

Author

The primary author of this final rule is Cary Norquist (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—(AMENDED)

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Caryophyllaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family:						
<i>Geocarpon minimum</i>	None.....	U.S.A. (AR, MO).....	T	275	NA	NA

Dated: May 27, 1987.
Susan Recce,
Acting Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 87-13682 Filed 6-15-87; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Cirsium Vinaceum* (Sacramento Mountains Thistle) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Cirsium vinaceum* (Sacramento Mountains thistle), to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Critical habitat was proposed but is being withdrawn. This plant occurs in Otero County, New Mexico, in the Sacramento Mountains. There are 20 known populations, which contain a total of 10,000 to 15,000 sexually reproducing plants. Threats to this species are habitat destruction by livestock and water development, competition with introduced plant species, road construction, logging, and recreational activities. This action implements the protection provided by the Endangered Species Act.

DATES: The effective date of this rule is July 16, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue

SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Region 2, U.S. Fish and Wildlife Service, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Cirsium vinaceum was first collected on July 12, 1899, by E.O. Wootton and was described by Wootton and Standley in 1913. *Cirsium vinaceum* is a perennial thistle that grows 1-2 meters (3.3-6.6 feet) tall. The stems are purple and highly branched. The leaves are up to 50 centimeters (20 inches) long and have deep, narrow, pointed lobes. The lobes on the leaf tips have short, slender, yellow spines. Flowering occurs in July, August, and possibly into September with many purple flower heads per plant. Some of the populations now occur only on steep calcium carbonate deposits immediately adjacent to flowing springs. The steep deposits provide adequate moisture and limit access of livestock to these plants. One population is known from the moist banks of a stream and adjacent wet meadows, and livestock trampling is a problem there. Many of these plants grow directly in the stream. The dominant associated species are Ponderosa pine (*Pinus ponderosa*), Douglas fir (*Pseudotsuga taxifolia*), New Mexico locust (*Robinia neomexicana*), and Gambel's oak (*Quercus gambelii*). *Cirsium vinaceum* is found at elevations of 2,400-2,700 meters (7,860-8,820 feet) (Martin and Hutchins 1980, Todsen 1976).

Cirsium vinaceum was included as a category 1 species in a revised list of plants under review for threatened or endangered classification, published in the December 15, 1980, Federal Register (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on the merits of those petitioned actions, including that for *Cirsium vinaceum*, was October 13, 1983. A finding was made on October 13, 1983, that listing *Cirsium vinaceum* was warranted but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. The Service published a proposed rule to list *Cirsium vinaceum* as a threatened species with critical habitat on May 16, 1984 (49 FR 20735), which constituted the next required finding.

Summary of Comments and Recommendations

In the May 16, 1984, proposed rule (49 FR 20735) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A

newspaper notice was published in the *Alamogordo Daily News* on June 10, 1984, that invited general public comment. Eight comments were received and are discussed below. No public hearing was requested or held.

Letters of support were received from the New Mexico Natural Resources Department, the International Union for Conservation of Nature and Natural Resources, the U.S. Forest Service, and Dr. T.K. Todsén (Professor Emeritus, New Mexico State University). Dr. Todsén also included information on *Cirsium vinaceum* sites observed in his 1976 survey and recommended the Water Canyon site and the Silver Springs Canyon site as important areas for *Cirsium vinaceum*. The Service is aware of all of these localities and will work towards their protection through the recovery process.

The Forest Service commented that *Cirsium vinaceum* merits listing as threatened. They recommended clarification of the critical habitat section to reflect that adverse modification of critical habitat would only occur when actions negatively impacted areas occupied by the plants or the constituent elements of critical habitat. The Service upon reexamination has decided that the large critical habitat proposed is inappropriate and the proposed critical habitat is being withdrawn (see "Critical Habitat" section).

The Forest Service also pointed out that accurate counts of the plant's numbers have not been made, and that the existing number is probably several times larger than the estimate in the proposal. The Service realizes that the exact number of plants is unknown; however, the best data available at the time of the proposal indicated 2,000–3,000 plants in 14 populations. The final rule reflects the most current information (20 populations with 10–15,000 individual plants total).

The Forest Service indicated that water development is a real and potential threat to *Cirsium vinaceum*, but that the suggested limit on water development of 500–1,000 meters (1,640–3,280 feet) downstream from *Cirsium* populations was somewhat extreme because surface water is present only a few hundred feet downstream of *Cirsium* populations. The Forest Service also indicated that water can be developed immediately below existing populations without affecting long term survival of the species. The Service agrees that 500–1,000 meters may be somewhat extreme but the Service does not agree that water can be developed immediately below existing populations without harmful effects. Removal of

water immediately below a population of *Cirsium vinaceum* would dry out the soil in the area of the water development. Through the processes of diffusion and gravity the potential exists for water in the soil to move from the higher, wetter site into the lower, drier area thus creating unsuitable conditions at the upstream location of *Cirsium*. The Service believes water development can occur with the details worked out on a case-by-case basis.

The Forest Service requested that the provisions of section 9(a)(2) of the Act prohibiting removal and reduction to possession of the plant from areas under Federal jurisdiction not be implemented because this would impede recovery activities. The Service does not agree that implementation of section 9(a)(2) of the Act would impede the recovery process. The Act provides for issuance of a permit for collection of plants for scientific purposes or to enhance the propagation or survival of the listed plant. A permit for collection of *Cirsium vinaceum* may be obtained from the Service for recovery activities. The Service will work with the Forest Service in planning and implementing the recovery process after the species is listed.

The National Park Service and the Bureau of Land Management (BLM) commented that this species is not known to occur on their lands. The Department of the Army commented that "the habitat of this species is not located within those stream reaches normally associated with Corps of Engineers' water resource developments. No significant interaction with water resource studies or plans is foreseen should this species be listed as a threatened species and critical habitat designated."

The Bureau of Reclamation (BR) said the area proposed as critical habitat would not impact existing BR projects. BR has studied three alternative dam and reservoir sites and "the drainage area studies included western portions of the proposed critical habitats." These studies, however, were preliminary site studies, and no further studies have been funded to date. The Service has noted this.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cirsium vinaceum* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations at 50 CFR Part 424 promulgated to implement the

listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium vinaceum* Wootton and Standley are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Cirsium vinaceum* is known only from the Sacramento Mountains of southeastern New Mexico. The species was historically known to occur along the moist banks of streams and in wet meadows throughout the Sacramento Mountains. The only population now known to grow in this type of habitat is located at the Lincoln National Forest—Mescalero Indian Reservation boundary. All other known populations are restricted to the area around springs flowing from limestone rock (Fletcher 1978). Twenty populations are known, with a total of 10,000–15,000 sexually reproducing plants. Most of the populations are in the Lincoln National Forest, and several are on private lands and the Mescalero Indian Reservation. This plant is dependent on springs or streams. Reduction or removal of this water supply would reduce or eliminate the populations. Water development, as the Forest Service indicated in its comments (see "Summary of Comments and Recommendations"), is a potential threat to *Cirsium vinaceum* and its habitat. The unauthorized water development (installation of a 1,900-foot pipeline and construction of a cement water collection box) of a spring, which was habitat for *Cirsium vinaceum*, had a detrimental effect on the involved population and its habitat. Several populations occur at Bluff Springs, an area heavily used by recreationists. Overuse for recreation or any human-caused deterioration of the area around the springs could harm the species. Logging activities could also impact the populations and their associated habitat if planning does not include consideration of this species (Fletcher 1978). Ground disturbance by livestock is detrimental to *Cirsium vinaceum* since this thistle is slow to reestablish itself in disturbed areas (Fletcher 1979). The threat from livestock trampling may be greater than previously thought as evidenced by the increase in numbers of *Cirsium vinaceum* in the Bluff Springs area due to exclusion of livestock, and as evidenced by the depletion in numbers of the Lucas Canyon population due to excessive livestock use (Overbay 1984).

The Bureau of Reclamation has completed subappraisal-level studies of three potential dam and reservoir sites that would be utilized for industrial and domestic water supply. Development of any of these sites might pose a threat to *Cirsium vinaceum* populations (Olson 1984). No further studies, however, have been funded to date.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Plants may occasionally be cut or trampled by recreationists or collected for scientific or educational purposes.

C. *Disease or predation.* The amount of predation on *Cirsium vinaceum* by herbivores is minimal. On occasion a browsed flowering stalk or leaf was observed, but the majority of detrimental effects on this species by livestock are due to ground disturbance.

D. *The inadequacy of existing regulatory mechanisms.* *Cirsium vinaceum* is protected from taking in the National Forest by Federal regulations found in 36 CFR 261.9(b). No other State or Federal regulations protect this species.

E. *Other natural or manmade factors affecting its continued existence.* There are numerous areas where *Cirsium vinaceum* formerly existed (such as the type locality) or now exists in very low numbers. Many of these sites still appear to be suitable habitat for the species. The populations that formerly occurred on them apparently have been eliminated or reduced by livestock impacts or through competition with the introduced exotic plant species *Carduus nutans* and *Dipsacus sylvestris* (Fletcher 1978 and 1979).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cirsium vinaceum* as threatened. Threatened status seems appropriate since only 20 populations are known, and these plants face potential threats from ground disturbance due to water development and livestock trampling. Critical habitat is not being determined due to factors discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was included in the May 16, 1984, proposal (49 FR 20735) which also proposed threatened status for *Cirsium vinaceum*.

The area proposed as critical habitat included 155 square miles and encompassed areas: (1) Occupied by *Cirsium vinaceum*, (2) containing the constituent elements required by the thistle, and (3) additional areas requested by the Forest Service to allow it to adequately plan for and manage this plant. Upon review of the comments and other information in the record, the large area included in the proposal to accommodate the Forest Service's management needs cannot be justified as an area that is essential to the conservation of *C. vinaceum*. The proposed critical habitat is thus being withdrawn.

The Service considered the option of designating a smaller area (occupied areas and areas with constituent elements) as critical habitat, but concluded that such a designation is not prudent at this time. Such a designation would involve description of a number of very small areas (approximately 29 acres total) which are not contiguous but rather exist as one to several acre parcels scattered throughout the 155 square mile area originally proposed as critical habitat. The provision of this very specific location information (highlighting the actual springs) could result in vandalism or increased taking pressures. Springs are easily located and modified by vandals. The Forest Service is aware of the areas which need to be managed for the *Cirsium* and is proceeding to develop plans for their protection. The Forest Service supports the withdrawal of critical habitat and feels that designation of 29 tracts of one to several acres each would only complicate and detract from their ability to manage and protect this species. Over 90% of the areas occur on lands administered by the U.S. Forest Service. The Service will also work with the Indian Reservation and private landowners through the recovery process to identify areas where the species occurs and to protect the species. No additional notification benefits would accrue from the designation of critical habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, there is no net benefit and it is not prudent to designate critical habitat for *Cirsium vinaceum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions

against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal agencies that may affect or be affected by the listing of *Cirsium vinaceum* are the Forest Service and the Bureau of Indian Affairs. Cattle trampling and water development disturbances are active threats on Forest Service lands and may result in interagency consultation between the Forest Service and the Service.

Effects of water development on *Cirsium vinaceum* can be eliminated or minimized by cooperative efforts to allow protection of *Cirsium* and its habitat and to enable water use to occur. If water is to be removed from a water source supporting a *Cirsium* population, diverting the water at a point sufficiently downstream of the plants will leave enough water for *Cirsium's* survival and will avoid habitat disturbance. Water development immediately below *Cirsium* populations may have harmful effects; therefore, water development effects will be determined on a case-by-case basis and the Service will work closely on this matter with the Forest Service. Effects of grazing can be minimized by fencing *Cirsium* populations to eliminate livestock trampling. Logging threats have been minimized by a no entry area condition on a recent timber sale. This condition was imposed by the Forest Service.

The Forest Service is currently preparing a District Management Plan for threatened and endangered species and has begun implementing protective measures for *Cirsium vinaceum* including: Fencing, livestock management to eliminate or alleviate grazing of important areas, and rerouting of recreational activities.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Cirsium vinaceum*, 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 this plant, transport it in interstate or foreign commerce in the course of a commercial activity, or sell or offer it for sale in interstate or foreign commerce, or remove it from Federal lands and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commercial trade in *Cirsium vinaceum* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since this plant is not common in the wild or in cultivation. *Cirsium vinaceum* occurs on Federal lands involving the Forest Service and Mescalero Indian Reservation. It is anticipated that few removal and possession permits for the

species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Abbott, J.R. 1983. *Cirsium vinaceum*. U.S. Forest Service, Southwest Region, Intra-regional Memorandum. July 18, 1983.
 Curran, N.L. 1983. *Cirsium vinaceum*. U.S. Forest Service Memorandum from Cloudcroft Ranger District to Lincoln Forest Supervisor. October 27, 1983.
 Fletcher, R. 1978. Status report: *Cirsium vinaceum*. U.S. Forest Service, Region 3, Albuquerque, New Mexico. 5 pp.
 Fletcher, R. 1979. Status report supplement: *Cirsium vinaceum*. U.S. Forest Service, Region 3, Albuquerque, New Mexico. 5 pp.
 Martin, W.C., and C.R. Hutchins. 1980. A Flora of New Mexico. J. Cramer. viii + 2591 pp.
 Olson, R.A. 1984. *Cirsium vinaceum*. Bureau of Reclamation, Washington, D.C. June 27, 1984.
 Overbay, J.C. 1983. *Cirsium vinaceum*. Response to preliminary listing letter. U.S. Forest Service, Region 3. July 29, 1983.
 Overbay, J.C. 1984. *Cirsium vinaceum*. U.S. Forest Service Southwestern Regional Intra-regional Memorandum. October 24, 1984.
 Todsen, T.K. 1976. *Cirsium vinaceum*, a threatened New Mexico species. Abstract of report presented at the annual meeting

of the New Mexico Academy of Sciences. 1 p.
 Wootton, E.O., and P.C. Standley. 1913. Description of new plants preliminary to a report upon the flora of New Mexico. Contributions from the U.S. National Herbarium. 16:109-196.

Authors

The authors of this final rule are Peggy Olwell and Alisa Shull, Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). Status information was provided by Mr. R. Fletcher, U.S. Forest Service, Region 3, 517 Gold SW., Albuquerque, New Mexico 87103. E. LaVerne Smith of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
<i>Cirsium vinaceum</i>	Sacramento Mountains thistle.....	U.S.A. (NM).....	T	276	NA	NA

Dated: May 29, 1987.
 Susan Recce,
 Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 87-13663 Filed 6-15-87; 8:45 am]
 BILLING CODE 4310-55-M

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Cyathea Dryopteroides* and *Ilex Cookii*
AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.
SUMMARY: The Service determines two plants, *Cyathea dryopteroides* and *Ilex cookii*, to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These plants are endemic to elfin forests of the Central Cordillera of Puerto Rico at elevations above 1,000 meters (3,280