

## ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

| Species  | Action           |
|--|------------------|
| 2 mussels (sheepnose (LPN = 2), spectaclecase (LPN = 4),)  | Proposed listing |
| Ozark hellbender <sup>2</sup> (LPN = 3)  | Proposed listing |
| Altamaha spiny mussel (LPN = 2)  | Proposed listing |
| 5 southeast fish (rush darter (LPN = 2), chunky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))  | Proposed listing |
| 8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choc-taw bean (LPN = 5), narrow pigtoe (LPN = 11), and tapered pigtoe (LPN = 11)) | Proposed listing |
| 3 Colorado plants (Pagosa skyrocket ( <i>Ipomopsis polyantha</i> ) (LPN = 2), Parchute beardtongue ( <i>Penstemon debilis</i> ) (LPN = 2), Debeque phacelia ( <i>Phacelia submutica</i> ) (LPN = 8))   | Proposed listing |

<sup>1</sup> Funds for listing actions for these species were provided in previous FYs.

<sup>2</sup> We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.

<sup>3</sup> Funds for these high priority listing actions were provided in FY 2008 and 2009

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline

processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

*Astragalus anserinus* will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for *Astragalus anserinus* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

#### References Cited

A complete list of all references cited is available on the Internet at <http://www.regulations.gov> and on request from the Idaho Fish and Wildlife Office (see ADDRESSES).

#### Author

The primary authors of this document are the staff members of the Idaho Fish and Wildlife Office

#### Authority

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

Dated: August 26, 2009

#### Daniel M. Ashe

Acting Director, U.S. Fish and Wildlife Service  
[FR Doc. E9-21754 Filed 9-9-09; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2009-0060]

[92210-1111-0000-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List *Cirsium wrightii* (*Wright's marsh thistle*) as Threatened or Endangered with Critical Habitat

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Cirsium wrightii* (Wright's marsh thistle) as threatened or endangered under the Endangered Species Act of 1973, as amended, and designate critical habitat. Following a review of the petition, we find the petition provides substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we request scientific and commercial data regarding *Cirsium wrightii*. At the conclusion of this review, we will issue a 12-month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat if and when we initiate a listing action for this species.

**DATES:** We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009.

**ADDRESSES:** You may submit information by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R2-ES-2009-0060 and then follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0060; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113; by telephone (505-346-2525) or by facsimile (505-346-2542). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are

required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the status of *Cirsium wrightii*. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of *C. wrightii*. We are seeking information regarding:

(1) The historical and current status and distribution of the Wright's marsh thistle, its biology and ecology, and ongoing conservation measures for the species and its habitat; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing or regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

If we determine that listing *Cirsium wrightii* is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by *C. wrightii*, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by *C. wrightii* that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why that proposed habitat meets the requirements of the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including information we receive during

this public comment period. Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12-month finding on the petitioned action, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section.

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

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the

measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this 90-day finding, we based our decision on information provided by the petitioner, as well as information available in our files and on the Internet that was directly relevant to the information raised in the petition at the time we received the petition. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and §424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the "substantial information" threshold.

### Petition

On October 15, 2008 we received a petition from the WildEarth Guardians, dated October 9, 2008, requesting that we list *Cirsium wrightii* (Wright's marsh thistle) as threatened or endangered under the Act. Additionally, the petitioner requested that critical habitat be designated concurrent with listing of *C. wrightii*. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a November 26, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that, to the maximum extent practicable, we would address their petition within 90 days.

The petition asserted that water diversion, habitat loss and degradation through current livestock grazing, inadequate regulatory mechanisms, weed control, non-native species, drought, and climate change threaten *C. wrightii*. During our review of the petition, we found that the majority of information cited in the petition was not readily available to us. Therefore, on December 18, 2008, we requested that the petitioner provide references. On February 13, 2009, the petitioner provided additional references.

### Previous Federal Actions

There have been no previous Federal actions concerning this species.

### Species Information

*Cirsium wrightii* is a wetland obligate species that was originally collected in 1851 at San Bernardino Cienaga, Cochise County, Arizona (Gray 1853, p. 101; Smithsonian 1849, p. 1).

Historically, the species was found in Arizona; New Mexico; and Chihuahua, Mexico (Gray 1853, p. 101; Coulter 1891, p. 244; Kearney and Peebles 1951, p. 952; Correll and Johnston 1970, p. 1719; Service 1995, p. 1). An occurrence of the species in western Texas has been verified from a few plants in Presidio County; however, most specimens from Texas have recently been identified as *Cirsium texanum* (Texas thistle), rather than *C. wrightii* (Sivinski 1994a, p. 1; 1996, p. 2; 2006, p. 1; Worthington 2002a, p. 4). This species is easily confused in herbarium collections with *C. wrightii* (Sivinski 1994a, p. 1; 1996, p. 2; 2006, p. 1; Worthington 2002a, p. 4). In the field, *C. wrightii* differs from *C. texanum* in being a wetland obligate (almost always occurs in wetlands) with thick succulent leaves (New Mexico Rare Plant Technical Council (NMRPTC) 2006, p. 1).

*Cirsium wrightii* is a biennial (a plant completing development in 2 years, flowering its second year) or a weak monocarpic perennial (a plant that flowers, sets seed, then dies) in the sunflower family (Asteraceae). The plant is prickly with short black spines and a 0.9-to-2.4-meter (m) (3-to-8-foot (ft)) single stalk covered with succulent leaves (Sivinski 1996, p. 1; Arizona Game and Fish Department (AGFD) 2001, p. 1). Numerous slender flowering branches emerge from the stalk, starting about one-third up the length of the plant. Branches are terminated by one or a few small flowering heads, which have numerous slender phyllaries (a modified leaf associated with the flower) (Sivinski 1996, p. 1). Flowers are white to pale pink in areas of the Sacramento Mountains, but are vivid pink in the Santa Rosa locality (Sivinski 1996, p. 1). The species occurs in wet, alkaline soils in spring seeps and marshy edges of streams and ponds between 1,130 and 2,600 m (3,450 and 8,500 ft) in elevation (NMRPTC 2006, p. 1; Sivinski 1996, p. 1).

In the New Mexico portion of the species' range, *Cirsium wrightii* appears to be an obligate of seeps, springs, and wetlands (NMRPTC 2006; Sivinski 1996; Service 1998; Worthington 2002a, p. 2). Plants commonly found in areas inhabited by this species include *Scirpus* spp. (bulrush), *Salix* spp. (willow), *Baccharis glutinosa* (seepwillow), *Helianthus paradoxus* (Pecos sunflower), *Juncus* spp. (rush), and *Typha* spp. (cattail) (New Mexico Botanist 2004, p. 2; Sivinski 1996, pp. 2-5; Worthington 2002a, pp 1-2).

The petition and information in our files indicate that *Cirsium wrightii* populations may be declining. The species is believed to be extant in New

Mexico; however, it is unclear whether the species has been extirpated from Arizona, Texas, and Mexico (Worthington 2002a, p. 4).

In New Mexico, *C. wrightii* is known from the Pecos River Valley and the west slope of the Sacramento Mountains (Sivinski 1996, p. 2), in Chavez, Guadalupe, Otero, and Socorro Counties, New Mexico (Bridge 2001, p. 1; New Mexico Botanist 2004, p. 2; NMRPTC 2006, p. 1; Sivinski 1994, p. 1; 2005, p. 1; Service 1998, p. 1; Worthington 2002, p. 1; 2002a, pp. 1-3). Known extant populations are widely disjunct, sometimes separated by more than 200 miles (322 km). Populations in the City of Roswell, Chaves County, and Lake Valley, Sierra County, New Mexico, appear to be extirpated (NMRPTC 2006, p. 2; Sivinski 2005, p. 1).

Information on the persistence and status of localities is lacking for many areas historically occupied by *Cirsium wrightii*. We are unaware of specific information on population abundance, or any year-round or long-term monitoring data on *C. wrightii* in Arizona, New Mexico or Mexico (see also Sivinski 1996). In Texas, *Cirsium wrightii* specimens have been confused with *C. texanum* because of the difficulty in distinguishing the two species (Sivinski 1994, p. 1; 1994a, p. 1; Sivinski 2007, p. 1). For these reasons, the status of this species remains unclear in its range in both the southwestern United States and in Mexico.

#### Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. 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) of the Act: (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.

In making this 90-day finding, we evaluated whether information on threats to *Cirsium wrightii*, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our

evaluation of this information is presented below.

#### A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

##### Information Provided in the Petition

The petitioner asserts that the most significant threat to *Cirsium wrightii* is the alteration of the hydrology of its rare wetland habitat. *Cirsium wrightii* is a wetland obligate, and populations have a high potential for extirpation when habitat dries due to water diversions, draining of wetlands, or drought. The petitioner makes the following claims:

(1) The extirpation of *C. wrightii* populations in Chaves and Sierra Counties, New Mexico, are likely linked to the depletion of water through human activity;

(2) Marshes along drainages in the Sacramento Mountains have been drained, but likely contained populations of *C. wrightii* historically; and

(3) Extant populations of *C. wrightii* in Otero and Guadalupe Counties, New Mexico, are currently threatened, and will be threatened in the future, by municipal water diversion and use, and the draining and development of wetlands.

The petitioner cites the U.S. Forest Service (USFS) (2008) as support for the assertion that private wells in Otero County have increased since the 1950s. The petitioner believes that these private wells threaten the species by diverting and draining water from canyons that currently or historically supported *C. wrightii* populations. Finally, the petitioner believes that, although the USFS considers *C. wrightii* to be a sensitive species on the Lincoln National Forest (see further discussion under Factor D), it recently permitted actions that may result in the destruction of its habitat (e.g., see USFS 2008, entire document).

The petitioner asserts *Cirsium wrightii* is threatened by alterations to the hydrology of its rare wetland habitat, as desert springs and cienegas (marshes) are susceptible to drying or being diverted (NMPTC 2006, p. 2; Worthington 2002a, p. 3). Loss of water from wetland or spring habitat occurs naturally through changing precipitation patterns or as a result of human impacts from direct or indirect water diversion (USFS 2008, p. 19). For example, the *C. wrightii* population on City of Roswell lands has been extirpated as habitat at that location is no longer suitable for the plant (New Mexico Department of Game and Fish 2005, pp. 33-34; Sivinski 1996, p. 4).

*Cirsium wrightii* occurrences in La Luz Canyon in the Sacramento Mountains of New Mexico are within municipal supply watersheds, where pipelines divert water to the City of Alamogordo (Shomaker 2006, pp. 20, 26; USFS 2008, p. 21). The petitioner indicates that:

(1) The City of Alamogordo holds about 11,500 acre feet (1420 hectare meters) per year in water rights on the Lincoln National Forest and other lands that they continue to use;

(2) The number of private wells in La Luz and Fresno Canyons in the Sacramento Mountains has increased 94 percent since the 1950s; and

(3) These watersheds were recently designated a critical management area, where the New Mexico Office of the State Engineer no longer permits new non-domestic groundwater appropriations (USFS 2008, p. 21).

The USFS (2008, p. 23) concluded that water withdrawal would continue to increase in this area and compound the effects of the recent and ongoing drought, leading to degradation of wetland and riparian habitat. The USFS (2008, p. 26) determined that *Cirsium wrightii* occurrences in this area would be affected by their issuance of a special use permit to maintain and operate the pipelines on USFS lands. Other *C. wrightii* occurrences are within areas where water is diverted for domestic use, which may contribute to the drying of its habitat (Sivinski 2006, p. 1).

The petitioner claims that the direct effects of grazing on *Cirsium wrightii* are not known and that Sivinski (1995, p. 5) did not find any evidence of the plant being grazed. Alternatively, the petitioner asserts that cattle may indirectly and adversely affect *C. wrightii* by degrading its habitat, changing soil structure and chemistry, and reducing water quality.

Nevertheless, the petitioners note that no studies specifically related to the effects of livestock grazing on *C. wrightii* have been conducted (NMRPTC 2006, p. 2). Sivinski (1995, p. 5) noted that if two small springs in La Luz Canyon were diverted for livestock use, *C. wrightii* could potentially be impacted. The petitioner does not detail ongoing or future direct or indirect impacts to the species from livestock.

#### Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed Sivinski (1996, 2005a, 2006) and find the assertions made by the petitioner to be reliable and accurate. Sivinski (1994, pp.1-2; 1996, p. 4; 2005, p. 1; 2006, p. 4) reported loss or degradation of habitat in Chaves, Otero, and Sierra Counties, New

Mexico, areas that historically supported *Cirsium wrightii*. The population at the type locality from Arizona has not been relocated and the species may be extirpated from the State (AGFD 2001, p. 1; Sivinski 1994, p. 1; 1996, p. 4). There are six general confirmed locations in New Mexico, each having occurrences within a few miles of one another, one verified population of a few plants in Presidio County, Texas, and no locations confirmed to be extant in Arizona and Mexico (Sivinski 1996, pp. 2-5; Sivinski 2005, p. 1; 2006, p. 1; Worthington 2002a, p. 4).

Increased water extraction in the last 100 years has contributed to the depletion of most surface spring systems in the Chihuahuan Desert (see Karges 2003 and references therein). Moreover, the appropriation of water rights from springs for a "beneficial use," such as livestock water, farming, domestic use, or recreational facilities, typically uses points of diversion that can curtail natural surface flows. Information in our files indicates that aquifers in the Sacramento Mountains are susceptible to appropriation by existing water rights and development of new water rights, which may pose future threats to the species (Service 2008, entire; USFS 2008, entire). For these reasons, we find that the petition presents substantial information that listing of the species may be warranted due to the alteration of wetland habitat occupied and needed by *C. wrightii*. We intend to assess this factor more thoroughly during the status review for the species.

We have no information in our files regarding grazing as a threat to *C. wrightii*, nor did the petitioner provide any information on observed or potential effects of grazing.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by the present or threatened destruction, modification, or curtailment of its habitat as a result of the alteration of desert springs, seeps, and wetland habitats. We did not find substantial information in the petition or readily available in our files to indicate that livestock grazing may be a threat to the species; however, we will assess the potential impacts of livestock grazing during the status review for the species.

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

The petitioner provides no information addressing this factor, and we have no information in our files indicating that listing of the species due

to overutilization for commercial, recreational, scientific, or educational purposes may be warranted. We intend to assess this factor more thoroughly during the status review for the species.

#### C. Disease or Predation

##### Information Provided in the Petition

The petitioner provides information on an exotic weevil (*Rhinocyllus conicus*) that was introduced into the Great Plains to feed on various species of thistles, and claims that this and other native and exotic predator species may threaten native *Cirsium* (thistle) species. The petitioner provides no information addressing impacts of disease on *Cirsium wrightii*.

##### Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files substantiates that there have been intentional releases of the exotic weevil to control *Carduus nutans* (musk thistle) (Sivinski 1994, p. 2; 2007, p. 6; NMRPTC 2006, p. 2; Bridge 2001, p. 1; AGFD 2001, p. 2). This exotic weevil has recently been found in the Sacramento Mountains in habitat occupied by *Cirsium wrightii* (Sivinski 2007, p. 6). Moreover, a native predator, the stem borer weevil (*Lixus pervestitus*) caused a widespread premature stem death to the flower heads of at least one population of the endangered *C. vinaceum* (Sacramento Mountains thistle), which co-occurs with *C. wrightii* (Sivinski 2007, pp. 8-12). It is unknown if the stem borer weevil feeds on *C. wrightii* or has the same level of impact; however, we will assess these potential impacts during the status review for the species.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by predation. We did not find substantial information in the petition or readily available in our files to indicate that disease may be a threat to the species; however, we will assess the potential impact of disease during the status review for the species.

#### D. The Inadequacy of Existing Regulatory Mechanisms

##### Information Provided in the Petition

The petitioner asserts that *Cirsium wrightii* is not adequately protected by Federal or State laws or policies to prevent its endangerment or extinction. The petitioner states that the species' ranking in NatureServe was changed from G3 (vulnerable) to G2 (imperiled) in 2003 (NatureServe 2009, p. 1). Similarly, its National Status ranking for the U.S. is N2 (imperiled due to a

restricted range and very few populations) (NatureServe 2009, p. 2). The petition reports that *Cirsium wrightii* is listed as endangered by the State of New Mexico; however, the petitioner claims that this designation provides little regulatory protection for the habitat of the species. The petition reports that *Cirsium wrightii* is on the Regional Forester's Sensitive Species List and is noted by the Service to be a species of concern (USFS 2008, p. 35); however, the petitioner claims that these designations provide no protection or mitigation for impacts to the species.

#### Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed these designations and find that the species receives no protection from the NatureServe designations because the designation lists only serve to notify the public of the species' status and do not require any conservation or management actions or provide any regulatory authority for conservation of species.

The State of New Mexico lists *Cirsium wrightii* as endangered. As such, *C. wrightii* is protected from unauthorized collection, transport, or sale by the New Mexico Endangered Plant Species Act, 9-10-10 NMSA. This law prohibits the taking, possession, transportation and exportation, selling or offering for sale any listed plant species. 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 any protection for *C. wrightii* habitat. There are no statutory requirements under the jurisdiction of the State of New Mexico that serve as an effective regulatory mechanism for reducing or eliminating the threats (see Factors A and C above) that may adversely affect the *C. wrightii* and its habitat. There are also no requirements under the New Mexico State statutes to develop a recovery plan that will restore and protect existing habitat for the species. Therefore, the species does not have a recovery plan, conservation plan, or conservation agreement. For these reasons, we find that the petition contains substantial information that existing New Mexico State regulatory mechanisms may currently be inadequate to protect *C. wrightii*.

The USFS is required to analyze the impacts on its sensitive species, including *C. wrightii*, in all applicable National Environmental Policy Act (NEPA) documents (42 U.S.C. 4321 *et. seq.*). On April 21, 2008, a new USFS planning rule (73 FR 21468) was made

final that detailed how sensitive species would be analyzed in project planning and review. However, on June 30, 2009, the United States District Court for the Northern District of California issued a decision in *Citizens for Better Forestry v. United States Department of Agriculture*, No. C 08-1927 CW (N.D. Cal. June 30, 2009). The court enjoined the USFS from implementing and using the 2008 planning rule and remanded the matter to them for further proceedings. The Government has not yet determined whether to appeal the District Court's June 30, 2009 decision to the Ninth Circuit Court of Appeals. Therefore, the protections that may be afforded the species due to its USFS sensitive species status are unclear, and we will assess this factor more thoroughly during the status review for the species.

Similarly, the petitioner notes that the Service has identified *Cirsium wrightii* as a species of concern (Service 2009). While not a formal legal designation under Service regulations, a species of concern is defined as a taxon for which further biological research and field study are needed to resolve its conservation status or which is considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies. Species of concern are identified for planning purposes only and the title confers no regulatory protection.

Neither the petition nor our files provide information about existing regulatory mechanisms for the species if it is extant in Arizona, Texas, or Mexico. As such, we found no information that the lack of regulatory mechanisms in Arizona, Texas, or Mexico is affecting the continued existence of *Cirsium wrightii*.

We find that there is substantial information in the petition and readily available in our files to indicate that *Cirsium wrightii* may receive inadequate protection from its designation as a USFS sensitive species and from current regulatory mechanisms in the State of New Mexico. It receives no regulatory protection from the NatureServe designations or from the Service designation as a species of concern, because these lists only serve to notify the public of the species' status and do not require any conservation or management actions. The petitioner does not provide substantial information on the inadequacy of other existing regulatory mechanisms, including those which may be in place in Texas, Arizona, or Mexico. In summary, we find that there is

substantial information in the petition and readily available in our files to indicate *C. wrightii* may be threatened by the inadequacy of existing regulatory mechanisms.

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

##### Information Presented in the Petition

The petitioner reports that drought may threaten *Cirsium wrightii*, as parts of the Sacramento Mountains have experienced extreme drought conditions in recent years, creating conditions that are not conducive to the species' occupation (USFS 2008, p. 21).

The petitioner notes that *Cirsium wrightii* is known to hybridize with *C. texanum* and *C. vinaceum*, threatening the genetic integrity of the species (Correll and Johnston 1979, p. 1719; NMRPTC 2006, pp. 1-2).

The petitioner also claims that *Cirsium wrightii* is threatened by climate change. The petitioner does not cite any information or publications in support of their claim on a correlation between climate change and the persistence of the species. The petitioner claims that climate change further complicates the impact of drought and water diversions, and suggests that regional landscape-scale vegetation changes from climate change are strong indicators for the potential loss of wetland habitat. The petitioner cites Breshears *et al.* (2005) as support; however, the authors (Breshears *et al.* (2005)) report on *Pinus edulis* (pinyon pine) in the Jemez Mountains, New Mexico, and not changes to wetland habitat or even vegetation changes within the range of *C. wrightii*.

The petitioner also claims that introduced plant species pose a threat to *Cirsium wrightii* through competition. The petitioner believes that *Elaeagnus angustifolia* (Russian olive), *Tamarix* spp. (salt cedar), and *Lythrum* spp. (loosestrife) can severely impact occurrences of *C. wrightii*.

The petitioner asserts that some occurrences of *Cirsium wrightii* are threatened by mechanical and herbicide treatments by individuals who believe they are eradicating invasive plants.

##### Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files supports the petitioner's claim that *Cirsium wrightii* may be threatened by drought. Sivinski (2005a, pp. 3-4) reports that springs and wet valleys have been affected by drought in at least three canyons of the Sacramento Mountains, New Mexico,

resulting in reduced *C. wrightii* populations.

Information in our files substantiates the petitioner's claim that *Cirsium wrightii* hybridizes with other species. For example, *Cirsium* species observed at Rattlesnake Springs (Carlsbad Caverns National Park), New Mexico, show characteristics that are intermediate between *C. wrightii* and *C. texanum* (NMRPTC 2006, pp. 1-2). This *Cirsium* population blooms in May rather than in August through October, as is typical of *C. wrightii*. *C. wrightii* sometimes occurs with the threatened *C. vinaceum* in the Sacramento Mountains, where a few hybrids between these rare taxa have been observed; however, hybrid plants are apparently uncommon (Service 2008a, p. 13; Worthington 2002, p. 1). We will assess hybridization more thoroughly during the status review for the species.

We find the information presented in the petition and readily available in our files on the subject of climate change to be insufficiently specific to *C. wrightii* to be conclusive; however, the Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate is unequivocal and indicates that drying trends in the Southwest are likely to persist or worsen (IPCC 2007a, p. 15; IPCC 2007b, p. 887). We intend to investigate the effects of climate change on *C. wrightii* further in the status review for the species.

We find the information cited on the potential threat of introduced species, *E. angustifolia* and *Tamarix* spp., to be generic in nature and not specific to *C. wrightii* or its habitat. Sivinski (1996) reports that *E. angustifolia* and *Tamarix* spp. are becoming dominate in many riparian and wetland areas, but that these species likely do not threaten *C. wrightii* because it grows in saturated substrates that are not suitable habitat for these exotic trees; however, there is substantial information that indicates that *Lythrum* spp. could severely impact the habitat of *C. wrightii* at some point in the foreseeable future. Sivinski (1996, p. 6) reports that this exotic species has not yet spread to the interior Southwest, but is spreading throughout the west coast States.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by drought and potential competition from *Lythrum* spp. While hybridization between *C. wrightii* and other *Cirsium* species has been observed, it is uncommon, and does not appear to be a significant threat to *C. wrightii*. We did not find substantial information in the petition or readily available in our files to

indicate that *C. wrightii* may be threatened by the effects of climate change or competition from *Elaeagnus angustifolia* or *Tamarix* spp; however, we will assess these potential impacts during the status review for the species.

#### Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. Based on our evaluation of the information provided in the petition, we find that the petition presents substantial scientific information indicating that listing *Cirsium wrightii* may be warranted.

The petitioner presents substantial information indicating that *Cirsium wrightii* may be threatened by Factor A (the present or threatened destruction, modification, or curtailment of its habitat or range), Factor C (predation), Factor D (inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting its continued existence). The petitioner does not present substantial information that Factor B (overutilization for commercial, recreational, scientific, or educational purposes) is currently, or may be in the future, a threat to *C. wrightii*. Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information that listing *C. wrightii* throughout all or

a significant portion of its range may be warranted due to current and future threats under Factors A, C, D, and E. Therefore, we are initiating a status review to determine whether listing *C. wrightii* under the Act is warranted. We will issue a 12-month finding as to whether any of the petitioned actions are warranted. To ensure that the status review is comprehensive, we request scientific and commercial information regarding *C. wrightii*.

The "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status review of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

We encourage interested parties to continue gathering data that will assist with the conservation of *Cirsium wrightii*. The petitioner requests that critical habitat be designated for this species. If we determine in our 12-month finding that listing *C. wrightii* is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

#### References Cited

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

#### Author

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (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: August 24, 2009.

**Daniel M. Ashe,**

*Acting Director, Fish and Wildlife Service.*

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