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Department of  
Agriculture

Forest  
Service

Southwestern Region  
Regional Office

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File Code: 2670

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Public Comments Processing,  
Attn: FWS-R2-ES-2008-0114  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
Arlington, VA 22203

Dear Sir or Madam:

This responds to your request for information published in the Federal Register on November 6, 2008 (73 FR 66003), regarding the 90-day finding on a petition to remove the threatened *Cirsium vinaceum* (Sacramento Mountains thistle) from the Federal List of Threatened and Endangered Plants, and your initiation of a 12-month status review. The Sacramento Mountains thistle is endemic to the Sacramento Mountains in southeastern New Mexico. Most of its populations occur on the Lincoln National Forest. The Forest has undertaken conservation management for this species since it was listed as threatened in 1987. Information on the Sacramento Mountains thistle is enclosed. This information mostly involves Forest Service policies and procedures for the continued conservation management of Sacramento Mountains thistle should it be removed from its present threatened status. If you have any questions, please contact Charlie McDonald, Regional Botanist, at (505) 842-3228 or [cbmcdonald@fs.fed.us](mailto:cbmcdonald@fs.fed.us).

Sincerely,

CORBIN L. NEWMAN, JR.  
Regional Forester

Enclosure

cc: Mailroom R3 Lincoln, David Pivorunas, Larry Stritch, Wally Murphy



**Information from the USDA Forest Service Southwestern Region on the 90-day petition finding to delist *Cirsium vinaceum* (Sacramento Mountains thistle) and initiation of a status review (73 FR 66003, November 6, 2008)**

December 16, 2008

***Cirsium vinaceum* Distribution and Range Expansion**

Both the NRCS PLANTS database (<http://plants.usda.gov>) and the NatureServe database (<http://www.natureserve.org>) include Lincoln County in the distribution of *Cirsium vinaceum*. The New Mexico Biodiversity Collections Consortium (<http://nmbiodiversity.org>), which maintains a searchable database of the museum specimens housed at various institutions in New Mexico, shows one *Cirsium vinaceum* specimen from Lincoln County. This specimen, collected by D. Ward and R. Spellenberg on July 27, 1981, and housed at the New Mexico State University Center for Natural History Collections Herbarium, is likely the source of the distribution information given in the PLANTS and NatureServe databases. The specimen predates the listing of *Cirsium vinaceum* in 1987, so the inclusion of Lincoln County in the species' distribution does not represent a recent range extension. This specimen should be examined to verify the accuracy of both the specimen identification and the recorded locality information. We are aware of no extant *Cirsium vinaceum* populations on the Lincoln National Forest, Smokey Bear Ranger District in Lincoln County, New Mexico.

**Forest Service Management and Conservation of *Cirsium vinaceum* if Removed from Threatened Status**

*Current Management under Forest Service Manual and 1982 Planning Rule*

If *Cirsium vinaceum* is delisted, it will be designated a Forest Service sensitive species as per Forest Service Manual 2670. This list of species is developed and maintained by the Regional Forester for all Forests in the Southwestern Region. The list can be updated and amended at any time. In general, sensitive species are those species (including subspecies and varieties) that are likely to occur or have habitat on National Forest Service System lands and that have been identified by the Regional Forester as of concern for reduction in population viability as evidenced by:

- *Significant current or predicted downward trends in population numbers or density, or;*
- *Significant current or predicted downward trends in habitat capability that would reduce a species' distribution (Forest Service Manual 2670.5).*

More specifically, the Forest Service Manual (2672.11) provides the following criteria for consideration in listing sensitive species:

- *US Fish and Wildlife Candidate species;*
- *State lists of endangered, threatened, rare, endemic, unique, or vanishing species;*

- *Other sources as appropriate in order to focus conservation management strategies and to avert the need for Federal or State listing as a result of National Forest management activities.* These “other sources” have been interpreted by Regional Threatened, Endangered and Sensitive Species Program managers to include:
  - Species that have been federally de-listed within the last 5 years;
  - Species on State Heritage Databases that indicate global and/or regional rarity and/or imperilment (G1-3 or T1-3; S1-2).

Forest Service Manual 2672.1 provides direction for the management of sensitive species. The manual states, “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.”

“There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the population, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers.”

In addition to Forest Service Manual direction, management of National Forests is guided by Land and Resource Management Plans. The present Lincoln National Forest Land and Resource Management Plan (Lincoln LRMP) provides the following management direction and Standards and Guidelines for sensitive species. On page 12, “Provide for management of sensitive species in accordance with Regional [and National] requirements.”

Appendix C (page 205) of the Lincoln LRMP gives Standards and Guidelines for management of threatened, endangered and sensitive species. Those applicable to sensitive species state, “Protect and manage essential and critical habitats of threatened, endangered and sensitive species through ensuring that legal and biological requirements of designated plant and animal species are met; further identify data needs for threatened, endangered and sensitive species.”. The LRMP Standards and Guidelines also direct the Forest to, “Identify, protect and enhance existing and potential habitat of all T&E and sensitive species.”

Forest and District biologists review all Forest Service planned, funded, executed, or permitted programs and activities for possible effects on endangered, threatened, proposed, or sensitive species. These reviews are called Biological Evaluations; their format and content are described in Forest Service Manual 2672.40 – 2672.43.

A Biological Evaluation includes:

- An analysis of the effects of the proposed action on species or their occupied habitat or any unoccupied habitat required for recovery.

- A discussion of cumulative effects resulting from the planned project in relationship to existing conditions and other related projects.
- A determination of no effect, beneficial effect, or "may" effect on the species and the process and rationale for the determination, documented in the environmental assessment or the environmental impact statement.
- Recommendations for removing, avoiding, or compensating for any adverse effects.

The Biological Evaluation or its results are included in the project review required under the National Environmental Policy Act (NEPA). Project decisions under NEPA must conform to the Forest's Land and Resource Management Plan (LRMP). Projects that do not conform to the LRMP must be modified to conform or abandoned. The only other option is to amend the LRMP.

#### *Future Management under the 2008 Planning Rule*

36 CFR Part 219 directs how the Forest Service will develop and structure LRMPs. A new planning rule was published in the Federal Register on April 21, 2008 (73 FR 21468). This rule describes the National Forest System land management planning framework; sets up requirements for sustainability of social, economic, and ecological systems; and gives directions for developing, amending, revising, and monitoring land management plans. The Lincoln National Forest LRMP is scheduled to be revised under the 2008 planning rule, starting the revision process in 2010. The Forest will continue to operate under all the requirements of its present LRMP until the revision is completed.

#### *Species-of-concern and species-of-interest*

Under the 2008 planning rule, land management planning will consider species-of-concern and species-of-interest. The Forest Service Handbook 1909.12 Chapter 40 describes how these species will be selected and how their management needs will be included in LRMPs. Species-of-concern are defined as, "species for which the Responsible Official determines management actions may be necessary to prevent listing under the Endangered Species Act (ESA)." Criteria for selection of species-of-concern include:

- Species identified as proposed and candidate species under the ESA.
- Species with ranks of G-1 through G-3 on the NatureServe ranking system.
- Intraspecific (subspecific) taxa with ranks of T-1 through T-3 on the NatureServe ranking system.
- Species that have been petitioned for federal listing and for which a positive "90-day finding" has been made (a 90-day finding is a preliminary finding that

- Species that have been recently delisted (these include species delisted within the past five years and other delisted species for which regulatory agency monitoring is still considered necessary).

Under these criteria, if *Cirsium vinaceum* is delisted, it will be designated a species-of-concern when the Lincoln National Forest LRMP is revised under the 2008 planning rule.

Land and Resource Management Plans describe the requirements and procedures for sustaining social, economic, and ecological systems on National Forest System lands. Ecological sustainability is recognized as maintaining the natural landscape's full array of ecosystem types including their composition, structure, and processes. Plan guidance, including desired conditions and objectives, is written for the various ecosystem types on a forest. This will include a full array of management approaches, ranging from stewardship management in some special areas to active management designed to emulate historic disturbance processes in other areas.

Endangered, threatened, and proposed species, species-of-concern, and species-of-interest are evaluated to determine how well the ecosystem-level management approaches described in the LRMP satisfy management objectives for the individual species. If it is determined that additional or more detailed management components are needed for individual species, then the plan will include those provisions. These additional plan components will focus on the key risk factors that have contributed to the status of the species, and that have not been fully addressed in the provisions for ecosystem diversity. Key elements of plan components could include:

- Managing for appropriate amounts and distribution of habitats used by the species, including habitat restoration, if necessary.
- Managing natural and human disturbance factors (wildland fire, roads, trails, dams, and so forth) so their impacts on the species are acceptable.
- Managing biotic interaction (for example, invasion of cheatgrass into sagebrush habitats).
- Managing for disturbances that are key to species survival (for example, producing open stand conditions to support red cockaded woodpeckers).
- Managing currently known species locations. This may involve all locations or a subset of locations.
- Managing newly discovered locations. This could involve all or a subset of locations.

substantive information was provided indicating that the petition listing may be warranted and a full status review will be conducted).

- Maintaining suitable habitat that is not currently occupied but has a likelihood of being occupied in the near future.

Land and Resource Management Plans written under the 2008 planning rule may contain relatively precise guidelines for the management of endangered, threatened, and proposed species, species-of-concern, and species-of-interest.

For LRMPs developed under the 2008 planning rule, Forest and District biologists will review all Forest Service planned, funded, executed, or permitted programs and activities for possible effects on endangered, threatened, or proposed species, species-of-concern, and species-of-interest. Just as now, these Biological Evaluations will follow the format and content described in Forest Service Manual 2672.40 – 2672.43.

The Biological Evaluation or its results will be included in the project review required under NEPA. Project decisions under NEPA must conform to the Forest's LRMP.

#### *Forest Service management of sensitive species collecting*

It is prohibited to remove from National Forest System lands any plant that is classified as a threatened, endangered, sensitive, rare, or unique species (36 CFR Part 261.9(d)). Exceptions to these prohibitions are available through permits (36 CFR Part 261.1a). The penalty for violation of these prohibitions shall be a fine of not more than \$500 or imprisonment for not more than six months or both pursuant to title 16 U.S.C., section 551, unless otherwise provided (36 CFR Part 261.1b).

The conditions under which permits will be issued for the collection of sensitive species are described in the Forest Service Manual 2673.2 as follows, "Collection of sensitive plants may be permitted only for scientific or educational purposes or for the conservation or propagation of the species, and must be authorized by a Forest Service permit." Further description of sensitive plant collecting permits in the Forest Service Manual states, "Regional Foresters shall establish criteria for the collection of sensitive plants and shall ensure that all collections are covered by a Forest Service permit. Present and future knowledge concerning sensitive plants comes partially from collection and study of specimens by botanists and other professionals in the botanical community. Although collection of sensitive plants will continue to be necessary in order to expand the knowledge base, it must be controlled." (FSM 2673.32)

If *Cirsium vinaceum* is delisted, permits for its collection for scientific or conservation purposes will use Forest Service Form 2400-8. These permits are good for one year and must be renewed annually if needed for a longer period. The permits usually allow collection of, "no more than 5 specimens per species per collection site plus misc. parts," but may be modified to suit specific needs. The permits include "General Conditions" and "Other Conditions". Some of the other conditions include:

- 1) Permittee shall notify local Ranger District of intended dates and location of collection prior to initiating any collection activities and abide by any local restrictions and orders in effect.
- 2) Species listed as “Sensitive” on the Regional Forester’s sensitive species list (see attached) can be collected from new, previously unrecorded populations. However, to assist the Forest Service in gathering information on the occurrence and location of sensitive species throughout the Region, Permittee shall inform the USFS Regional Office of such collections and the location of each population.
- 4) The quantity (number and/or biomass) of live species to be collected from a population is limited to that specified in this permit for purposes of the survey, consistent with Forest Service responsibilities for maintaining viable populations under the National Forest Management Act.
- 9) Collection or disturbance of any federally listed threatened or endangered species or any Regional Forester’s Sensitive Plant Species shown on the attached list is prohibited, except as noted in #2 above.

It should be noted for *Cirsium vinaceum* that it is unlikely any new previously unrecorded populations exist. If collections are needed for scientific or conservation purposes, “Other Condition” number 2 will not apply and Forest Service personnel will direct the permittee to the best locations for making the needed collections without adversely harming the populations.

#### **Prohibitions for threatened plants under the Endangered Species Act**

When a species is listed as threatened, Section 4(d) of the ESA directs that regulations be issued as deemed necessary and advisable to provide for the conservation of the species. Regulations for threatened plants are not written species-by-species, but instead are found at 50 CFR 17.71 and state that all the prohibitions for endangered plants found at 50 CFR 17.61 will apply to threatened plants. The prohibition for endangered plants found at 50 CFR 17.61(c)(1) states, “It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction.”

In the early 1980s it was realized the prohibition against removing endangered plants from areas under Federal jurisdiction provided only limited protection to plants on Federal lands and no protection to plants on non-Federal lands. The 1988 ESA amendments changed section 9(a)(2)(B) of the Act to read, “remove and reduce to possession any such species [meaning any endangered plant] from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law.”

The regulations at 50 CFR 17.61(c)(1) were never amended to incorporate the 1988 amendments to the Act. Thus, threatened plants were never extended the additional protections given to endangered plants by the 1988 ESA amendments.

On page 66008 of the Federal Register notice for the 90-day petition finding for *Cirsium vinaceum*, the following statement is incorrect:

Currently, under the Act, damage, destruction, removal, possession, transport, or sale of *Cirsium vinaceum* is prohibited on Federal lands (16 U.S.C. 1531 *et seq.*). On State lands, the Act serves to prohibit moving, digging up, cutting, damaging, destroying, transporting, or selling *C. vinaceum*, including instances where trespassing is involved (16 U.S.C. 1531 *et seq.*).

Wording in the proposed rule to list *Helianthus paradoxus* as a threatened plant (63 FR 15808) is correct and might help guide wording for *Cirsium vinaceum*. The proposed rule reads:

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth 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, transport in interstate or foreign commerce in the course of a commercial activity, 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 the malicious damage or destruction on areas under Federal jurisdiction and 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 law. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated.