

The Pacific Junction allotment was added to the FM Table of Allotment in 2000. See 65 FR 41377, published July 5, 2000. However, the allotment was later removed as a result of MB Docket 05–210. See 71 FR 76208, published December 20, 2006. In this regard, Channel 299A was included in Auction 37 and acquired by Connoisseur Media, LLC as the winning bidder.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the

following words in the body of the message, “get form.” A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2008-0114]
[92220-1113-0000; ABC Code: C5]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to Delist *Cirsium vinaceum* (Sacramento Mountains thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to remove *Cirsium vinaceum* (Sacramento Mountains thistle) from the Federal List of Threatened and Endangered Plants under the Endangered Species Act. After reviewing the best scientific and commercial information available, we find that delisting *C. vinaceum* is not warranted. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species or its habitats at any time. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on June 2, 2010.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket # FWS-R2-ES-2008-0114 and <http://www.fws.gov/NewMexico>. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113; telephone (505) 346-2525; facsimile (505) 346-2542. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT:

Wally “J” Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to

list, delist, or reclassify a species presents substantial information to indicate the petitioned action may be warranted. Section 4(b)(3)(B) of the Act requires that within 12 months after receiving a petition to revise the Lists of Threatened and Endangered Wildlife and Plants (Lists) that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings: (a) The petitioned action is not warranted; (b) the petitioned action is warranted; or (c) the petitioned action is warranted but precluded by pending proposals to determine whether any species is an endangered or threatened species as long as expeditious progress is being made to add qualified species to, and remove species from, the Lists. Such 12-month findings are to be published promptly in the **Federal Register**.

Previous Federal Actions

The U.S. Fish and Wildlife Service (Service) proposed to list *Cirsium vinaceum* as a threatened species with critical habitat under the Act on May 16, 1984 (49 FR 20735), and listed the species on June 16, 1987 (52 FR 22933). A recovery plan for *C. vinaceum* was signed on September 27, 1993. The proposed critical habitat rule was not adopted in the final determination to list *C. vinaceum* as a threatened species. The proposed critical habitat rule was withdrawn, because the initial area proposed was considered too large to be essential for *C. vinaceum*'s conservation; the secondary option of designating small, separated parcels around each population was deemed not prudent because of the potential for vandalism and the absence of net benefit to the species (52 FR 22935).

On April 30, 2004, we received a petition from Mr. Doug Moore, County Commissioner of Otero County, New Mexico, to delist *Cirsium vinaceum*. In response to the petitioner's request to delist *C. vinaceum*, we sent a letter to the petitioner dated August 31, 2005, explaining that the Service would review the petition and information in our files and determine whether or not the petition presents substantial information indicating that delisting *C. vinaceum* may be warranted. We concluded in our 90-day finding that the information presented in the petition and information in our files was not substantial to indicate that delisting the species may be warranted; however, the Service initiated a 5-year status review of the species (71 FR 70479; December 5, 2006).

On August 13, 2007, we received a petition from the Board of County

Commissioners of Otero County, New Mexico, to delist *Cirsium vinaceum*. On August 31, 2007, the Service acknowledged receipt of Otero County's complete petition. On November 6, 2008, we published a 90-day finding with the conclusion that the petition and information in our files presented substantial information indicating that delisting *C. vinaceum* may be warranted (73 FR 66003). That document also initiated a review of the species' status within its range.

Species and Habitat Information

E.O. Wooton and P.C. Standley first described *Cirsium vinaceum* in 1913, and originally named it *Carduus vinaceus*, in accordance with generic concepts at that time. In 1915, Wooton and Standley combined the thistle with *Cirsium*, a common genus in the New Mexico flora.

Cirsium vinaceum is a stout plant, 3.3 to 5.9 feet (ft) (1 to 1.8 meters (m)) tall when mature. *Cirsium vinaceum* stems are brown-purple and highly branched. The basal leaves are green, 12 to 20 inches (in) (30 to 50 centimeters (cm)) long, and up to 8 in (20 cm) wide, with ragged edges. *Cirsium vinaceum* is a short-lived perennial. It lives as a rosette (a circular arrangement of leaves close to the ground) for one or more years, and eventually a stem bolts upward producing flower and seed. Flowering, the vehicle for reproduction, occurs only once, from late June through August, when pink-purple flower heads form at the tips of stems.

Seeds are usually produced through cross-pollination, a form of sexual reproduction requiring genes from 2 or more separate *Cirsium vinaceum* individuals; however, this species is capable of reproducing asexually, using genetic material from a single individual to produce a clone. Pollen is carried by a variety of animal vectors, including several species of native bees, flies, butterflies, and hummingbirds (Tepedino 2002, pp. III.5-7). Burks (1994, pp. 72-78) studied pollen movement between *C. vinaceum* flowers and found that native bees were less active as pollinators in small sites (fewer than 100 flowering individuals) than in large sites (greater than 1,000 flowering individuals), although she concluded that this disparity did not limit the overall reproductive success of smaller sites. Burks did find, however, that the reproductive success of smaller sites may be limited by the relative abundance of heterospecific versus conspecific pollen on stigmas. Heterospecific pollen is pollen from other species and does not lead to successful fertilization, whereas

conspecific pollen is pollen from other individuals of the same species, and when deposited on the stigma structures of flowers, can successfully fertilize that flower. Burks found that there was more conspecific pollen on the stigmas of flowers in larger sites than in smaller sites simply as a function of there being more *C. vinaceum* individuals in the area. This suggests that larger sites have a better chance of receiving enough of the appropriate type of pollen to ensure successful fertilization and persistence of that site.

Cirsium vinaceum is an obligate wetland species that requires saturated soils with surface or subsurface water flow. *Cirsium vinaceum* habitats occur in mixed conifer forests and open valleys. Waters at these sites are rich in calcium carbonate, from limestone sources, that often precipitates out to create large areas of travertine (calcium carbonate) deposits, which occasionally become large bluffs or hills. Travertine deposits are the most common habitat of the species.

Distribution and Range

Cirsium vinaceum occurs in Otero County, New Mexico, mostly on the eastern slope of the Sacramento Mountains, with a few sites on the western slope. The range extends from about 6 miles (mi) (10 kilometers (km)) northeast to about 17 mi (27 km) south of Cloudcroft in an area of about 150 square mi (390 square km) (Service 1993, p. 3). Plants occur in meadows and partly shaded forested areas in the mixed conifer zone at 7,500–9,200 ft (2,300–2,743 m) (USFS 2003, p. 42).

More than 95 percent of the known *Cirsium vinaceum* sites occur on the Lincoln National Forest. There are two additional *C. vinaceum* sites near the southern boundary of the Mescalero Apache Reservation, and one known site on a private property seep in Fresno Canyon that is visible from State Highway 82 (Sivinski 2006, pp. 8-9). The extent of *C. vinaceum* habitat on private property inholdings (privately owned land within the boundaries of a protected area that is federally or publicly owned) within the Lincoln National Forest is unknown.

Craddock and Huenneke (1997, p. 218) studied water dispersal of seed and determined that resultant *Cirsium vinaceum* establishment in streamside habitats was sufficient to genetically link some discrete patches of plants. They also found *C. vinaceum* seed on the surface of snow and hypothesized that snowpack may provide large areas of smooth, unobstructed surface for wind transport of seed to adjacent *C. vinaceum* patches. Burks (1994, pp. 75-

77) states that discrete patches of *C. vinaceum* sites, interconnected by pollen and seed dispersal, could collectively be identified as a metapopulation. A metapopulation is defined as group of populations separated geographically, but interconnected through patterns of exchange of genes (Pulliam and Dunning 1994, pp. 189-190). *Cirsium vinaceum* habitats occur in relatively close proximity and may be sufficiently connected genetically to form one or more metapopulations.

The U.S. Forest Service (USFS) catalogs *Cirsium vinaceum* occurrences as habitat locations or sites. New occupied sites have been documented on the Lincoln National Forest since *C. vinaceum* was listed as a threatened species in 1987. By 1993, a total of 62 sites was identified, of which 58 were on USFS land (Service 1993, p. 2). In 1995, there were 77 sites known to occur on the Lincoln National Forest (Service 2005, p. 697). In 2005 and 2007, the USFS cataloged 104 extant, historic, or potential *C. vinaceum* sites included in a monitoring program (Barlow-Irick 2007, p. 1); however, most of these sites are subdivisions of the original 20 populations described at listing. Some sites are sporadically occupied by a few plants during wet years, and unoccupied or dormant during droughts (Sivinski 2006, p. 8). We conclude, therefore, that the 104 *C. vinaceum* sites currently identified by the USFS cannot be meaningfully compared numerically to the original 20 populations identified in the listing rule; most of the newly identified sites do not represent true populations, but subdivisions of the original 20 populations which were identified through the increased survey effort.

The known geographic range of *Cirsium vinaceum* has not significantly expanded since 1987. All but one of the newly documented sites occur within the 155-square-mi (401.45-square-km) critical habitat area identified in the 1984 listing proposal (49 FR 20739; May 16, 1984). The newly occupied site in Fresno Canyon extends the range by less than 1 mi (1.6 km) (Sivinski 2009a, p. 1). It was believed to be extirpated when this species was listed, and is thought to be the type locality (representative location where the first specimen was found) for the species (Sivinski 2009a, p. 1). This site has recently been reoccupied due to a USFS road management action that increased water supply to the site (USFS 2004, p. 626). *Cirsium vinaceum* plants occur in small, dense groupings covering less than 100 acres (ac) (40 hectares (ha)) (Service 2005, p. 695). Within the range

of the species, sites vary in size from 5 square m (54 square ft) to several thousand square meters.

Population Abundance

At the time of listing as a threatened species in 1987, surveys of USFS land estimated *Cirsium vinaceum* to be a species with 10,000 to 15,000 sexually reproducing individuals (June 16, 1987; 52 FR 22933). Most of these individuals occur in sites on USFS lands; however, several are on private lands and the Mescalero Indian Reservation (June 16, 1987; 52 FR 22933). Both the Service and the USFS noted at the time that accurate counts of the plant had not been made, and that the actual number of plants was likely much larger than the best available data indicated. A 1990 inventory of Lincoln National Forest habitats located 196,000 total plants, including mature and juvenile rosettes (Service 1993, p. 2). This inventory was conducted primarily within the original 20 populations described at the time of listing. The survey method used reflected all age classes of plants in their habitats, rather than methods used in subsequent inventories in which only flowering stems were counted. The 1990 inventory also determined that *C. vinaceum* is capable of sporadic root sprouting to produce multiple rosettes, or clones, per individual.

Six additional inventories of *Cirsium vinaceum* on the Lincoln National Forest have been conducted, beginning in 1995, by Dr. Laura Huenneke, and in subsequent years by Dr. Patricia Barlow-Irick. These inventories consistently followed the survey protocol of counting only flowering plants, rather than all plants of various age classes, at most of the Lincoln National Forest locations known at the time. Surveyed sites consisted of historically occupied, currently occupied, and potentially suitable sites within the known range of *C. vinaceum*. Total numbers of flowering individuals were 34,228 in 1995; 39,849 in 1998; 34,710 in 2000; 30,460 in 2003; 28,063 in 2005; and 24,124 in 2007 (Barlow-Irick 2008, p. 1). Total numbers of habitat sites assessed were: 76 sites in 1995, 81 sites in 1998, 82 sites in 2000, 85 sites in 2003, 85 sites in 2005, and 81 sites in 2007 (Barlow-Irick 2007, p. 1; Sivinski 2006, p. 6).

Many of the occupied *Cirsium vinaceum* sites included in these surveys are only 330 ft (100 m) apart and are as small as 54 square ft (5 square m). Therefore, we do not consider all of these sites to be "populations" in a reproductive or genetic sense of the term, because many are in close proximity to one another (Service 1993,

p. 4). The 1987 description of *C. vinaceum* as occurring in 20 populations of discrete patches of plants, or clusters of proximate occupied habitats that experience limited exchange of genes between plants in each of the patches because of geographic distance, has been revised using more complete survey information. Subsequent discoveries of several additional patches of *C. vinaceum* between these "populations" and observations of seed dispersal in streams have significantly reduced the number of *C. vinaceum* patches that could conform to the traditional biological definition of a population (Craddock and Huenneke 1997, p. 218); however, a revised number of populations of *C. vinaceum* has not been determined.

The Service and USFS estimates of total population size of *Cirsium vinaceum* are based on the 1995 monitoring protocol of multiplying the number of flowering individuals by 10 to account for the numerous juvenile rosettes (USFS 2003, pp. 44-45). The multiplier of 10 is based on a 1989 count of all rosettes in four *C. vinaceum* sites, which found that flowering individuals ranged from 10 percent to 13 percent of the rosettes in the four sites (Sivinski 2006, p. 6). Therefore, this protocol relies on a very limited sample in a single year, which may or may not be accurate for an entire population estimate in any given year (Sivinski 2006, p. 6). We currently do not have information available to determine whether 1989 was a representative year, and how other years compare to 1989 in terms of total numbers of rosettes at a variety of *C. vinaceum* sites. For these reasons, we are using actual flowering stem counts in this finding, and not estimates of total population size, as determined by the 1995 monitoring protocol.

In 1998, the survey protocol was changed from estimating population size to actually counting every flowering stem. Additional sites were found in this year, leading to a population size that would translate to nearly 400,000 individuals using the old protocol of multiplying the number of flowering individuals by 10. Barlow-Irick, the contractor who completed the inventories of *Cirsium vinaceum* from 1998 to 2007, states that the reported increase in numbers is not the result of the species being more abundant within populations, but rather is strictly a function of finding more sites as well as the change in protocol from estimating population size to actually counting every flowering stem (Barlow-Irick 2008, p. 1).

The intensive field monitoring described above conducted by Huenneke and Barlow-Irick shows a downward trend in the number of occupied sites, overall population numbers, and number of flowering stalks from 1998 to 2007. The rate of decline in total flowering *C. vinaceum* numbers was 12.9 percent between 1998 and 2000, 12.2 percent between 2000 and 2003, 7.9 percent between 2003 and 2005, and 14 percent between 2005 and 2007. This decline coincides with a severe long-term period of drought with higher than average winter temperatures across most of New Mexico beginning in 1999 (Sivinski 2006, pp. 6-7). Five *C. vinaceum* sites were extirpated between 1995 and 2007. In 2007, another 18 sites contained less than 25 percent of the average number of plants documented in the previous five surveys, and 11 other sites had between 25 and 50 percent of their average stem count (Barlow-Irick 2008, p. 2). However, a declining trend is not completely consistent among *C. vinaceum* sites. While most *C. vinaceum* sites have experienced decreasing numbers of flowering stems during the monitoring period, a few sites have increased in stem numbers, likely as a result of exclusion of livestock (USFS 2004, p. 629).

Sacramento Mountains Thistle (*Cirsium vinaceum*) Recovery Plan

The main objective of the Sacramento Mountains Thistle *Cirsium vinaceum* Recovery Plan (1993) is to protect and manage the habitats necessary to sustain viable populations of the species. It recommends the following three criteria to meet the plan's goal to delist *C. vinaceum*:

(1) Acquire water rights specifically for the maintenance of travertine spring habitats at a minimum of 30 percent of the occupied spring localities, including at least 1 occupied spring locality in each of the 20 known canyons of occurrence;

(2) Develop habitat management plans to alleviate threats to the species and ensure permanent protection of at least 75 percent of the known occupied habitats, according to steps outlined in the plans. Sites should include both core populations at springs, as well as other occupied riparian habitats. Unoccupied stream habitat downstream of occupied springs should be protected for future colonization by *Cirsium vinaceum*; and

(3) Establish a 10-year monitoring and research program to demonstrate the effectiveness of management implemented under the plans.

No portion of criterion (1) has been met. The State of New Mexico owns the State's water, as determined by the *United States v. New Mexico* case of 1978 (438 U.S. 696, 98 S. Ct. 3012). Federal land managers in New Mexico do not own the water located on Federal lands, and therefore cannot deny a claim of a legitimate beneficial use of a water right. However, a land manager can designate the point of diversion according to a claim of the water right. In July 2007, the State of New Mexico adopted legislation establishing a strategic water reserve to manage water for interstate stream augmentation to benefit threatened or endangered aquatic or obligate riparian species (NM ST § 72-14-3.3, 2007). This law may be applicable to protect *Cirsium vinaceum* habitats. Federal agencies are eligible to acquire such State-based water rights to benefit threatened or endangered aquatic or obligate riparian species; however, to date, no action agency has acquired or attempted to acquire water rights to benefit *C. vinaceum*. Where *C. vinaceum* is not exclusively associated with riparian habitats and is not located within river reaches that involve stream augmentation or interstate stream compacts, this recent law may not apply. This would eliminate most occupied *C. vinaceum* sites, particularly at its upland spring and travertine shelf habitats. Also, the New Mexico State Engineer has the ability to protect a water resource to further a "State Conservation Goal," but this has not been applied to protect any *C. vinaceum* sites.

The development of management plans to alleviate threats and ensure permanent protection of at least 75 percent of known occupied *Cirsium vinaceum* habitats pursuant to criterion (2) has not been achieved. Although management plans have been developed by the Lincoln National Forest to address threats to *C. vinaceum* from forestry practices, livestock grazing, and trampling by recreationists, the plans have not resulted in permanently protecting 75 percent of the species' occupied habitats. As described in the "Summary of Information Pertaining to the Five Factors" below, exclosures designed to protect some habitats occupied by *C. vinaceum* from trampling and predation have not been consistently maintained and have not been used correctly, and livestock grazing utilization standards and rotation dates have not been consistently enforced. As a result, even in areas where protection has been planned and attempted, *C. vinaceum* has been impacted. In addition, *C.*

vinaceum continues to be impacted by highway maintenance activities, drought, and an emerging threat of insect predation. These additional threats have not been addressed by management plans, and permanent protection of at least 75 percent of the known occupied habitats has not been ensured.

While criterion (3) has not been explicitly met, it has been addressed in concept by continuing studies of *Cirsium vinaceum* population dynamics, ecology, and response to the mitigation of some threats, such as livestock grazing and trampling. For example, monitoring has shown that properly maintained and used exclosures increase the numbers of *C. vinaceum*, allowing recovery at sites. The recovery plan also recommends developing new information for biological factor and threat analysis. Of relevance here is the need for research on measures to control insect predation on *C. vinaceum*.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following 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 these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

- (1) The species is extinct;
- (2) The species has recovered and is no longer endangered or threatened; or
- (3) The original scientific data used at the time the species was classified were in error.

A species is "endangered" for purposes of the Act if it is in danger of extinction throughout all or a "significant portion of its range," and is "threatened" if it is likely to become

endangered within the foreseeable future throughout all or a “significant portion of its range.” For the purposes of this analysis, we will evaluate whether the currently listed species, *Cirsium vinaceum*, should be considered threatened or endangered. Then we will consider whether there are any portions of the range of *C. vinaceum* in which the status of the species differs from that determined for the species rangewide.

The Act does not define the term “foreseeable future.” However, in a January 16, 2009, memorandum addressed to the Acting Director of the Service, the Office of the Solicitor, Department of the Interior, concluded, “* * * as used in the [Act], Congress intended the term ‘foreseeable future’ to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species.” In a footnote, the memorandum states, “In this memorandum, references to ‘reliable predictions’ are not meant to refer to reliability in a statistical sense. Rather, I use the words ‘rely’ and ‘reliable’ according to their common, non-technical meanings in ordinary usage. Thus, for the purposes of this memorandum, a prediction is reliable if it is reasonable to depend upon it in making decisions” (M–37021, January 16, 2009). The majority of *Cirsium vinaceum* habitat is on land within the Lincoln National Forest. This land is publicly owned and managed by the USFS. The USFS manages the land for multiple uses, including livestock grazing and recreation. Considerable data are available on the impacts such activities have had on *C. vinaceum*, and reliable predictions can be made concerning future impacts to the species under USFS management.

In making this finding, we evaluated the best scientific and commercial information available to determine whether delisting *Cirsium vinaceum* is warranted. This information includes the updated petition and associated documents, data from the 1990 through 2007 surveys (Barlow-Irick 2005, 2007, 2008), recent reports by Sivinski (2007, 2008) and the USFS (2008), as well as other information available to us, to determine whether delisting *C. vinaceum* is warranted. The following analysis examines the five factors described in section 4(a)(1) of the Act and those activities and conditions currently affecting *C. vinaceum*, or likely to affect the species within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species’ Habitat or Range

Availability of Water

Cirsium vinaceum is an obligate wetland species that requires surface or immediately subsurface water flows. It occurs only on water-saturated substrates of springs and seeps on hillsides and valley bottoms. Loss of available water at *C. vinaceum* sites has been observed to lead to retractions of occurrence boundaries, a reduction in the numbers of individuals, and, in some cases, a loss of all plants at sites (USFS 2003, pp. 42–43; Barlow-Irick 2007, pp. 1–2). Study results indicate that declining and extirpated *C. vinaceum* sites are more frequently found in drier conditions than are sites with stable or increasing populations (Barlow-Irick 2007, pp. 1–2). Loss of water from *C. vinaceum* habitat occurs both naturally and as a result of human impacts that cause water diversion directly and indirectly. Examples of naturally occurring water loss include changes in precipitation patterns and watershed condition, as well as shifts in travertine deposits and slopes (USFS 2003, pp. 42–43). Water diversion by roads, trails, and spring development are examples of loss of water flow to occupied sites due to human activity (USFS 2003, pp. 42–43).

Natural water loss. In the current decade, *Cirsium vinaceum* has experienced some drought conditions. Water flow at a number of springs occupied by *C. vinaceum* has declined substantially. Monsoonal summer precipitation can be very patchy, with some areas receiving considerably less rainfall than others. While precipitation data compiled by the Western Regional Climate Center for Cloudcroft indicate that there was a shortfall of over 20 percent in mean rainfall in only 1 of the last 15 years (1999) (USFS 2003, pp. 53–54), the seasonal distribution of yearly precipitation is significant and can result in temporary drought conditions for *C. vinaceum*.

Monitoring of *Cirsium vinaceum* has shown a simple and direct relationship between water availability in suitable habitat and numbers and extent of plants in occurrences (Huenneke, 1996, pp. 149–150). As water flow has been observed to decline at springs, decreases in plant numbers and the size of occurrences have occurred. The situation has been observed to reverse when increased water is available (USFS 2003, pp. 55–56). Dry periods can also increase the effects of livestock trampling and herbivory on *C. vinaceum*

when other water and forage plants are not available. Springs and creeks provide a majority of the watering sites for both livestock and wildlife species, especially elk. These wet sites are subject to trampling and hoof damage, and receive especially heavy use during drought periods, when neither water nor green forage are readily available elsewhere. At the end of the summer grazing season in October, livestock water can again be in short supply, and impacts to *C. vinaceum* may increase as a result (USFS 2003, p. 56).

Water diversion due to current activities. Appropriation of water rights from springs for a use recognized by the State of New Mexico as beneficial, such as for livestock, farming, domestic, or recreational facilities, typically uses points of diversion that curtail natural surface flows, and thus may negatively impact *Cirsium vinaceum*. Additionally, the original *C. vinaceum* listing rule described an unauthorized 1,900 ft (579 m) long pipeline and cement spring box constructed at a *C. vinaceum* site, which negatively impacted nearby plants by impeding water flow (52 FR 22933; June 16, 1987). This unauthorized development of a spring near Bluff Springs resulted in an 84-percent loss of *C. vinaceum* at one site, from 300 plants in 1984 to 47 plants in 1991 (Service 1993, p. 29).

Drainage under roads was improved in Water Canyon and the Rio Peñasco in a 2001–2002 riparian improvement project. Sites that were formerly occupied by *Cirsium vinaceum* were returned to conditions suitable for reoccupation by the species with the increased water availability afforded by this alteration, resulting in the rehabilitation of these areas by the species (USFS 2004, p. 626).

Increased water diversion due to future population growth. The human population in Otero County, New Mexico, increased by 20 percent from 1990 to 2000, and is expected to increase another 17.3 percent between the years 2000 and 2030 (University of New Mexico 2004, pp. 1–3). An increasing human population and its associated agricultural and economic activities will require additional water from this relatively dry region. For example, between 2010 and 2040, the City of Alamogordo estimates its water demand will increase from 7,609 acre feet per year to 10,375 acre feet per year (Office of the State Engineer 2003, pp. 3–4). Aquifers in the Sacramento Mountains are susceptible to impacts from existing water rights. Development of additional water rights could potentially dewater *Cirsium vinaceum* water sources, and this constitutes a

threat to the species in the foreseeable future. As discussed above, the State of New Mexico adopted legislation establishing a strategic water reserve to manage water for interstate stream augmentation to benefit threatened or endangered aquatic or obligate riparian species (NM ST § 72-14-3.3, 2007). Federal agencies are eligible to acquire such State-based water rights to benefit threatened or endangered aquatic or obligate riparian species, which may help to mitigate impacts of increased water diversion in the future. However, to date, no action agency has acquired or attempted to acquire water rights to benefit *C. vinaceum*.

In summary, while water diversion due to current activities does not appear to be a widespread threat at the current time, localized impacts have been observed and increased use of water constitutes a threat in the foreseeable future. Natural loss of water is currently a threat to *Cirsium vinaceum*. We will continue to monitor water availability for *C. vinaceum*.

Trampling by Livestock

Improper livestock grazing, as it relates to trampling of habitat, was recognized as a threat to *Cirsium vinaceum* in the 1987 listing rule (52 FR 22933; June 16, 1987). In that notice, the authors report that many sites previously occupied by *C. vinaceum* appear to be suitable for habitation by the species; however, the populations that formerly occurred there had been reduced or eliminated by livestock impacts (52 FR 22933; June 16, 1987). Livestock have the potential for large impacts to the species, both by trampling, discussed below, and by predation through grazing, discussed under Factor C.

Ninety-five percent of *Cirsium vinaceum* localities occur on USFS lands within grazing allotments accessed by livestock. *Cirsium vinaceum* habitats on travertine springs and in the valley bottoms provide the majority of watering locations for livestock and elk, subjecting this fragile habitat to frequent trampling. One site at Silver Springs on the James Allotment has been closed to livestock since 1995. The *C. vinaceum* population in this allotment has grown in response to being rested from livestock, and recent information indicates that this single allotment contained 36 percent of all flowering stems for the species (USFS 2003, p. 44).

Trampling of *Cirsium vinaceum* and its habitat by livestock and humans has caused damage to travertine formations and outflow creek beds, resulting in altered water flow to *C. vinaceum*

habitat (USFS 2003, pp. 42-44). Damage to travertine crusts can adversely affect surfaces critical to the successful germination and reproduction of *C. vinaceum* and inhibit *C. vinaceum* seed movement and dispersal by flowing water (USFS 2003, pp. 43-44). During drought, the effects of compaction and trampling in drying travertine *C. vinaceum* sites may be even more severe. This damage causes a loss of normal soil structure and permeability that may inhibit processes necessary for the development and establishment of new plants when water flows return to these sites. Trampling of *C. vinaceum* can reduce tissue needed for metabolism, and damage seedlings, rosettes, and flowering stalks (USFS 2003, pp. 43-44). Broken flowering stalks render affected *C. vinaceum* incapable of reproduction (USFS 2007, pp. 20-21).

Prior to listing, instances were observed in which trampling from livestock grazing had severely impacted *Cirsium vinaceum* (USFS 2003, p. 46). Todsén (1976, p. 1) reported that the *C. vinaceum* population in Silver Springs Canyon had only a few intermittent plants on the side of a fence where livestock were permitted to graze. In 1978, the USFS reported that *C. vinaceum* in a wet meadow above Bluff Springs occurred only within a small fenced-in area that excluded livestock and not in the adjacent grazed habitat. The USFS later reported in 1984 that recent livestock exclusions from some habitats at Silver Springs, Bluff Springs, and Rio Peñasco had "led to a remarkable increase in numbers of *Cirsium vinaceum*," while the population in Lucas Canyon was "considerably smaller" because of livestock (USFS 2003, p. 44). In a Lucas Canyon study, *C. vinaceum* rosettes were markedly smaller at a site grazed by livestock (mean rosette diameter approximately 4.85 to 8.87 in (12.3 to 22.5 cm)) adjacent to an excluded population subject only to grazing by elk (mean rosette diameter approximately 20.27 to 29.17 in (51.5 to 74.1 cm)). Furthermore, this discrepancy was observed for 24 months after grazing pressure had been alleviated (Thomson and Huenneke 1990, pp. 9-10).

The effects of trampling have resulted in declines or disappearance of *Cirsium vinaceum* at sites (Fletcher 1979, p. 3; 52 FR 22933; June 16, 1987). The USFS has minimized some of the trampling impacts of concentrated use by livestock and elk by enclosing *C. vinaceum* habitats with fences; however, no new fences or protected areas have been created since 1999. Enclosures currently

cover approximately 290 ac (120 ha) on USFS lands. These enclosures protect about one-half of the habitat occupied by *C. vinaceum* from negative impacts associated with livestock use and have resulted in increased numbers of *C. vinaceum* within many fenced sites (Service 2005, p. 698). Fences that are part of livestock enclosures are occasionally knocked down or left open, resulting in trampling of *C. vinaceum* (USFS 2007, p. 4). Additionally, several enclosures were never finished after their construction was initiated, and others have not been maintained, allowing livestock access to *C. vinaceum* habitats (Barlow-Irick 2008, p. 1).

The USFS has excluded livestock from many *Cirsium vinaceum* habitats with fencing, often aiding in the recovery of those populations. For example, a site in Hubbell Canyon that contained no known *C. vinaceum* in 1984 was able to support approximately 500 plants shortly after an enclosure was constructed in 1991 (USFS 2003, p. 62). A grazing enclosure was built around a site in Lucas Canyon that contained 350 plants in 1984, but expanded to 3,414 *C. vinaceum* by 1991. A wet meadow above Bluff Springs that contained only one *C. vinaceum* plant in 1976 has supported hundreds of *C. vinaceum* since 1984, when a livestock enclosure was built (USFS 2003, p. 62). At present, 40 of 86 sites located within the Lincoln National Forest have been fenced to exclude livestock or are considered to be inaccessible to livestock due to steep slopes or cliffs (Todsén 1976, p. 1; Service 2005, p. 698).

As previously discussed, enclosures protect *Cirsium vinaceum* from several grazing impacts, including trampling of plants and habitat, and herbivory of rosettes, flowering stalks, and seedlings. They have allowed *C. vinaceum* populations to recover inside and even expand beyond fenced areas in a few cases (Service 2005, p. 698). However, livestock enclosures around *C. vinaceum* habitats have not been consistently maintained. Due to unmaintained fences, some enclosures are available for the gathering or relocation of cattle (USFS 2003, p. 53; 2007, p. 20; Barlow-Irick 2008, p. 1). Two of the larger fenced areas containing *C. vinaceum* habitats have been and continue to be used as grazing enclosures during the grazing season, and then used to gather cattle at season's end (USFS 2003, p. 53; Service 2010, p. 1). Such practices have had adverse impacts on *C. vinaceum* plants and sites by way of increased grazing and presence of livestock which destroy

seedlings, fragile travertine habitat, and the flowering stalks of plants, thereby preventing reproduction by affected plants (Service 2010).

In summary, although many sites have been protected, up to 50 percent of sites are still subject to grazing pressures, and those that are fenced may be impacted into the future as fences fall into disrepair or are vandalized (Service 2010, p. 1). Furthermore, if *Cirsium vinaceum* were to be delisted, there is little likelihood that maintenance and construction of enclosures would continue in the future. Therefore, livestock trampling is a significant, ongoing threat to *C. vinaceum* that is expected to continue in the foreseeable future.

Recreation

Cirsium vinaceum at Bluff Springs are impacted by trampling due to human recreation. The Land and Resource Management Plan for the Lincoln National Forest (2004, p. 628) prescribes managing Bluff Springs for dispersed recreation, while providing for *C. vinaceum* management. *Cirsium vinaceum* stands in this area have been fenced and foot trails rerouted since 1983 to protect this population (USFS 2003, p. 46). Soon after construction of the fence, *C. vinaceum* increased at this location, but since 1995, the number of individuals has fluctuated, with an overall downward trend. In 2005, the number of flowering stems was 486, less than one-third of the 1,600 plant total in 1995. Recreational users at Bluff Springs continue to impact *C. vinaceum* annually as users trespass into the fenced area and vandalize plants and trample habitat (Barlow-Irlick 2008, p. 1). Impacts from recreational users continue to be a threat to *C. vinaceum* at Bluff Springs, but are not known to be impacting other populations. Thus, recreation is not considered a threat to the species rangewide now or in the foreseeable future.

Logging

Cirsium vinaceum sites have been subjected to direct and indirect impacts from land uses that damage travertine substrates and their hydrological characteristics. Some of the roads and trails that support regional access for timber harvest and management, ranching operations, recreation, and residential developments occur in, or adjacent to, *C. vinaceum* habitats. Prior to, and at the time of listing, there was concern that ground disturbance from road construction and logging could potentially impact *C. vinaceum* habitats if project planning for logging operations did not consider avoiding or

reducing impacts to the species (Fletcher 1979, p. 3; 52 FR 22933; June 16, 1987). Indirect effects from logging, such as road construction, siltation, alteration of hydrologic flows, increased surface water runoff, decreased infiltration, and higher sediment loads in streams, are additional potential impacts to *C. vinaceum* habitat that can result from forestry activities (Service 1993, p. 28). At present, our information indicates that the USFS applies a minimum 200 ft (61-m) protective buffer around *C. vinaceum* occurrences during forest management activities and excludes all equipment from wetland areas with *C. vinaceum* habitat (Service 2002, p. 3; Service 2004, pp. 4–13). These buffers are in accordance with the guidelines of the Lincoln National Forest's Interim Management Plan (USFS 1989, p. 4). This active management by the USFS has mitigated effects of ground disturbance on USFS lands, where 95 percent of the species is located. We do not consider ground disturbance from logging or its associated direct and indirect effects to be a current threat to *C. vinaceum*.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate system is unequivocal based on observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (2007a, p. 5). For the next two decades, a warming of about 0.4 degrees Fahrenheit (°F) (0.2 degrees Celsius (°C)) per decade is projected (IPCC 2007a, p. 12). Temperature projections for the following years increasingly depend on specific emission scenarios (IPCC 2007a, p. 13). Various emissions scenarios suggest that average global temperatures are expected to increase by between 1.1°F and 7.2°F (0.6°C and 4.0°C) by the end of the 21st century, with the greatest warming expected over land (IPCC 2007a, p. 13). Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over-allocated water resources (IPCC 2007b, p. 14). The IPCC reports that it is very likely that hot extremes, heat waves, and heavy precipitation and flooding will increase in frequency (IPCC 2007b, p. 18). Because *Cirsium vinaceum* occupies a relatively small area of specialized habitat, it may be vulnerable to climatic changes that could decrease suitable habitat.

We find that there are limitations in currently available data and climate models. The information available on

climate change indicates that New Mexico will be impacted by the effects of climate change (Agency Technical Work Group 2005, p. 1). However, reliable predictive models have not yet been developed for use at the local scale in New Mexico's Sacramento Mountains, and there is little certainty regarding the timing and magnitude of the resulting impacts. There is currently no information specific to the effects of climate change on *Cirsium vinaceum* or its habitat; however, based on projections made by the IPCC, we consider climate change to be a potential exacerbating factor, worsening the impacts of other known threats. These threats include habitat degradation from water loss resulting from prolonged periods of drought and increased temperature, and the allocation of water for use by the human population and livestock in the area, as well as any number of unforeseen compounding effects. In summary, we do not currently consider climate change itself to be a factor affecting *C. vinaceum*'s persistence, because the information available on the subject is insufficiently specific to the species. However, we consider climate change to be a potential exacerbating factor and will continue to evaluate new information on the subject as it becomes available.

In summary for Factor A, we continue to consider water availability and trampling caused by livestock to be threats to *Cirsium vinaceum* and its habitat currently and in the foreseeable future. We find the information available on climate change to be insufficiently specific to *C. vinaceum* to indicate with certainty that it is affecting the species and its habitat at this time; however, we will continue to evaluate the most up-to-date information on the subject as it becomes available.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We do not have any data suggesting that *Cirsium vinaceum* is, or may be, overutilized for commercial, recreational, scientific, or educational purposes. *Cirsium vinaceum* seeds and seed heads have been collected for research projects intended to understand and improve the status of the species. The species' current level of State and Federal protection requires permits from the Service, USFS, and the State of New Mexico for such research. At current levels of collection, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat

currently or in the foreseeable future. If the species were delisted, permits for collection would continue to be required by the USFS and the State of New Mexico.

Factor C. Disease or Predation

Insect Predation

Native insect population fluctuations and invasions of nonnative insects may impact the condition, reproduction, and distribution of *Cirsium vinaceum*.

Cirsium vinaceum is host to an undetermined number of native and nonnative insect species that prey upon the plant and its flower heads. Native insect seed predators can consume from 17 to 98 percent of *C. vinaceum*'s seed production within a population. Observed seed predators include *Paracantha gentilis*, a native specialist Tephritid gall fly; *Platyptilia carduidactyla*, the native Pterophorid artichoke plume moth; *Euphoria inda*, a native generalist Scarabaeid bumble flower beetle; and *Rhinocyllus conicus*, an introduced Curculionid seed-head weevil (Sivinski 2007, pp. 2-14; Sivinski 2008, pp. 1-11). A fifth insect predator, *Lixus pervestitus*, the native Curculionid stem borer weevil, was first detected during field surveys in 2006 and 2007 (Sivinski 2007, pp. 8-13; Sivinski 2008, pp. 7-11). Thus far, *L. pervestitus* has not been found on *C. vinaceum* outside of the Silver Springs population, and little is known about this insect species in New Mexico (Sivinski 2008, pp. 10-11). Sivinski studied insect seed predation and herbivory of *C. vinaceum* in September of 2006, 2007, and 2008 in four populations: Silver Springs, Bluff Springs, Upper Rio Peñasco, and Scott Able Canyon. These insect species damaged flower heads or caused premature stem death in all years of the study. By September 2007, these insects had collectively damaged flowering stalks in significant proportions—up to 98 percent within the Silver Springs site, 80 percent of the Bluff Springs site, up to 66 percent in the Upper Rio Peñasco site, and 90 percent of the Scott Able Canyon site (Sivinski 2007, p. 12). After predation by these insects, seed production was significantly reduced in 2007, particularly as a result of *L. pervestitus* in the Silver Springs population.

Lixus pervestitus is likely a recent immigrant to the Sacramento Mountains and represents a significant new threat to the long-term persistence of the species (Sivinski 2007, p. 13). *Lixus pervestitus* was responsible for killing thousands of *Cirsium vinaceum* at Silver Springs in September of 2006, 2007,

2008, and 2009, before most of the flowers had set seed, resulting in nearly complete die-off of flowering stems each of these years (Sivinski 2008, p. 9; 2009b, p. 1). Insect damage to the Silver Springs population was two-fold; *Rhinocyllus conicus* and *Paracantha gentilis* reduced seed production earlier in the flowering season, then *L. pervestitus* damaged flowering stems into early fall (Sivinski 2007, p. 13). The population totaled 8,727 stems in the summer of 2007, and by the end of September of the same year, 98 percent of these stems were prematurely dead or dying. The timing of *L. pervestitus*' attack left seed maturity and production to only the earliest blooming flower heads, greatly reducing this population's reproductive output for the season. Immature *C. vinaceum* rosettes were not significantly affected by any native or nonnative insects during the study (Sivinski 2007, p. 14). However, this recent addition of this invasive seed predator, *L. pervestitus*, will likely further decrease seed production and increase the threat to the persistence of some *C. vinaceum* populations. Small *C. vinaceum* sites may be more likely to be extirpated because of seed limitations, and some sites could remain unoccupied if adjacent sites of *C. vinaceum* are producing and dispersing fewer seeds.

The recovery plan for *C. vinaceum* identified *Rhinocyllus conicus* as a potential threat to the species (Service 1993, p. 6). *Rhinocyllus conicus*, indigenous to Eurasia, was intentionally introduced to North America in 1969 as a biological control agent for the noxious weed *Carduus nutans* (musk thistle). It subsequently spread to at least 26 States on both *C. nutans* and native thistle species, and is also frequently distributed by deliberate introduction on both private and public lands (Dodge 2005, p. 6). The ability of *R. conicus* to attack native thistle species and decrease their seed production has been documented (Dodge 2005, pp. 15-38). A preliminary field study of the presence and damage of *R. conicus* in the Silver Springs area found the weevil using 63.8 percent of *C. vinaceum* flower heads in mid-July 2007 (Sivinski 2008, p. 9).

The reduction of seed production due to seed predators could have long-term effects on the viability of populations. Although *Cirsium vinaceum* can reproduce asexually, that is, without the genetic contribution of another *C. vinaceum* individual, it is not known how long a site can persist with little or no seed production (Sivinski 2009a, p. 1). Asexual reproduction can be advantageous in a stable environment

because it requires less energy; however, with this form of reproduction, genetic material from only one plant is required, so clones are produced. Populations that are reduced to recruitment via only asexual reproduction could suffer from loss of genetic variation. The resulting clones may not be able to adapt to even moderate changes to their environment, including the arrival of new insect predators or diseases. Many *C. vinaceum* sites are small or occur on marginal habitats where they can disappear during extreme conditions. If insect predation eliminates seed production in larger populations, such as Silver Springs, the smaller patches that temporarily disappear may not be re-established. In addition, genetic exchange through sexual reproduction between sites would discontinue and further reduce genetic variability of the species.

In summary, insect seed predation and herbivory of *Cirsium vinaceum* eliminated seed production in the majority of plants at all of the study sites in all 3 years of the study. This condition is either very likely to spread to other *C. vinaceum* sites, or is already occurring at other sites. For these reasons, we find that insect predation, even within sites containing large numbers of *C. vinaceum*, represents a significant new category of threat currently and in the foreseeable future.

Livestock Grazing

Grazing of *Cirsium vinaceum* by livestock and elk was described as minimal in the 1987 listing determination (52 FR 22933). Subsequent monitoring of herbivore impacts at several *C. vinaceum* sites has determined that this species is a forage plant for livestock and, although not preferred, appears to be part of the cattle diet throughout its range (USFS 2003, p. 49). *C. vinaceum* rosettes that have been grazed by livestock early in the growing season have the ability to make compensatory growth if grazing ceases; however, flower stems that are destroyed or severely damaged by grazing later in the season do not recover, and the plant dies without producing seeds (USFS 2003, p. 49). Grazing can adversely impact growth, vigor, seedling establishment, and reproductive output, and small *C. vinaceum* sites may be more vulnerable and at a higher risk of extirpation than larger sites (USFS 2003, p. 55).

Although *Cirsium vinaceum* populations have been documented to recover within a few weeks from light grazing on fewer than 10 percent of plants, grazing of the plants' flowering stalk and leaves of rosettes can cause

total loss of reproduction and can lead to the loss of the affected population (USFS 2003, p. 55). *Cirsium vinaceum*'s low tolerance for freezing and drought may compound the effects of livestock grazing. Herbivory of seedlings, particularly in spring, may reduce the density of plants and leave seedlings more exposed to low temperatures. Livestock grazing during periods of long-term drought may also affect *C. vinaceum*'s ability to recover reproductive capability. Barlow-Irick (2005, p. 1) surveyed 85 *C. vinaceum* monitoring sites in the late summer of 2005, after the first wet season following several years of drought. The overall number of flowering *C. vinaceum* was still decreasing, but five sites exhibited increased numbers of flowering individuals. These five sites were excluded from livestock. Furthermore, long-term monitoring trends show correlations between *C. vinaceum*, herbivores, and water availability. *Cirsium vinaceum* populations with above-average numbers of reproductive individuals are associated with sites that exhibit consistently greater levels of water flow and lower levels of livestock grazing, compared to sites with lower average water flows and increased levels of grazing (Barlow-Irick 2007, p. 1).

Livestock grazing in USFS allotments containing *Cirsium vinaceum* habitats is permitted from May to October, and herbivory on *C. vinaceum* occurs in all of these months (USFS 2007, p. 20). During a 1992 study of livestock grazing on *C. vinaceum*, use peaked in June, with 76 percent of accessible rosettes grazed, and again in September and October, with over 90 percent of accessible rosettes grazed (USFS 2003, p. 48). Although *C. vinaceum* may be able to persist under this grazing regime, there are recognized adverse effects to the species (USFS 2003, pp. 54–57). Adverse effects include significant differences between rosette size and leaf length between grazed and ungrazed occurrences, with the smaller measurements for both found in occurrences grazed by livestock. A reduction of plant tissue and size can adversely impact growth, vigor, reproductive potential, and the ability of the plants to compete with invasive weeds. *C. vinaceum* has also been observed to only make one attempt per rosette at producing a flowering stalk. If that stalk is lost to herbivory, reproductive potential for that plant is lost (USFS 2003, pp. 54–57).

Grazing practices in the Sacramento Allotment are sufficiently significant to influence the general status of *Cirsium vinaceum* because this allotment contains the majority of *C. vinaceum*

sites and individuals. In 2001, the Sacramento Grazing Allotment contained 74 of 86 occupied *C. vinaceum* sites found on the Lincoln National Forest. This represented a total of 96 percent of all *C. vinaceum* in 2001 (USFS 2003a, p. 53). Thirty-eight of these 74 sites are either fenced to exclude livestock or are considered to be inaccessible to livestock (USFS 2003, p. 53). As of 2007, 68 of the 75 occupied sites were within the Sacramento Grazing Allotment, with approximately 62 percent of the total number of *C. vinaceum* stems for the species (Barlow-Irick 2007, p. 1). In March 2007, the USFS proposed to extend the grazing rotation to allow cattle to be present throughout the entire summer growing season (May to October) on portions of the allotment containing *C. vinaceum*. The previous arrangement placed livestock in one pasture from May to August, and then deferred the same livestock to another pasture from August to October, thus reducing *C. vinaceum*'s exposure to livestock approximately one-half of the time. Season-long presence of livestock within both pastures would increase livestock impacts to *C. vinaceum* during times when the species could benefit from grazing deferral. The extended presence of livestock may adversely affect seedlings and their rate of successful establishment and recruitment into the population (USFS 2007, p. 20). Moreover, broken or consumed flowering stems render affected *C. vinaceum* incapable of reproduction (USFS 2003, p. 55). As described under Factor A, longer exposure to livestock also increases the chances of damage to travertine substrates, water flow channels, and wetlands upon which *C. vinaceum* depends (USFS 2007, p. 20). As of publication date, this proposal is under consultation with the Service.

Established thresholds for forage of *Cirsium vinaceum* have been exceeded on USFS lands many times, especially during drought years when livestock congregate in wetland *C. vinaceum* habitats or where forage production is greater than in dry uplands (USFS 2003, pp. 59–67). Very dry conditions early in the summer of 1996 led to an emergency consultation with the Service that resulted in use of temporary electric fencing to minimize impacts to *C. vinaceum* (USFS 2003, p. 63). At other times, the USFS has allowed grazing permittees 30 days or more to remove their livestock after use thresholds had been reached or exceeded (USFS 2003, pp. 59–60). Exceeding threshold levels can have adverse effects to *C. vinaceum*

plants and sites, as increased grazing pressure further destroys the flowering stalks of plants and thereby prevents successful reproduction by affected plants.

In summary, although many *Cirsium vinaceum* sites have been protected, up to 50 percent of sites are still subject to livestock herbivory, and those that are fenced may be impacted into the future as fences fall into disrepair or are vandalized (Service 2010, p. 1). Furthermore, if *C. vinaceum* were to be delisted, past history indicates there is little reason to expect that adequate maintenance and construction of enclosures would continue in the future. Therefore, livestock herbivory is a significant, ongoing threat to *C. vinaceum* that will continue in the foreseeable future.

Disease

Barlow-Irick (2007, p. 1; 2008, p. 1) recently reported that the large population of *Cirsium vinaceum* in Firman Canyon and isolated individuals in other populations appeared to have unspecified symptoms of disease during 2007. This potential disease was not identified, nor had any positively identified disease been reported in any *C. vinaceum* population. No specific assessment of potential disease threats has been conducted. We do not currently consider disease to be a threat to *C. vinaceum*; however, we intend to continue monitoring populations for impact due to this factor.

In summary for Factor C, we consider predation by insects and livestock to be threats to *Cirsium vinaceum* currently and in the foreseeable future. We do not currently consider disease to be a threat to the species; however, we need to continue monitoring for impacts due to this factor.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Cirsium vinaceum is currently listed as threatened under the Act. The Act and its implementing regulations at 50 CFR 17.71 and 17.72 establish a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, to transport in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants

listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction and further prohibits the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass laws. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection does not currently apply to *C. vinaceum*.

As with all federally listed plants, Federal land management actions and other project proposals that use Federal funding or require a Federal permit that may affect *C. vinaceum* must be evaluated by the Federal action agency in consultation with the Service under section 7(a)(2) of the Act. Through consultation, the Federal action agency ensures that an action will not likely jeopardize *C. vinaceum* or destroy or adversely modify critical its designated critical habitat. If the proposed project is likely to jeopardize the species, the Service will provide the Federal action agency reasonable and prudent alternatives for implementing the action. Regardless of the outcome of this determination, the Service will also provide discretionary conservation recommendations that would eliminate the impacts to *C. vinaceum* or its habitat. Adoption of these measures may also contribute to a Federal action agency's requirements under section 7(a)(1) of the Act to utilize their authorities to carry out programs for the conservation of listed species. These procedures would not be required if *C. vinaceum* were delisted, and significant reductions in recovery effort and protection would likely result. As a delisted species, *C. vinaceum* would continue to be protected by the Lacey Act (83 Stat. 279–281, 18 U.S.C. 42–44 *et seq.*; as amended), which prohibits trade in wildlife and plants that have been illegally taken, possessed, transported, or sold. However, the Lacey Act does not afford protection of habitat, and were it delisted, *C. vinaceum* would lose its current level of habitat protection.

The State of New Mexico lists *Cirsium vinaceum* as endangered under the New Mexico Endangered Plant Species Act, 9-10-10 New Mexico Statutes Annotated (NMSA). This law prohibits the taking, possession, transportation, exportation, selling, or offering for sale any listed plant species. Under this act, listed species can only be collected under permit from the State of New Mexico for scientific studies and impact mitigation; however, this law does not provide protection for *C. vinaceum* habitat.

If *Cirsium vinaceum* were delisted, it would continue to be designated a USFS sensitive species, as described in USFS Manual 2670 (USFS 2008). The USFS Manual 2672.1 provides the following direction for the management of sensitive species: "Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing." USFS biologists review all USFS planned, funded, executed, or permitted programs and activities for possible effects on endangered, threatened, proposed, or sensitive species.

It is prohibited to remove from USFS lands any plant that is classified as a threatened, endangered, sensitive, rare, or unique species (36 CFR Part 261.9(d)). Therefore, *Cirsium vinaceum* is protected from "taking" in the National Forest by these Federal regulations (Service 1987, p. 22935). Exceptions to these prohibitions are available through permits (36 CFR Part 261.1a). If *C. vinaceum* were delisted, permits for its collection for scientific or conservation purposes on USFS lands would continue to be required. These permits provide additional oversight and limit impacts from potential over-collection.

If delisted, *Cirsium vinaceum* would be monitored for at least 5 years to ensure that the species would not be at risk of extinction during that time. A post-delisting monitoring plan would likely include thresholds indicating when a status review would be warranted. If delisted, *C. vinaceum* could also benefit from regulatory protection as a USFS sensitive species, but there would likely be less impetus to implement and maintain protective measures for a sensitive species than for a Federally listed species. Under its current status, the species is impacted by livestock trampling and herbivory, and impacts resulting from noncompliance on USFS lands. These activities have affected the species' reproductive success and overall viability. Therefore, we conclude that regulatory mechanisms are not adequate to support removing the protections of the Act.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Hybridization

The range of another native thistle species, *Cirsium parryi* (Parry's thistle), overlaps with that of *Cirsium vinaceum*, and it is capable of crossbreeding with *C. vinaceum* to produce hybrid offspring

(Sivinski 2006, p. 7). *Cirsium parryi* is relatively common through much of the Sacramento Mountains and has been found to occasionally hybridize with *C. vinaceum* at a few locations (Barlow-Irick 2007, p. 1). *Cirsium wrightii* (Wright's marsh thistle) is another wetland thistle that overlaps with *C. vinaceum* at Silver Springs; hybrid offspring are uncommon (Sivinski 2006, p. 7). Huenneke (1996, pp. 148-149) hypothesized that hybridization between *C. vinaceum* and *C. parryi* was a potential threat to *C. vinaceum*. It has been hypothesized that *Cirsium* species of remarkably different morphologies are able to hybridize, but only the presence of a complex collection of hybrids, produced when there is a breakdown of isolating barriers between two species with overlapping distributions, would indicate hybridization had reached the level of a threat (Kiel 2006, p. 1). During the 2007 surveys, hybrids between *C. vinaceum* and *C. parryi* were found at many sites (Barlow-Irick 2007, p. 1). Above-average precipitation in 2007 may have favored the germination and survival of these hybrids. It is unknown if the hybrid plants are viable and if incorporation of genes through repeated crossing from *C. parryi* into the *C. vinaceum* population is possible (Barlow-Irick 2007, p. 1). Neither the viability of these hybrid offspring, nor their ability to hybridize with the parent species, has been studied. Therefore, it is not known at this time whether hybridization with other *Cirsium* species could become a threat in the foreseeable future; however, it does not appear to be a threat at present. The potential for hybridization to become a threat to *C. vinaceum* in the future needs to continue to be monitored and evaluated.

Herbicide Use

In 2000, a biological assessment for noxious weed management prepared by the USFS proposed to use only selective spot application of herbicides, hand-pulling, or use of various hand tools to experimentally treat noxious weeds within some selected *Cirsium vinaceum* sites (Sivinski 2006, p. 21). Herbicides are not considered a threat to *C. vinaceum* sites on USFS lands; however, if herbicides are applied to *C. vinaceum* on private land, the site could be impacted. For example, in June 2007, on Federal Highway 82 in Otero County, many *C. vinaceum* rosettes on private land were injured or killed by misapplication of herbicide during a road maintenance project conducted by the State of New Mexico Department of Transportation (Tonne 2007, p. 1). Similarly, maintenance of the Federal

Highway 82 right-of-way by a State highway crew also reportedly impacted *C. vinaceum* plants and habitat on non-USFS lands between Cloudcroft and High Rolls prior to 2007 (USFS 2003, p. 22). Potential solutions for such accidental misapplication of herbicide to *C. vinaceum* plants are under development among staff of the New Mexico Department of Transportation and Department of Forestry, New Mexico Natural Heritage Program, USFS, and the Service (Tonne 2007, p. 1). Effects from herbicide use continue to impact *C. vinaceum* along highways and on non-Federal land, but are not known to be impacting most sites. Thus, herbicides are not considered a threat to the species now or in the foreseeable future.

Exotic Weeds

Exotic plant species associated with *Cirsium vinaceum* habitats include *Dipsacus fullonum* (teasel), *Carduus nutans* (musk thistle), *Conium maculatum* (poison hemlock), *Cirsium arvense* (Canada thistle), *Cirsium vulgare* (bull thistle), *Daucus carota* (Queen Anne's lace), *Taraxicum officinale* (dandelion), *Nasturtium officinale* (watercress), *Tragopogon pratensis* (salsify), and *Verbascum thapsus* (mullein) (Huenneke 1996, pp. 146-147; Sivinski 2006, pp. 9-10). Of these, the exotic species that may have the capacity to compete with the *C. vinaceum* for light and possibly for water under drier conditions include *D. fullonum*, *C. nutans*, *C. vulgare*, and *C. maculatum* (Huenneke and Thomson 1995, p. 423; Huenneke 1996, pp. 146-147). The presence of these four invasive plant species in and near *C. vinaceum* habitat has been observed and monitored for many years. Of these, only *C. maculatum* is an obligate wetland species; however, it does not appear to compete well with *C. vinaceum* (Barlow-Irick 2005, p. 1). The three other weed species require some soil moisture, but cannot tolerate the continuously saturated substrates that are typical in *C. vinaceum* patches on spring habitats. These weeds can grow side by side with *C. vinaceum* in drier habitat margins and in sediment deposited by flowing water, where *C. vinaceum* is subirrigated (irrigated from beneath the ground surface) and the root systems of these weeds occupy the drier surface soils near the surface (Sivinski 2006, p. 15). As of September 2007, *C. nutans* was infesting much of the Lincoln National Forest and continued to mix with *C. vinaceum* without directly impacting the survival of *C. vinaceum* through competition (Gardner and Thompson 2007, p. 8).

The Sacramento Mountains presently lack large, aggressive, exotic wetland weeds, such as *Lythrum salicaria* (purple loosestrife), which could dominate *Cirsium vinaceum* habitat. *Lythrum salicaria* is a Eurasian species that has been modifying wetlands and outcompeting native species in North America for many decades (Natural Resources Conservation Service 2006, p. 2). *Lythrum salicaria* appeared in New Mexico in the 1990s and is extant in the Mimbres Mountains of Grant County and Sandia Mountains of Bernalillo County. The Sandia Mountains occurrence of this invasive weed covers an alkaline spring seep similar to *C. vinaceum* habitats in the Sacramento Mountains (Sivinski 2006, p. 15). If it also spreads to the Sacramento Mountains, this aggressive wetland weed could impact *C. vinaceum* habitat.

At the time of listing, it was thought that competition with exotics *Dipsacus fullonum* and *Carduus nutans* had reduced or eliminated populations of *Cirsium vinaceum* at sites where it had formerly grown (52 FR 22933; June 16, 1987). These two weed species have invaded some *C. vinaceum* sites, but they occupy slightly drier habitat (USFS 2004, p. 625). *Dipsacus fullonum* and *C. nutans* occurrences are being monitored on USFS lands. At this time, we have no information suggesting that competition among *C. vinaceum* and these exotic plants is a significant threat. Similarly, we have no information establishing *Conium maculatum*, *Cirsium arvense*, or *Cirsium vulgare* as immediate threats to *C. vinaceum*. However, *C. nutans* may be serving as a vector for *Rhinocyllus conicus*, the exotic seed head weevil, discussed under Factor C (Sivinski 2006a, pp. 6, 13; Gardner and Thompson 2008, p. 1). Future interactions among *C. nutans*, *R. conicus*, and *C. vinaceum* are unclear at this time. Based on possible interactions with water availability, climate change, and preference for similar growth conditions, these exotic weeds could potentially threaten *C. vinaceum* in the future; however, we do not believe they pose a threat at present.

In summary for Factor E, we do not currently consider hybridization or herbicide use as threats to the species; however, these may become threats in the future. Similarly, we do not consider exotic weeds as a threat to the species now; however, they could potentially threaten *Cirsium vinaceum* in the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether *Cirsium vinaceum* is threatened or

endangered throughout all or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by *C. vinaceum*. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized *C. vinaceum* experts and other Federal, State, and tribal agencies.

In our review of the status of *Cirsium vinaceum*, we identified a number of potential threats to this species, including water diversion, trampling by livestock and recreationists, predation by livestock and insects, disease; inadequacy of regulatory mechanisms, hybridization; herbicide use, and exotic weeds. To determine whether these factors individually or collectively put the species in danger of extinction throughout its range, or are likely to do so in the foreseeable future, we first considered whether the risk factors significantly affected *C. vinaceum*, or were likely to do so in the future.

We found natural loss of water, trampling by livestock, predation by livestock and insects, and the inadequacy of existing regulatory mechanisms to be significant threats to *C. vinaceum*. We found lack of ensured water availability, increased water diversion, and the spread of insect predators by exotic weeds may threaten *C. vinaceum* in the foreseeable future. We also considered the ways in which the effects of climate change are likely to exacerbate the impacts caused by the above factors in the foreseeable future.

As a wetland obligate species, *Cirsium vinaceum* occurs exclusively at springs, seeps, and drainage areas that are often widely dispersed and collectively comprise the significant portions of *C. vinaceum*'s range. Recent declines in reproducing *C. vinaceum* numbers and population sites, combined with the lack of ensured water availability, harmful levels of herbivory and trampling from noncompliant grazing practices, predation by insects, and the inadequacy of existing regulatory mechanisms, lead us to conclude that *C. vinaceum* should retain its current listing status as a threatened species. We have determined that *Cirsium vinaceum* is not now in danger of extinction, but is likely to become endangered in the foreseeable future based on the expected persistence of these threats, including increased water diversion and increased insect predation in the foreseeable future.

Our evaluation of the five factors does not support the assertion that threats have been removed or that their

imminence, intensity, or magnitude has been reduced sufficiently to prevent substantial losses of population distribution or viability of *Cirsium vinaceum*. We find that *C. vinaceum* is likely to become an endangered species within the foreseeable future throughout all of its range and should remain classified as a threatened species. Therefore, delisting the species as threatened under the Act is not warranted at this time.

Significant Portion of the Range

Having determined that *Cirsium vinaceum* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, we must next consider whether there are any significant portions of its range that are currently in danger of extinction. The Act defines an endangered species as one “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as one “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “significant portion of its range” is not defined by the statute. For the purposes of this finding, a significant portion of a species’ range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, “The Meaning of ‘In Danger of Extinction Throughout All or a Significant Portion of Its Range,’” (USDI 2007c). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species’ range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To

identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species’ range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the Act.

The terms “resiliency,” “redundancy,” and “representation” are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. A portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat, or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, we evaluate the historical value of the portion and how frequently the portion is used by the species, if possible. In addition, the

portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is necessarily a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species’ adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species’ habitat requirements.

Based upon factors that contribute to our analysis of whether a species or subspecies is in danger of extinction throughout all or a significant portion of its range, and in consideration of the status of, and threats to, *C. vinaceum* discussed previously, we find that the primary threats to the continued existence of *C. vinaceum* occur throughout all of its range. We do not have any data suggesting that the identified threats to the species are concentrated in any portion of the range such that *C. vinaceum* may be in danger of extinction in that portion. Therefore, it is not necessary to conduct further analysis with respect to the significance of any portion of its range.

Conclusion

On the basis of the best scientific and commercial information available, we find that the magnitude and imminence of threats indicate that *Cirsium vinaceum* is likely to become an endangered species within the foreseeable future throughout all of its range and should remain classified as a threatened species. Therefore, we find that delisting *C. vinaceum* is not

warranted throughout all or a significant portion of its range at this time.

We request that you submit any new information concerning the status of, or threats to, *Cirsium vinaceum* to our New Mexico Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor *C. vinaceum* and encourage its conservation. If an emergency situation develops for *C. vinaceum* or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited in this finding is available upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rule are the New Mexico Ecological Services Field Office staff members (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: May 17, 2010

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

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Billing Code 4310-55-S

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648-AY49

Endangered and Threatened Species; Proposed Listing of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Extension of public comment period; Notice of public hearing.

SUMMARY: NMFS and USFWS hereby extend the comment period on the proposed listing of nine distinct population segments of loggerhead sea turtles as endangered or threatened, which was published on March 16, 2010, until September 13, 2010. In addition, NMFS and USFWS will hold a public hearing in Berlin, MD, on June 16, 2010 to answer questions and receive public comments.

DATES: Comments and information regarding this proposed rule must be received by September 13, 2010. See **SUPPLEMENTARY INFORMATION** for the specific date, time and location of the public hearing.

ADDRESSES: You may submit comments, identified by RIN 0648-AY49, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Mail: NMFS National Sea Turtle Coordinator, Attn: Loggerhead Proposed Listing Rule, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13657, Silver Spring, MD 20910 or USFWS National Sea Turtle Coordinator, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
- Fax: To the attention of NMFS National Sea Turtle Coordinator at 301-713-0376 or USFWS National Sea Turtle Coordinator at 904-731-3045.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS and USFWS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule is available electronically at <http://www.nmfs.noaa.gov/pr>.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, NMFS (ph. 301-713-1401, fax 301-713-0376, e-mail barbara.schroeder@noaa.gov), Sandy

MacPherson, USFWS (ph. 904-731-3336, e-mail

sandy_macpherson@fws.gov), Marta Nammack, NMFS (ph. 301-713-1401, fax 301-713-0376, e-mail marta_nammack@noaa.gov), or Emily Bizwell, USFWS (ph. 404-679-7149, fax 404-679-7081, e-mail emily_bizwell@fws.gov). Persons who use a Telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On March 16, 2010, NMFS and USFWS issued a proposed rule to list nine distinct population segments (DPSs) for the loggerhead sea turtle (*Caretta caretta*) that qualify as "species" for listing as endangered or threatened under the Endangered Species Act (ESA), and the Services proposed to list two as threatened and seven as endangered.

NMFS and USFWS subsequently received several requests to extend the public comment period for an additional 60-120 days. NMFS and USFWS have determined that an extension of 90 days, until September 13, 2010, making the full comment period 180 days, will allow adequate time for the public to thoroughly review and thoughtfully comment on the proposed rule.

NMFS and USFWS received a request for a public hearing to be held in Maryland. In response to that request, the date, time and location of the public hearing is as follows:

Wednesday, June 16, 2010, 6 p.m. to 9 p.m., Berlin, MD: Worcester County Library Ocean Pines Branch, 11107 Cathell Road, Berlin, MD 21811; Meeting Room.

This hearing will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sara McNulty, NMFS, Office of Protected Resources, 301-713-2322, at least five business days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 27, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

Gary Frazer,

Assistant Director for Endangered Species, U.S. Fish and Wildlife Service.

[FR Doc. 2010-13190 Filed 5-27-10; 4:15 pm]

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