of Subunit 3a (Coffeepot Mountain Subunit) that is under the jurisdiction of the Tohono O’odham Nation based on a request from the Tohono O’odham Nation.

*Consideration of Exemption under Section 4(a)(3) of the Act*

For the acuña cactus, we are considering an exemption for a portion of Subunit 3a (Coffeepot Mountain Subunit) and the entirety of Subunit 4b (Sand Tank Mountains Subunit), which is proposed critical habitat for acuña cactus on Department of Defense lands (Barry M. Goldwater Range, under the jurisdiction of the U.S. Air Force). Section 4(a)(3) of the Act exempts Department of Defense lands from critical habitat if an integrated natural resources management plan is prepared and if the Secretary of the Interior determines that plan provides a benefit to the species for which critical habitat is proposed for designation. A revised management plan has been submitted to the Service for review. However, the final decision on whether to exclude or exempt any area will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

### **Draft Economic Analysis**

The purpose of the draft economic analysis is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the acuña cactus and the Fickeisen plains cactus. The draft economic analysis separates conservation measures into two distinct categories according to “without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents

the baseline for the analysis, considering protections otherwise afforded to the acuña cactus and the Fickeisen plains cactus (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the draft economic analysis, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “FRAMEWORK FOR THE ANALYSIS,” of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the acuña cactus and the Fickeisen plains cactus over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The draft economic analysis quantifies economic impacts of the acuña cactus conservation efforts associated with the following categories of activity: (1) BLM Statewide and Resource Management Plans; (2) livestock grazing; (3) Barry M. Goldwater Range activities; (4) U.S. Mexican border activities; (5) Tohono O’odham Nation activities; and (6) transportation activities. The draft economic analysis quantifies economic impacts of the Fickeisen plains cactus conservation efforts associated with the following categories of activity: (1) Livestock grazing; (2) BLM Statewide Plans; (3) uranium mining; (4) activities on lands of the Navajo Nation; and (5) transportation activities.

Total present value incremental impacts are approximately \$60,000 over 20 years following the designation of the acuña cactus critical habitat, assuming a 7 percent discount rate (\$65,000 assuming a 3 percent discount rate). Total present value incremental impacts are approximately \$39,000 over 20 years following the designation of the Fickeisen plains cactus critical habitat, assuming a 7 percent discount rate (\$43,000 assuming a 3 percent discount rate). The total present value incremental impacts in areas considered for exclusion within the Fickeisen plains cactus critical habitat are approximately \$22,000, assuming a 7 percent discount rate (\$23,000 assuming a 3 percent discount rate). The majority of the incremental costs for both cacti is administrative in nature and results from the consideration of adverse modification in section 7 consultations. Additional costs are associated with conducting surveys for acuña cactus within the Barry M. Goldwater Range.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

#### **Required Determinations—Amended**

In our October 3, 2012, proposed rule (77 FR 60509), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). However, based on the

draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as uranium mining, livestock grazing, and transportation construction and maintenance projects. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a

substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the acuña cactus or the Fickeisen plains cactus are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus. Fifty-five percent of land in the proposed designation for acuña cactus and 34 percent of the land in the proposed designation for Fickeisen plains cactus is federally owned. Anticipated incremental impacts in proposed critical habitat are primarily related to consultations on livestock grazing and other Federal land management activities. The remaining forecast impacts are anticipated to be conducted for transportation construction and maintenance projects, Partners for Fish and Wildlife programs, and activities on the Tohono O’odham or Navajo Nations’ lands. The Arizona Department of Transportation

(ADOT) and Tribes are not considered small entities. Therefore, of the remaining activities affected by the proposed critical habitat designations for the cacti, only one is expected to incur costs to small entities: uranium mining. One consultation is projected for the EZ uranium mine. This one consultation will result in impacts to Energy Fuels Inc. (operators of the EZ Mine) of approximately \$900 on a present value basis, or approximately \$80 on an annualized basis, which constitutes an impact of less than one-tenth of a percent of annual revenues. Of the activities affected by the proposed designation for the acuña cactus and the Fickeisen plains cactus, none is expected to incur incremental costs to third-party small entities. The forecast consultations either do not include third parties (programmatic consultations, intra-Service consultations, and consultations with another Federal agency) or the third parties are not considered small entities (consultations with the ADOT and the Tribes). Please refer to the Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated by the designation of critical habitat. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action

agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of the RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess cost and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We conclude that future consultations are not likely to involve a third party or the third parties are not considered small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designations would not have a significant economic impact on a substantial

number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951)*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

Please see our statement under this required determination in our October 3, 2012, proposed rule (77 FR 60565-60566) for information regarding the Tribal lands included in the proposed critical habitat designation for the acuña cactus and Fickeisen plains cactus. Since the publication of that proposed rule, we sent the Chairmen of the

Navajo and Tohono O’odham Nations letters of notification on October 31, 2012. In addition, we had a meeting with Tohono O’odham Nation staff in February 2013, to discuss the proposed designations.

### **Authors**

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Region 2, U.S. Fish and Wildlife Service.

**Authority**

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

Date: March 18, 2013

Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

**~~[Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the acuña cactus and the Fickeisen plains cactus]~~**

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