

*Plant Non-Specific Expenses*

Network Operations Expenses—  
Account 6530 (Class B Telephone  
Companies); Accounts 6531, 6532,  
6533, 6534, and 6535 (Class A  
Telephone Companies)

Other Jurisdictional Assets—Net .....	Account 1500.
Accumulated Depreciation .....	Account 3100.
Accumulated Depreciation—Property Held for Future Telecommuni- cations Use.	Account 3200.
Accumulated Amortization—Capital Leases .....	Account 3400 (Class B Telephone Companies); Account 3410 (Class A Telephone Companies).
Net Current Deferred Operating Income Taxes .....	Account 4100.
Net Noncurrent Deferred Operating Income Taxes .....	Account 4340.
Other Jurisdictional Liabilities and Deferred Credits—Net .....	Account 4370.

■ 29. In § 36.505, revise the section heading to read as follows:

**§ 36.505 Accumulated amortization—Tangible—Account 3400 (Class B Telephone Companies); Accumulated amortization—Capital Leases—Account 3410 (Class A Telephone Companies).**

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■ 30. Amend § 36.631 by revising paragraphs (a) introductory text, (c) introductory text, and (d) introductory text to read as follows:

**§ 36.631 Expense adjustment.**

(a) Until December 31, 1987, for study areas reporting 50,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

\* \* \* \* \*

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

(d) Beginning January 1, 1988, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) shall be calculated pursuant to § 54.309 of this

*Customer Operations Expenses*

Marketing—Account 6610 (Class B Telephone Companies); Accounts 6611 and 6613 (Class A Telephone Companies)

Services—Account 6620

■ 27. In § 36.411, revise the section heading to read as follows:

chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AG88

#### Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa thistle)

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Cirsium loncholepis* (La Graciosa thistle). Approximately 41,089 acres (ac) (16,628 hectares (ha)) are within the boundaries of the critical habitat designation. The designated critical habitat is in San Luis Obispo and Santa Barbara Counties, California.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Section 7(a)(2) of the Act requires that each Federal agency, in consultation with and with the assistance of the Service, ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or

**§ 36.411 Operating taxes—Account 7200 (Class B Telephone Companies); Accounts 7210, 7220, 7230, 7240, and 7250 (Class A Telephone Companies).**

■ 28. Revise § 36.501 to read as follows:

**§ 36.501 General.**

For separations purposes, reserves and deferrals include the following accounts:

result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of designating any particular area as critical habitat. We solicited data and comments from the public on all aspects of this designation, including data on economic and other impacts of the designation.

**DATES:** This rule is effective April 16, 2004.

**ADDRESSES:** Comments and materials received, as well as supporting documentation, used in the preparation of this final rule are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

#### Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that

additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

#### *Role of Critical Habitat in Actual Practice of Administering and Implementing the Act*

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 25 percent (306 species) of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

#### *Procedural and Resource Difficulties in Designating Critical Habitat*

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing

determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

#### **Background**

We proposed to designate critical habitat for *Cirsium loncholepis* (La Graciosa thistle) on November 15, 2001 (66 FR 57559), along with *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant). We designated final critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* on November 7, 2002 (67 FR 67968), but did not designate *C. loncholepis* due to ongoing analysis of its taxonomic status.

Dr. David Keil is currently studying the taxonomic relationship between *Cirsium scariosum* (elk thistle) and *C. loncholepis* (David Keil, California Polytechnic State University, San Luis Obispo (CPSU), pers. comm. 2002). A highly variable species complex, *C. scariosum* occurs in montane wetlands throughout California including the Klamath Ranges, the Cascade Ranges, the Sierra Nevada, the Transverse Ranges, the South Coast Range, and the Peninsular Ranges (Keil and Turner 1993). A small number of *C. scariosum* populations occur at one of the headwaters of the Santa Maria River in the Mount Pinos region, less than 95 miles (mi) (153 kilometers (km)) inland

of the *C. loncholepis* populations. Recent research suggests that the populations of *C. scariosum* in the Mount Pinos region and the Peninsular Ranges are related to *C. loncholepis* and may collectively represent a single taxon (David Keil, CPSU, in litt. 2003). Based on this analysis, Dr. Keil may propose a new taxon, *C. scariosum* var. *citrinum*; the new taxon would not supersede the current nomenclature until it is peer reviewed and published. Dr. Keil intends to publish his new treatment of the genus *Cirsium* in *The Flora of North America* (FNA). Publication of the FNA volume containing the genus *Cirsium* will likely occur between 2005 and 2006 (Dieter Wilken, Santa Barbara Botanical Garden, in litt. 2003). Because of delays in finalization of this taxonomic research, we determined to proceed with the designation of critical habitat for *C. loncholepis* based on its current taxonomic status. When the proposed taxonomic changes are published, we will as necessary re-evaluate, within the constraints of available funding, the critical habitat designation and the listing of *C. loncholepis*.

Please refer to the proposed critical designation (66 FR 57559) for an overview of *Cirsium loncholepis* biology, historic range, land ownership and management, and a list of the ongoing threats to the species. Since the publication of the proposed critical habitat, subsequent research on *C. loncholepis* has added to our understanding of the species. For example, demographic studies found that the survival and rapid growth of seedlings to a large vegetative (non-flowering) state and large flowering individuals were the main demographic influences driving population growth rate in the populations studied (Lea 2002; Teed 2003). An investigation of seedling ecology found that seedlings tolerate saturated soils better than larger, more mature individuals, and higher seedling mortality occurs if soils dry out quickly (Huber 2003). This study also found that mice forage on seedlings and contribute to seedling mortality. Field observations suggest that *C. vulgare* (bull thistle), an invasive non-native species, may also threaten local populations of *C. loncholepis* due to competition (Tina Teed, CPSU, pers. comm. 2002). The population reported for Monterey County was erroneously identified as *C. loncholepis* and is not being considered a component of this new taxon (D. Keil, pers. comm., 2002).

Changes in land managers and the status of conservation easements within the proposed critical habitat units have occurred since publication of the

proposed rule. The Coastal Conservancy now holds a conservation easement for the western portion of the private parcel owned by the Unocal Corporation. The Center for Natural Land Management manages the parcel owned by the County of Santa Barbara (Rancho Guadalupe Dunes County Park) that was formerly managed by the Trust for Public Lands. This County of Santa Barbara parcel is south of the Unocal parcel and supports suitable habitat though no plants have been documented from that location. The Guadalupe-Nipomo Dunes National Wildlife Refuge is currently negotiating the development of a conservation easement on the entire Unocal parcel. The dune area and shoreline of the Santa Maria River mouth would then be managed as part of the refuge. Long-term management plans for *C. loncholepis* have not yet been developed for any of these areas.

#### Previous Federal Action

A proposed rule to list *Cirsium loncholepis* and three other species, as endangered was published in the **Federal Register** on March 30, 1998 (63 FR 15164). Please refer to the proposed rule listing the species for information on previous Federal actions prior to March 30, 1998 and to the proposed designation of critical habitat (66 FR 57559, 57564) for information on previous Federal actions prior to November 15, 2001. The proposed critical habitat rule also contains information regarding the litigation history related to the listing and designation of critical habitat for this species (*Southwest Center for Biological Diversity and California Native Plant Society v. U.S. Fish and Wildlife Service et al.* (Case No. C99–2992 (N.D.Ca.)).

The proposed rule to designate critical habitat for *Cirsium loncholepis* and two other species was signed on November 2, 2001, and published in the **Federal Register** on November 15, 2001 (66 FR 57559). In the proposal, we determined it was prudent to designate approximately 66,830 ac (27,046 ha) of land in Santa Barbara and San Luis Obispo Counties as critical habitat for *C. loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Publication of the proposed rule opened a 60-day public comment period, which closed on January 14, 2002.

On May 7, 2002, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*, and a notice of availability of the draft economic analysis on the proposed determination (67 FR 30641). This

second public comment period closed on June 6, 2002.

In August 2002, we agreed through a joint stipulation with the plaintiffs (Southwest Center for Biological Diversity and California Native Plant Society) to a 1-year extension on the publication date of a final rule for *Cirsium loncholepis* critical habitat to October 25, 2003. A delay in publication was proposed by the plaintiffs because of the uncertainty in the taxonomic status of *C. loncholepis*. (Please refer to the Background section of this rule for more information regarding *C. loncholepis* taxonomic issues.) A final rule designating critical habitat for the other two species was issued October 25, 2002 (67 FR 67968, November 7, 2002).

On September 12, 2003 we filed with the court a motion to modify its Stipulated Order Regarding Critical Habitat Designation, seeking additional time due to the continued uncertainty regarding the taxonomic status of *Cirsium loncholepis* and because appropriations provided by Congress in fiscal year 2003 were insufficient to cover this action. On November 6, 2003, the judge denied our motion for further extension. The Service is issuing this designation in compliance with the court's order.

#### Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat for the three species. In addition, we invited public comment through the publication of a notice in the San Luis Obispo Tribune on November 18, 2001, and the Santa Barbara News-Press on November 27, 2001.

We received individually written letters from 11 parties, which included 4 designated peer reviewers, 1 Federal agency, and 1 State agency. Of the 11 parties responding individually, 6 supported the proposed designation, 3 were neutral, and 2 were opposed. Of the responding parties, five commented specifically on *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, while three made general comments for all three taxa, and three commented specifically on *Cirsium loncholepis*.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of

conservation biology. All four of the peer reviewers supported the proposal and provided us with comments, which are included in the summary below and incorporated into the final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat and *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. We previously addressed comments regarding critical habitat for *E. capitatum* and *D. increscens* ssp. *villosa* in a separate rule that did not include *C. loncholepis* (67 FR 67968). A peer review comment relating to the uncertainty in the taxonomic status of *C. loncholepis* prompted the separation of *C. loncholepis* from the final critical habitat designation for the other two species.

The comments were grouped according to peer review or public comments. Two general issues arose in the public comments that related specifically to the proposed critical habitat determination. These comments are addressed in the summary below. We did not receive any comments on the draft economic analysis of the proposed determination. However, we did receive one comment on economic issues during the first comment period on the proposed designation.

#### Peer Review Comments

(1) *Comment:* A peer reviewer suggested that we delay publication of a final rule for *Cirsium loncholepis* pending the determination of its taxonomic status. Recent research on *C. loncholepis* raises significant questions regarding the taxonomy of the species.

*Our Response:* We acknowledge the uncertainty in the taxonomy of *Cirsium loncholepis*. In 2002, we discussed with the plaintiffs, the Center for Biological Diversity and California Native Plant Society, appropriate action on the critical habitat designation given the questions raised by recent review of *Cirsium loncholepis* taxonomy (Please refer to the Background section of this rule for information regarding the study of the taxonomic relationship of *C. loncholepis* and *C. scariosum*). We agreed, through a joint stipulation with the plaintiffs, to a 1-year extension until October 25, 2003 for completion of the final critical habitat determination for *C. loncholepis*. However, resolution of the taxonomic status of *C. loncholepis* did not occur during the 1-year extension. Given the continuing uncertainty regarding resolution of the taxonomic issue, the Service determined to proceed with the final determination.

(2) *Comment*: One peer reviewer recommended that we include all apparently suitable unoccupied habitats within the range of the species in our critical habitat designation. The reviewer stated that it is unclear from the proposed rule how many unoccupied areas or unsurveyed areas within the historical range of these taxa have been excluded from the proposed rule. Including these areas would improve the chances for recovery by increasing the habitat that would be protected and thus available for colonization.

*Our Response*: We acknowledge that all areas within the historical range of *Cirsium loncholepis* have not been surveyed. It is possible that suitable habitat for the taxon exists but remains unidentified. While additional surveys would help in further defining the distribution of *C. loncholepis*, we are required to designate as critical habitat those areas we know to be essential to the conservation of the species, using the best information available to us. We included in our critical habitat designation areas with the soil types and vegetation communities necessary to support *C. loncholepis* that are contiguous with the known locations of the taxon and are essential to the conservation of the species.

Within the geographic area occupied by *Cirsium loncholepis*, we designate only areas currently known to be essential to the conservation of the species. Essential areas already have the features and habitat characteristics that are necessary to sustain the species. We do not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area is not included in the critical habitat designation. Within the geographic area occupied by the species, we do not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

We agree that future conservation and recovery of the species depends not only on the areas it currently occupies, but also on providing the opportunity for it to shift in distribution over time, and to expand its current distribution. We have addressed this by designating as critical habitat the areas that surround existing populations and contain the primary constituent elements and are, therefore, essential to the conservation of *Cirsium loncholepis*. The number and location of standing

plants (*i.e.*, above-ground expression) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seedbank.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Critical habitat designations do not signal that habitat outside the designation is unimportant or not required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action.

(3) *Comment*: A peer reviewer commented that the Cañada de las Flores unit of *Cirsium loncholepis* critical habitat appears to be marginal in its contribution to the conservation and recovery of the species. Much of the area has been converted from grazing, which is generally compatible with the thistle, to intensive agriculture in the form of vineyards. The thistle may not be able to survive and recover under this change in land use.

*Our Response*: No vineyards currently occur within the Cañada de las Flores Unit. Much of the area surrounding the Cañada de las Flores unit, specifically within and south of Los Alamos Valley, has undergone recent land use changes in the form of vineyard development. However, the majority of the property within the Cañada de las Flores unit remains under a grazing regime with a small amount of agricultural row crops. The majority of the property in this unit is owned by Chevron, which is in the process of closing, excavating, and capping old well sites on the South Los Flores Ranch. A vineyard developer has approached the Service and Santa Barbara County about vineyard development on property within the southern portion of the Unit; less than 10 percent of the unit is proposed for vineyard conversion in the current plans (Bridget Fahey, Service biologist, pers. comm. 2002). Vineyard development on the property would likely occur in upland areas, away from marsh and wetland habitat that support *Cirsium loncholepis* and the federally endangered Santa Barbara Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*). Measures developed to

protect wetland habitat on the property should be beneficial for *C. loncholepis* as well as the California tiger salamander. We included the Cañada de las Flores unit in our critical habitat designation because it contains the primary constituent elements and characteristics that make it essential for the conservation of *C. loncholepis*.

## Public Comments

### Issue 1: Site-Specific Areas and Other Comments

(4) *Comment*: A commenter requested that the Oceano Dunes State Vehicular Recreation Area be excluded from the Pismo-Orcutt unit of *Cirsium loncholepis* critical habitat. Designating critical habitat in this area would diminish, if not completely eliminate, opportunities for public use of the dunes for recreational activities. The Oceano Dunes State Vehicular Recreation Area is not necessary for the survival and recovery of the species when considering the large area (approximately 44,000 ac) that would be protected as critical habitat.

*Our Response*: We are sensitive to the concerns of individuals regarding the effects of critical habitat designation on private land or public lands under State or local jurisdiction. We agree that critical habitat should include only areas essential to the conservation of *Cirsium loncholepis*. Upon review of the area encompassed by the Oceano Dunes State Vehicular Recreation Area (ODSVA), we have removed from the final designation the heavily used off-highway vehicle (OHV) riding area within the ODSVA because the area is not essential for the conservation of *Cirsium loncholepis* (see Summary of Changes from the Proposed Rule section). However, we have retained the remaining portion of the ODSVA in our final designation because these areas are not disturbed and contain habitat essential for *C. loncholepis*. Unless a Federal nexus (*e.g.*, Federal funding, Federal permit, or other Federal actions) exists, the critical habitat designation poses no regulatory burden and should not affect activities at the Oceano Dunes State Vehicular Recreation Area. If a Federal nexus is found to exist, we will work with the State (or other non-Federal entity) and appropriate Federal agency to attempt to develop a project that can be completed without jeopardizing the continued existence of the *C. loncholepis* or adversely modifying its critical habitat.

We have analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis*. This final rule will not take private,

State, or other non-Federal property. Owners and users of non-Federal recreational areas that are included in the designated critical habitat will continue to have an opportunity to utilize private and public property in ways consistent with the conservation of *C. loncholepis*. Activities that do not have a Federal nexus are not restricted by the designation of critical habitat.

(5) *Comment*: California Department of Transportation (DOT) requested an exclusion of areas within the DOT operating Right of Way (ROW) in several, unspecified units of critical habitat for *Cirsium loncholepis*, where they overlap with the transportation system of California. The DOT requested an exclusion to reduce the need for habitat effects determinations for the taxa where routine disturbance occurs as a result of regular maintenance and operational improvements.

*Our Response*: In the region covered by this critical habitat designation, State and Federal roads appear to be within the Pismo-Orcutt unit. To clarify, we are not including roads that border the critical habitat units in our designation. The areas adjacent to the State roads that extend within the Pismo-Orcutt unit contain habitat essential to the conservation of *Cirsium loncholepis* as defined by the primary constituent elements. Therefore, we cannot justify excluding these particular areas from the critical habitat unit.

Due to mapping and time constraints, we did not map critical habitat in sufficient detail to exclude all road surfaces, although these would not contain the primary constituent elements essential for the conservation of this taxon. Therefore, we do not view road surfaces within the units as critical habitat for *Cirsium loncholepis*. Federal activities limited to roads and other paved or graveled areas would not trigger a section 7 consultation unless they affect the species or one or more of the primary constituent elements in adjacent critical habitat.

Designation of critical habitat in areas occupied by *Cirsium loncholepis* is not likely to result in a regulatory burden substantially above that already in place due to the presence of the listed species. To streamline the regulatory process, the DOT may request section 7 consultation at a programmatic level for ongoing activities that would result in adverse effects to the taxon or its critical habitat.

#### Issue 2: Economic Issues

(6) *Comment*: We received one comment recommending we use the contingent valuation method (CVM) to determine the hypothetical non-use

values for *Cirsium loncholepis* and the other two species for which critical habitat was concurrently proposed.

*Our Response*: Some economists recognize that in addition to a “use value” that society places on natural resources these goods may also exhibit a “non-use value” by society. For example, while many people may elect to visit a public park and “use” it for a variety of recreational purposes, the presence of this park may provide a variety of benefits to additional members of society even though their enjoyment may not be directly observable. Certain individuals may also derive benefits from the park because of the protection it offers to certain natural resources including a diverse ecosystem that harbors endangered and threatened species. While these members of society may value the park merely for its existence, their behavior is not directly observable and thus economists have developed certain tools, including CVM, for measuring these values.

CVM is an approach used by economists to directly elicit non-use values from individuals through the use of carefully designed survey instruments. A CVM study will provide respondents with a framework wherein they are asked to value the resource given the parameters of the framework. For CVM to work properly, and provide meaningful information on non-use values, considerable resources must be expended to adequately design and administer this tool. We have not employed CVM studies to capture the non-use values certain individuals may place on critical habitat designation.

In conducting our analyses for the La Graciosa thistle, we reviewed economic literature to determine whether or not there are any existing studies that can provide information that would allow us to better describe and accurately quantify such benefits associated with the survival and recovery of the La Graciosa thistle and its habitat. However, even when such studies are identified, they usually do not allow for the separation of the benefits of listing (including the Act’s take provisions) from the benefits of critical habitat designation.

While we are often unable to quantify benefits that may be associated with the designation, our analyses do discuss potential benefits in a qualitative manner. This discussion is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general or critical habitat designation in particular. In short, we believe that we are currently best able to express the benefits of critical habitat designation in biological terms that can

be weighed against the expected cost impacts of the rulemaking.

#### Summary of Changes From the Proposed Rule

In preparation for development of our final designation of critical habitat for *Cirsium loncholepis*, we reviewed comments received on the proposed designation of critical habitat. In addition to minor clarifications and incorporation of additional information on the species’ biology and taxonomy, we made four changes to our proposed designation, as follows:

(1) We modified two of the three primary constituent elements from the proposed designation by including additional habitats, excluding two plant communities, and refining the plant species associated with *Cirsium loncholepis* habitats. We did not include seeps in our proposed list of *C. loncholepis* habitats for primary constituent element one. Because hillside seeps provide habitat for the species in the Cañada de las Flores critical habitat unit, we have added seeps to the list of habitats. Intermittent streams also provide habitat for the species, specifically where sub-surface water is close to the surface or exposed along such drainages. For this reason, we have also included intermittent streams. In primary constituent element two of the proposed designation, we included coastal dune and coastal scrub as being essential plant communities. However, coastal dune and coastal scrub plant communities do not provide the moist soils considered necessary for habitats occupied by *C. loncholepis*, and therefore we have removed these communities from the final list. Coastal dune ecosystems contain lakes and other wetlands suitable for *C. loncholepis*, and these wetland habitats are not dominated by plant species associated with coastal dune and coastal scrub plant communities. In primary constituent element two, we kept the plant species typically associated with wetland habitats and removed plants that are not obligate wetland species including *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), and *Baccharis pilularis* (coyote brush).

(2) We modified the boundaries of the proposed units to be consistent with other recent critical habitat designations. The boundaries are now defined by points that lie on a 100-meter-by-100-meter grid in the Universal Transverse Mercator (UTM) coordinate system.

(3) When making adjustments to the Pismo-Orcutt unit, we made slight modifications to exclude developed

areas that were missed during assessment of the 2000 aerial photos. Developed areas are generally not considered essential habitats for *Cirsium loncholepis* because of the lack of primary constituent elements in these areas.

(4) We excluded the heavily used off-highway vehicle (OHV) riding area, which is a portion of the Oceano Dunes State Vehicular Recreation Area, because the area is not essential for the conservation of *Cirsium loncholepis*. OHV disturbance in the riding area has inhibited the development of a natural dune structure that includes the formation of wetlands which could support *C. loncholepis*. The riding area consists mostly of shifting, open sand that is unsuitable habitat for *C. loncholepis*. A small number of remnant wetland habitats exist in the riding area that might support the species, but these are fenced off from OHV disturbance and too few to be essential to the conservation of the species. The highly disturbed riding area that we are excluding is only a small part of the much larger Guadalupe Dune complex. The majority of the known extant populations of *C. loncholepis* are restricted to undisturbed wetlands of the Guadalupe Dune complex and the Santa Maria River mouth, and we have therefore retained the vast majority of the dune complex and a large part of the river in the Pismo-Orcutt unit.

As a result of using the 100-meter-by-100-meter grid method for defining the boundaries and the removal of developed areas missed in the original proposed delineation, the Pismo-Orcutt unit decreased in size by 1,468 ac (595 ha) and the Cañada de las Flores unit decreased in size by only 137 ac (56 ha). With the removal of the OHV riding area, the Pismo-Orcutt unit decreased in size by an additional 1,621 ac (656 ha).

#### Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species.

“Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which

listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that are essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat except in those circumstances determined by the Secretary. Our regulations (50 CFR 424.12(e)) also state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

To be included in a critical habitat designation, the Service must also find that habitat may require special management considerations or protections. As discussed in more detail below, with respect to the individual units, the Service finds that the two units designated as critical habitat for the *C. loncholepis* may require special management considerations or protections due to threats to the species and/or its habitat. Such special management considerations or protections may include management of off-highway vehicle activity, irrigation practices, groundwater pumping, invasive, non-native species, and grazing, as well as protecting the composition of native plant and animal communities within critical habitat units. Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, including impacts to

National security, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may thus result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation

planning efforts if new information available to these planning efforts calls for a different outcome.

## Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Cirsium loncholepis*. This included information from the California Natural Diversity Data Base (CNDDB 2001), soil survey maps (U.S. Soil Conservation Service 1972), digital versions of the U.S. Geological Survey 7.5' quadrangles, aerial photography, recent biological surveys and reports, additional information provided by interested parties, and discussions with representatives of California Department of Fish and Game (CDFG), the Santa Barbara County Planning Department, and other botanical experts. We also conducted site visits at several locations managed by local, State, or Federal agencies, including Guadalupe-Nipomo Dunes National Wildlife Refuge, Oceano Dunes State Vehicle Recreation Area, and Pismo Dunes State Preserve. We also visited the portion of Guadalupe Dunes owned by the Unocal Corporation.

We delineated the proposed critical habitat units for *Cirsium loncholepis* by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of the taxon using the information sources described above and aerial photography available through TerraServer (<http://terraobserver.homeadvisor.msn.com>). Where possible, we defined the boundaries of proposed critical habitat to conform to roads, known landmarks, and topographic features. To create the legal descriptions of the boundaries, we used the UTM coordinates that defined the proposed boundary.

For the final rule we made several modifications to the boundaries of proposed critical habitat. We overlaid the boundaries of proposed critical habitat on aerial imagery from April 2000 (AirPhoto USA), and an effort was made to exclude developed areas. We excluded from critical habitat the off-highway vehicle (OHV) riding area in the Oceano Dunes State Vehicular Recreation Area (Recreation Area). We used GIS data from Thomas Reid & Associates, a consultant of the Recreation Area, who approximated the perimeter of the OHV riding area. With the exception of the boundary excluding the OHV riding area just described, the boundaries were modified to conform to a UTM coordinate system grid with a

cell size of 100-meters by 100-meters. To accomplish this modification, the points defining the boundaries of proposed critical habitat were moved to an adjacent point lying on the UTM grid of 100-meter cells. Defining critical habitat boundaries to be coincident with points on a UTM grid is consistent with current practice and is intended to simplify interpretation of the coordinates while diminishing the number of coordinates necessary to define a boundary. We did not conform the boundary along OHV riding area to the UTM grid of 100-meter cells because the resulting boundary would greatly deviate from the boundary marked for visitors to the Recreation Area; we believe that a boundary coincident with the OHV riding area is easily understood by Recreation Area visitors and simplifies administration for State Parks.

## Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas designated as critical habitat for *Cirsium loncholepis* are within the species' historic range and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of each species. Much of what is known about the specific physical and biological requirements of *C. loncholepis* is described in the Proposed Designation of Critical Habitat for *C. loncholepis*.

The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Cirsium loncholepis* throughout the species' range, and provide those habitat components essential for the conservation of the species. Habitat components that are essential for *C. loncholepis* are found in wetland communities where physical processes,

including the pattern of prevailing coastal winds, support natural dune dynamics in coastal areas, or occasional floodplain depositional events in inland areas.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Cirsium loncholepis* consist of:

(1) Moist, sandy soils associated with dune swales, margins of dune lakes and marshes, seeps, intermittent streams, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(2) Plant communities that support associated wetland species, including: *Juncus* spp. (rush), *Scirpus* spp. (tule), and *Salix* spp. (willow); and

(3) Hydrologic processes, particularly the maintenance of a stable groundwater table supporting the soil moisture regime that appears to be favored by *Cirsium loncholepis*.

## Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. The Pismo-Orcutt unit may require special management considerations or protections due to the threats to the species and its habitat posed by erosion or compaction of soils that could threaten wetlands, coastal dunes and swales; changes in surface or subsurface flows upon which *C. loncholepis* depends that may reduce or remove the essential hydrological regime that supports the species; invasions of non-native plants that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and excessive grazing that can lead to changes in essential habitat conditions (e.g., increases in soil temperature resulting in loss of moisture, decreases in plant cover, and increases in non-native species). Currently, grazing, agriculture conversion, agricultural practices, competition from non-native plant species, off-road vehicle traffic, and oil and gas decommissioning activities are ongoing in the Pismo-Orcutt unit. The Canada de las Flores unit may require special management considerations or protections due to the threats to the species and its habitat posed by erosion or compaction of soils that could threaten wetlands, coastal dunes and swales; changes in surface or subsurface flows upon which *C. loncholepis*



depends that may reduce or remove the essential hydrological regime that supports the species; invasions of non-native plants that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and excessive grazing that can lead to changes in essential habitat conditions (e.g., increases in soil temperature resulting in loss of moisture, decreases in plant cover, and increases in non-native species). Currently, grazing, agriculture conversion, competition from non-native plant species, and oil and gas decommissioning are ongoing in the Canada de las Flores Unit.

#### Criteria Used To Identify Critical Habitat

Throughout this designation, when selecting areas of critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Cirsium loncholepis*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. loncholepis*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements and thus do not constitute critical habitat for the species. Therefore, Federal actions limited to these areas would not trigger a section 7 consultation unless it is determined that such actions may affect the species and/or adjacent designated critical habitat.

During development of this rule, we considered the role of unoccupied habitat in the conservation of *Cirsium loncholepis*. Due to the historic loss of the habitats that supported the taxon, we believe that conservation and recovery of this species depends not only on protecting it in the limited areas that it currently occupies, but also on providing the opportunity to increase its distribution by protecting currently unoccupied habitat within its historic range.

We consider both units designated as critical habitat for *Cirsium loncholepis* to be occupied by the species. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The methods for mapping the current distributions of *C. loncholepis* can be variable, depending

on the scale at which groups of individuals are recorded (e.g., many small groups versus one large group); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the above-ground distributions may either shrink and temporarily disappear, or, as a residual soil seedbank is expressed, enlarge and cover a more extensive area. Therefore, the inclusion of currently unoccupied habitat interspersed with patches of occupied habitat in the critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the taxon. We have also included a larger area of currently unoccupied habitat in the Pismo-Orcutt unit, extending from the known coastal locations of the species inland to Orcutt. This habitat is essential to the conservation of the species because (1) it provides connectivity between the known locations on the coast and those habitats containing the primary constituent elements for *C. loncholepis* in the more interior portions of the unit including the type locality for the species (The type locality is the geographic location where the primary type was collected. The type specimen (also known as holotype) is the original specimen from which a description of a new species is made.), (2) it contains the primary constituent elements for the species and (3) it provides potentially suitable habitat for introductions needed for recovery of the species.

We considered the status of habitat conservation planning (HCP) efforts during the development of this rule. We may exclude HCPs from critical habitat designation if the benefits of excluding them would outweigh the benefits of including them. Currently, no HCPs include *Cirsium loncholepis* as a covered species.

#### Critical Habitat Designation

The critical habitat areas described below include one or more of the primary constituent elements described above and constitute our best assessment at this time of the areas needed for the conservation of *Cirsium loncholepis*. Critical habitat includes habitat throughout the species' current range in the United States (Santa Barbara and San Luis Obispo Counties, California). Lands designated as critical habitat are under Federal, State, local, and private ownership. Federal lands include areas owned and managed by the Service. State lands include areas owned and managed by the California Department of Parks and Recreation and the California Department of Fish and Game (CDFG). Local lands include parks

owned by the County of Santa Barbara. Private lands include areas that are being managed for conservation by private landowners, as well as those that are being managed for agriculture, ranchlands, or oil field decommissioning. Each of the critical habitat units is considered to be occupied by either seeds as part of the seedbank or standing plants, and to contain habitat that include the specific soils, hydrology, or plant communities that are essential for this taxon.

Critical habitat designated for *Cirsium loncholepis* includes two units, both of which currently sustain the species. Protection of both units is essential for the conservation of the species because the geographic range that *C. loncholepis* occupies has been reduced to so few sites that the species is in danger of extinction. Both units contain habitat components that are essential for the conservation of *C. loncholepis*. The areas being designated as critical habitat contain the appropriate marsh, dune wetland, and riparian habitat that support *C. loncholepis*, including the sandy soils, the associated plant communities, and a groundwater table that maintains wet soil conditions. We are designating approximately 41,089 ac (16,628 ha) of land as critical habitat for *C. loncholepis*. Approximately 5 percent of this area consists of Federal lands, approximately 5 percent are State lands, less than 1 percent are county lands, and approximately 89 percent are private lands (Table 1). Both units maintain the ecological processes that support the habitats containing the primary constituent elements. Within the units, these habitats allow expansion of the existing populations by maintaining connectivity through pollinators and wind dispersal.

A brief description of both critical habitat units is given below:

#### Pismo-Orcutt Unit

The Pismo-Orcutt Unit consists of coastal dunes, swales, and wetlands extending from Grover City south to Mussel Point, just north of Point Sal, and then extending inland across the Santa Maria Valley to the area of Orcutt. This unit includes a portion of the Pismo Dunes State Preserve, non-OHV riding areas of Oceano Dunes State Vehicular Recreation Area, the Guadalupe-Nipomo Dunes National Wildlife Refuge, Rancho Guadalupe Dunes County Park, and privately owned lands. In the vicinity of Orcutt, some of the private lands included in this unit have been designated as open space by Santa Barbara County (1998). The coastal portion of this unit contains almost all of the known populations of



*Cirsium loncholepis*, including the largest population known to exist anywhere on privately owned lands, the Unocal parcel near the mouth of the Santa Maria River, as well as numerous smaller populations that are scattered along the coast north to Grover City. Maintaining all of these populations is essential for this species to survive through a variety of natural and human-induced environmental changes as well as stochastic events (e.g., floods). The more interior portions of this unit are primarily within the lower portion of the Santa Maria River Valley (below 80 ft (24 m) in elevation) and have been placed in agricultural production. However, fragments of numerous small marshes, wetlands, and drainages can still be found interspersed with agricultural fields. The prevailing winds from the stretch of coast between Pismo Beach and the mouth of the Santa Maria

River blow southeast across the lower Santa Maria River Valley in the direction of Orcutt and beyond to Cañada de las Flores. The prevailing winds cause seed dispersal, which explains the elongated pattern in distribution of individual plants within known coastal populations. Wind dispersal is important for the maintenance and expansion of existing populations of this species. Intervening habitat between the coastal populations and the more interior portions of the Pismo-Orcutt unit is therefore important to maintain connectivity through pollinator activity and seed dispersal mechanisms, and to provide suitable habitat for introduction efforts needed for recovery of the species.

#### Cañada de Las Flores Unit

The Cañada de Las Flores Unit consists of wetland habitat, in particular

seeps, at the head of Cañada de las Flores watershed, northwest of the town of Los Alamos. All of the lands in this unit are privately owned. The two known populations of *Cirsium loncholepis* in this unit encompass the easternmost distribution of the species; consequently they occur under slightly different environmental conditions, specifically at a higher elevation (200 ft (61 m) elev.) and warmer climate than the coastal populations. These are the only known populations that represent the more interior distribution of the species. Preserving plants surviving in these slightly different environmental conditions (e.g., seasonal temperatures, type of wetland habitat, adjacent plant communities) may be important for the long-term survival and conservation of the species because they may contain genetic features different than those in other parts of the range.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT UNIT AREAS FOR *Cirsium loncholepis* IN ACRES (AC) (HECTARES (HA)) BY LAND OWNERSHIP <sup>1</sup>

Unit name	State	Private	County and other local jurisdictions	Federal	Total
Pismo-Orcutt .....	1,946 ac ..... (787 ha) .....	33,954 ac ..... (13,741 ha) .....	29 ac ..... (12 ha) .....	2,333 ac ..... (944 ha) .....	38,262 ac ..... (15,484 ha) .....
Cañada de las Flores	0 ac ..... (0 ha) .....	2,827 ac ..... (1,144 ha) .....	0 ac ..... (0 ha) .....	0 ac ..... (0 ha) .....	2,827 ac ..... (1,144 ha) .....
Total .....	1,946 ac ..... (787 ha) .....	36,781 ac ..... (14,885 ha) .....	29 ac ..... (12 ha) .....	2,333 ac ..... (944 ha) .....	41,089 ac ..... (16,628 ha) .....

<sup>1</sup> Approximate hectares have been converted from acres (1 ha = 2.47 ac).

## Effects of Critical Habitat Designation

### Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat designated for such a species. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect

alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service, et al.*, 245 F3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act 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 its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires

Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry

out are not likely to jeopardize the continued existence of such a 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 (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of the listed species or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation previously has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Cirsium loncholepis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting *C. loncholepis* or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultations with respect to this taxon.

Both of the units we are designating are occupied by either above-ground plants or a seedbank of the taxon, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Each unit also contains some areas that are considered unoccupied. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development;

(2) Activities of the U.S. Fish and Wildlife Service on its Refuge lands;

(3) Watershed management activities sponsored by the Natural Resources Conservation Service;

(4) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(5) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(6) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(7) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development and a habitat conservation plan (HCP) is submitted by an applicant to secure a permit to take according to section 10(a)(1)(B) of the Act, our issuance of such a permit would be subject to the section 7 consultation process. In those situations where *Cirsium loncholepis* may occur or its critical habitat is present within the area covered by an HCP that covers a wildlife species, the consultation process would include consideration of the potential effects on all listed species, including plants, of granting the permit authorizing take of threatened or endangered wildlife species addressed by the HCP.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that

designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Cirsium loncholepis* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Cirsium loncholepis* include, but are not limited to:

(1) Activities that alter habitat hydrological regimes in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface water needed to maintain the coastal dune swale, seep, marsh, and riparian habitat within the range of *Cirsium loncholepis*. Such activities adverse to *C. loncholepis* could include, but are not limited to, water drawdown or water diversions that lower the water table, agricultural activities that would affect the quality of water through contamination, off-highway vehicle activity that alters vegetation cover and topography, road building and maintenance or modification that alters runoff patterns, oilfield development, oil contamination remediation activities, construction of pipelines and utility corridors, golf course and residential development and certain recreational activities; and

(2) Activities that destroy the attendant native vegetation and make *Cirsium loncholepis* habitats more susceptible to invasion by non-native plant species including, but not limited to activities such as livestock grazing, grading, construction and maintenance of pipeline and utility corridors, off-road vehicle traffic, and other recreational activities.

Several other wildlife species that are listed under the Act occur in the same general areas as *Cirsium loncholepis*. Western snowy plovers (*Charadrius alexandrinus nivosus*), tidewater gobies (*Eucyclogobius newberryi*), California least terns (*Sterna antillarum browni*), California red-legged frogs (*Rana aurora draytonii*), marsh sandwort (*Arenaria paludicola*), Gambel's watercress (*Rorippa gambelii*), and Nipomo lupine (*Lupinus nipomensis*) occur within the coastal portions of the Pismo-Orcutt unit designated as critical habitat for *C. loncholepis*; in addition, critical habitat for Western snowy plover overlaps with that designated for *C. loncholepis*.

California tiger salamanders (*Ambystoma californiense*) (*Santa Barbara DPS*) occur on the more inland portion of the Pismo-Orcutt unit in the vicinity of Orcutt, as well as in the vicinity of the Cañada de las Flores unit.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, Fax 503/231–6243).

#### *Relationship to Habitat Conservation Plans*

Currently, no Habitat Conservation Plans include *Cirsium loncholepis* as a covered species.

#### *Economic Analysis*

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on May 7, 2002 (67 FR 30641). We accepted comments on the draft analysis until June 6, 2002.

Our proposed critical habitat rule included three species, *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Therefore, our economic analysis evaluated the potential future effects associated with the listing of all three of those species as endangered under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. In addition, we analyzed costs incurred through consultations and modifications of activities on lands under the Federal jurisdiction of Vandenberg Air Force Base (VAFB), and the following

discussion of potential economic effects and the values presented below assumes the inclusion of these lands in the critical habitat designation. However, through section 4(b)(2), in our final critical habitat rule, we excluded lands owned by VAFB from the areas designated as critical habitat for *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. In that rule, we determined that the benefits of excluding lands owned by VAFB outweighed the benefits of inclusion, which finding resulted in the entire removal of three units and modification of two units (67 FR 67968). Therefore, because our economic analysis was based on an analysis of effects from listing and designating critical habitat for three species, not just *C. loncholepis*, and included impacts of areas that were subsequently excluded from the final critical habitat rules, the values presented below and in the economic analysis are likely overestimates of the potential economic effects resulting from this critical habitat rule for *C. loncholepis*.

The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations due to the listing or the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; and (3) potential offsetting beneficial costs connected to critical habitat including educational benefits.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden.

Based on our analysis, we concluded that the designation of critical habitat would not result in a significant economic impact, and estimated the potential economic effects over a 10-year period would range from \$3.1 to \$3.65 million for all three species. The total estimated costs associated with *Cirsium loncholepis* alone over a 10-year period is estimated to range between \$641,000 and \$802,300, or \$64,100 and \$80,200 annually. The total consultation costs for *C. loncholepis* attributable exclusively to the critical habitat provision of section 7 may range from \$17,200 to \$43,600 over 10 years. These costs are small when considered in the context of the economic activity

of the region. Given the total value of \$1.09 billion in income (over 10 years) from farming, agricultural services, construction, and oil and gas extraction activities in Santa Barbara County alone, the annualized total cost of section 7 implementation represents about 0.07 percent of the total value of affected economic activities, as estimated in the economic analysis. Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including and excluding areas from critical habitat.

We did not receive any comments on the draft economic analysis of the proposed designation. Following the close of the comment period, the economic analysis was finalized. We made no revisions or additions to the draft economic analysis.

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### **Required Determinations**

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of \$100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

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

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government

jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement. In this rule, we are certifying that the critical habitat designation for *Cirsium loncholepis* will not have a significant effect on a substantial number of small entities. The following discussion explains the factual basis for this certification.

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

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities

potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Cirsium loncholepis*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. Since *C. loncholepis* was listed in March 2000, there have only been two formal consultations involving the species. Both consultations were conducted with the Army Corps of Engineers on restoration activities being undertaken by one entity, Unocal, to clean up and restore beach habitat contaminated by oil production activities. In these consultations, restoration of *C. loncholepis* habitat was proposed as part of the project because Unocal was under court order to remediate contamination by the Environmental Protection Agency. Since there have been only two consultations and both involved the same agency and entity, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

Our economic analysis found that private development, oil and gas production (oil and gas decommissioning in the *Cirsium loncholepis* units), and agriculture (particularly, vineyard conversion) are the primary activities anticipated to take place within the area designated as critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. There are approximately 114 development and real estate, 73 oil and gas, and 93 agriculture small companies within the area designated as critical habitat for the three species. Because this final rule does not include the critical habitat designation for the *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and also differs from the proposed rule upon which the economic analysis was based through the exclusion of proposed units for those species located on Vandenberg Air Force Base, the impacts of this rule on small businesses and total economic

costs are likely to be lower than were reflected in the economic analysis. To be conservative (i.e., more likely to overstate impacts than understate them), we assumed in our economic analysis that a unique business entity would undertake each of the projected consultations in a given year. Therefore, the number of businesses affected annually is equal to the total annual number of consultations (both formal and informal).

Based on the economic analysis which looked at the critical habitat for three species, we estimated that in each year there could be between one and two consultations for private development projects. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small private development companies could be affected annually by the designation of critical habitat for these three species.

Similarly again in analyzing critical habitat for the three species, we estimated that in each year there could be approximately three consultations for oil and gas production activities. Assuming each consultation involves a different business, approximately 3 to 4 percent of the total number of small gas and oil companies could be affected annually by the designation of critical habitat for these three species.

We also estimated that in each year there could be approximately less than one consultation for agriculture (vineyard) activities. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small agriculture companies could be affected annually by the designation of critical habitat for *Cirsium loncholepis*. Therefore, the economic analysis concluded that the designation of critical habitat for *C. loncholepis* will not result in a significant economic impact on a substantial number of small entities. This conclusion is supported by the low number of consultations on *C. loncholepis* that have occurred since it was listed.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Cirsium loncholepis* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are

alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, pursuant to section 7(b)(4), if we find that a proposed action adversely affects the species but is not likely to jeopardize the continued existence of a listed animal or plant species or adversely modify its critical habitat, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Cirsium loncholepis* with no consultations that resulted in a jeopardy determination and so no identified reasonable and prudent alternatives, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of

the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Cirsium loncholepis*. Based on the types of modifications and measures that have been implemented in the past for plant species, a project proponent may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. It should be noted that a developer likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Cirsium loncholepis* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

#### *Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. City and county governments

would only be affected by this designation if their actions were being funded, permitted, or carried out by a federal agency. In that circumstance, the federal agency would need to assure the action it was funding, permitting, or carrying out would not adversely modify critical habitat. For all actions without federal involvement, this designation would not have any effect on such actions.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### *Executive Order 13211*

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. In our economic analysis, we did not identify energy production or distribution as being affected by this designation, and we received no comments indicating that the proposed designation could significantly affect energy supplies, distribution, or use. Oil and gas facilities in the designated units of this final rule are decommissioned or in the process of decommissioning. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Takings*

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for *Cirsium loncholepis* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Cirsium loncholepis* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas

essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium loncholepis*.

#### Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information unless it displays a valid OMB Control Number.

#### National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement 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, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major federal action significantly affecting the quality of the human environment.

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Cirsium loncholepis* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The authors of this final rule are Diane Gunderson, Mary Root, and Connie Rutherford, Ventura Fish and Wildlife Office (See **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. In § 17.12(h) revise the entry for *Cirsium loncholepis* under "FLOWERING PLANTS" to read as follows:

**§ 17.12 Endangered and threatened plants.**  
(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
<i>Cirsium loncholepis</i>	La Graciosa thistle	U.S.A. (CA) .....	Asteraceae-sun-flower.	E	691	17.96(a) .....	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Cirsium loncholepis* under Family Asteraceae to read as follows:

#### § 17.96 Critical habitat—plants.

(a) \* \* \*

Family—Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

(1) Critical habitat units are depicted for San Luis Obispo and Santa Barbara Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium loncholepis* are those habitat components that provide:

(i) Moist sandy soils associated with dune swales, margins of dune lakes and marshes, seeps, intermittent streams, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(ii) Plant communities that support associated wetland species, including: *Juncus* spp. (rush), *Scirpus* spp. (tule), and *Salix* spp. (willow); and

(iii) Hydrologic processes, particularly the maintenance of a stable groundwater table supporting the soil moisture regime that appears to be favored by *Cirsium loncholepis*.

(3) Critical habitat does not include existing features and structures, such as

buildings, hard-packed roads (e.g., asphalt, pavement), aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing all of the primary constituent elements.

(4) *Critical Habitat Map Units.* Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Cirsium loncholepis.* Pismo-Orcutt Unit; San Luis Obispo and Santa Barbara Counties, California.

(i) From USGS 1:24,000 scale quadrangle maps Pismo Beach and Oceano. Land bounded by the following

UTM 10 NAD 1927 coordinates (E, N): 715600, 3889000; 716100, 3889000; 716100, 3888800; 716200, 3888500; 716600, 3887600; 716500, 3887600; 716600, 3887300; 716400, 3887300; 716400, 3887400; 716300, 3887400; 716300, 3887300; thence southwest to Oceano Dunes State Vehicular Recreation Area "Street Legal" riding area boundary at y-coordinate 3887230; thence north along the "Street Legal" riding area boundary to y-coordinate 3888735; thence northwest, returning to 715600, 3889000.

(ii) From USGS 1:24,000 scale quadrangle maps Pismo Beach, Oceano, Point Sal, Guadalupe, Santa Maria, and Orcutt. Lands bounded by following UTM Zone 10, NAD 1927 coordinates (E, N): 716700, 3886500; 717100, 3886400; 717300, 3886300; 717600, 3886100; 718100, 3886000; 719100, 3885200; 719400, 3884900; 719600, 3884600; 719600, 3884000; 719300, 3883700; 719200, 3883200; 719100, 3883000; 719200, 3882300; 719400, 3881300; 719700, 3880800; 719800, 3880700; 720300, 3880700; 720300, 3880200; 719600, 3880400; 719500, 3880300; 719600, 3879500; 719700, 3879100; 720300, 3878900; 720400, 3879000; 720400, 3879300; 720000, 3879500; 720400, 3879700; 720600, 3880000; 720700, 3880000; 721300, 3879500; 721500, 3880000; 721900, 3880000; 722500, 3879400; 722500, 3878300; 722300, 3877600; 722000, 3876600; 721800, 3876000; 721800, 3875700; 721500, 3875800; 721600, 3875500; 721800, 3875100; 721800, 3873200; 722200, 3873300; 722300, 3873300; 722900, 3873100; 723200, 3873300; 724100, 3873500; 725800, 3873900; 727000, 3874200; 727600, 3870900; 731700, 3870600; 731700, 3869000; 731400, 3869000; 731400, 3868000; 731600, 3868000; 731700, 3867400; 731200, 3867300; 730500, 3867000; 730000, 3867000; 729900, 3866700; 730600, 3866700; 731200, 3867000; 731600, 3867000; 731700, 3864600; 731200, 3863900; 731400, 3863500; 731800, 3863500; 731800, 3861500; 732300, 3861100; 732500,

3861000; 732800, 3861000; 733000, 3860800; 733200, 3860800; 733200, 3860600; 733500, 3860400; 733600, 3860300; 734100, 3860300; 734200, 3860200; 733900, 3860100; 733600, 3860100; 733600, 3859900; 733400, 3859800; 733300, 3859700; 733200, 3859500; 733200, 3859200; 733000, 3859200; 733000, 3859600; 732800, 3860400; 732600, 3860700; 731500, 3861500; 730700, 3861800; 729800, 3862100; 728800, 3862500; 728300, 3862900; 726900, 3864000; 726400, 3864300; 726100, 3864600; 725100, 3865000; 723900, 3866000; 722700, 3867000; 722800, 3867300; 722700, 3867600; 722600, 3867800; 722400, 3867900; 722300, 3868300; 722100, 3868300; 722000, 3868200; 721400, 3868400; 721000, 3868400; 720300, 3868700; 719700, 3868800; 719500, 3868900; 719400, 3869100; 719200, 3869300; 718600, 3869600; 717900, 3869700; 717700, 3869800; 717500, 3869800; 717100, 3869700; 716600, 3869600; 716600, 3870000; 716500, 3870300; 716400, 3870500; 716200, 3870700; 715900, 3870800; 715400, 3870900; 715100, 3870900; 715000, 3871100; 715200, 3872300; 715000, 3872600; 715500, 3875200; 716000, 3878600; thence north to the boundary "Open Riding Area" in Oceano Dunes State Vehicular Recreation Area at y-coordinate 3878700; thence north along the "Open Riding Area" boundary to y-coordinate 3886500; thence east, returning to 716700, 3886500.

(iii) Excluding land bounded by: 727800, 3868100; 727600, 3868100; 727300, 3868000; 727300, 3867800; 727500, 3867600; 727700, 3867600; 727700, 3867800; 727800, 3867800; 727800, 3868100.

(iv) Excluding land bounded by: 729800, 3864700; 729400, 3864700; 729400, 3864000; 730200, 3864000; 730400, 3864100; 730400, 3864500; 729800, 3864700.

(v) Excluding land bounded by: 726400, 3867300; 726200, 3867000; 726200, 3866900; 726900, 3866400; 727300, 3866100; 727600, 3866300; 727600, 3866500; 727200, 3866600;

727300, 3867100; 727100, 3867200; 727000, 3866900; 726400, 3867300.

(vi) Excluding land bounded by: 728400, 3870600; 728400, 3870200; 727700, 3870200; 727500, 3869700; 729200, 3869700; 729200, 3869500; 729400, 3869500; 729400, 3870300; 728900, 3870300; 728500, 3870600; 728400, 3870600.

(vii) Excluding land bounded by: 722100, 3872900; 721800, 3872900; 721600, 3872700; 721400, 3872200; 721300, 3871700; 721100, 3871600; 721000, 3871400; 720800, 3871300; 720600, 3871400; 720200, 3871400; 720000, 3871300; 720000, 3870800; 721100, 3870800; 721100, 3870700; 721400, 3870700; 721400, 3870800; 722200, 3870800; 722200, 3871900; 723000, 3871900; 723000, 3872000; 722300, 3872300; 722300, 3872600; 722100, 3872900.

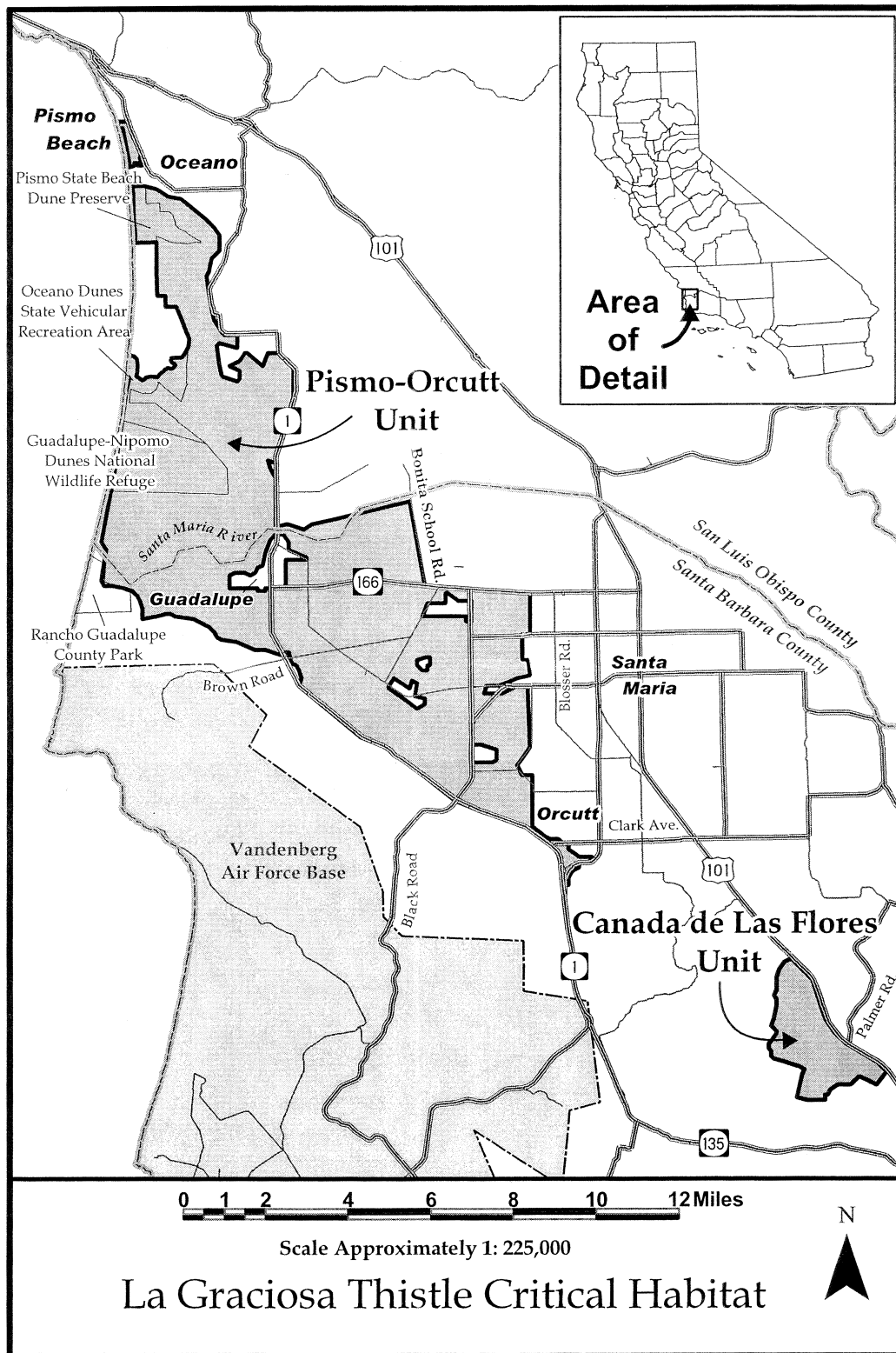
(6) *Cirsium loncholepis*. Cañada de Las Flores Unit; San Luis Obispo and Santa Barbara Counties, California.

(i) From USGS 1:24,000 scale quadrangle map Sisquoc. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 741100, 3853100; 741300, 3853400; 741300, 3853500; 741100, 3853700; 741200, 3854000; 741300, 3854500; 741300, 3854700; 741200, 3854900; 741300, 3855100; 741300, 3855600; 741400, 3855900; 741600, 3856200; 741800, 3856300; 741900, 3856300; 742700, 3855500; 743200, 3854000; 743300, 3853800; 743600, 3853400; 743700, 3853300; 744000, 3853000; 744200, 3852900; 745000, 3852400; 745200, 3852300; 745600, 3851900; 745200, 3851400; 744600, 3851700; 744500, 3851700; 744200, 3851400; 743700, 3851400; 743400, 3851200; 743300, 3851000; 743200, 3851000; 743200, 3850800; 742500, 3850800; 742100, 3850900; 742300, 3851800; 742400, 3852000; 742200, 3852100; 741600, 3852300; 741200, 3852400; 741100, 3852500; 741100, 3852700; 741000, 3852800; 741000, 3853000; 741100, 3853100.

(ii) **Note:** Map follows:

BILLING CODE 4310-55-P





Dated: March 10, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-5925 Filed 3-16-04; 8:45 am]

BILLING CODE 4310-55-C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 031104A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2004 total allowable catch (TAC) of Pacific cod allocated for catcher/processor vessels using hook-and-line gear in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2004, until 1200 hrs, A.l.t., August 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 Pacific cod TAC, specified in the 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), allocated to catcher/processor vessels using hook-and-line gear in the BSAI, a directed Pacific cod fishing allowance of 48,558 metric tons for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., June

10, 2004. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2004 Pacific cod TAC allocated as a directed fishing allowance to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod specified for catcher/processor vessels using hook-and-line gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 11, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 031204B]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allocation of the 2004 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using trawl gear in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 14, 2004, until 1200 hrs, A.l.t., April 1, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to catcher/processor vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 1, 2004 as 23,422 metric tons (mt). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allocation of the 2004 Pacific cod TAC specified for catcher/processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed