

integrity of the remedy constructed at the Site.

With the OU 1 Consent Decree, The Aspen/Pitkin Environmental Health Department has assured EPA and the State that all necessary ICs are in full force and effect within the Site boundary. The Consent Decree also includes reopeners in the event that the County were to repeal or disregard these ordinances. A Five-year Review conducted by EPA and completed on November 7, 1997, confirmed that these controls are in force and that the program is working.

A recent amendment to the OU 2 AOC has provided EPA and the State with indefinite O&M assurances. As stated in the AOC Amendment, the O&M Plan, as defined by the EE/CA, Action Memorandum and original workplan, will provide for maintenance of runoff control, dust control, restricted site access and site reclamation measures. This O&M Plan will become effective upon the termination of the permit with the Colorado Mined Land Reclamation Board and will be implemented by the PRP, Wright and Preusch Mining, LTD.

#### F. Community Relations

Community outreach at the Smuggler Mountain Superfund Site included: timely information about the Superfund process, ongoing communications, and opportunities for community participation in the decision-making process for the Site remedy. Specific activities included monitoring community concerns, preparation and mailing of fact sheets, coordination of community meetings and providing communication between EPA, the community and Pitkin County (and the other PRPs). EPA's outreach efforts to meet community needs and interests resulted in integral participation by the Aspen community and periodic revision(s) to the Site remedy.

#### V. Summary

The responsible parties have implemented all appropriate response actions required to sufficiently protect human health and the environment. Reports on lead speciation, bioavailability, and blood lead monitoring studies have concluded that children living on the Site are not at unacceptable risk due to exposure to lead in the soil. Also, this Site meets all the site completion requirements as specified in Close Out Procedures for National Priorities List Sites (OSWER Directive 9320.2-09). Further, O&M of the Site is assured via the OU 1 Consent Decree and the OU 2 AOC and AOC Amendment.

Because hazardous substances will remain at the site, EPA will conduct periodic inspections of the site to ensure that the remedy remains protective of human health and the environment. EPA is required to conduct such reviews under section 121(c) of CERCLA and the NCP.

EPA, with the concurrence of the State of Colorado, has determined that all appropriate response actions required by CERCLA at the Smuggler Mountain Site have been completed, and that no further cleanup by responsible parties is appropriate.

Dated: July 27, 1999.

**Jack W. McGraw,**  
Acting Regional Administrator, Region 8.  
[FR Doc. 99-20199 Filed 8-6-99; 8:45 am]  
BILLING CODE 6560-50-P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 99-1525, MM Docket No. 99-265, RM-9660]

#### Digital Television Broadcast Service; Monroe, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Noe Corporation, licensee of station KNOE-TV, NTSC Channel 9, Monroe, Louisiana, seeking the substitution of DTV Channel 7 for its assigned DTV Channel 55. DTV Channel 7 can be allotted to Monroe in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32-11-45 N. and 92-04-10 W. As requested, we also propose to modify KNOE-TV's authorization to specify operation on DTV Channel 7 at Monroe, Louisiana, with a power of 5.0 (kW) and a height above average terrain (HAAT) of 519 meters.

**DATES:** Comments must be filed on or before September 24, 1999, and reply comments on or before October 12, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1920 N Street, NW, Suite 300, Washington, DC, 20036 (Counsel for Noe Corporation).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-265, adopted July 30, 1999, and released August 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99-20389 Filed 8-6-99; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE89

#### Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Plant *Rumex orthoneurus* (Chiricahua Dock) as Threatened

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the plant *Rumex orthoneurus* (Chiricahua dock or Blumer's dock) as a threatened species under the Endangered Species Act of

1973, as amended (Act). We find that the available information does not support the listing of this species as threatened. Although threats to some populations of this plant may persist, these threats are not sufficiently widespread to pose a significant risk to *R. orthoneurus* within the foreseeable future. Recent genetic research and survey efforts indicate that *R. orthoneurus* has a much larger distribution than previously thought. We, therefore, find that *R. orthoneurus* does not meet the definition of a threatened or endangered species.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021.

**FOR FURTHER INFORMATION CONTACT:** Dave Harlow, Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602-640-2720, ext. 244; facsimile 602-640-2730).

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 1, 1998, we published in the **Federal Register** a proposed rule to list Chiricahua dock *Rumex orthoneurus* as threatened (63 FR 15813). An herbaceous, robust perennial within the Polygonaceae family, *R. orthoneurus* is known from the mountains of Arizona, New Mexico, and Mexico. Plants grow to 1 meter (m) (3.3 feet (ft)) in height with inflorescence stalks up to 2 m (6.6 ft) in height on more vigorous specimens. The large oblong to oblong-lanceolate basal leaves are up to 50 centimeters (cm) (19.7 inches (in)) long, and 18 cm (7.1 in) wide. Characteristics differentiating this plant from other members in its genus include woody rhizomes (a rootlike horizontal stem, as opposed to taproots) on mature plants which appear banded, the color of which can vary (Robert Bellsey, University of Arizona, pers. comm. 1999); lateral leaf veins almost perpendicular to the middle vein of the leaf (but that are often at less than right angles); and a lack of callosities or swellings on the valves or midribs of fruiting capsules (Dawson 1979, Phillips *et al.* 1980, Coronado National Forest 1993).

*Rumex orthoneurus* occurs in moist, loamy soils within riparian and wetland habitats, and in cienegas (desert wetlands), springs, and streams. It is also known to occur in the drier headwaters of some areas (Robert Bellsey, University of Arizona, pers.

comm. 1999). *R. orthoneurus* is found at elevations primarily between 2,000 and 3,500 m (approximately 6,500–11,500 ft). While many sites are in open meadows or along streams with open canopies, *R. orthoneurus* frequently occurs in shaded forests. Surrounding habitats are generally mixed conifer forest. The dominant species associated with *R. orthoneurus* include sneeze weed (*Helenium hoopesii*), larkspur (*Delphinium andesicola*), monkeyflower (*Mimulus* spp.) and various sedges (*Carex* spp.) (Phillips *et al.* 1980).

*Rumex orthoneurus* is distributed in areas scattered throughout Arizona and New Mexico, and is known to occur at two locations in the State of Sonora, Mexico. In Arizona, the plant is present on the Coronado, Apache-Sitgreaves, Coconino, and Tonto National Forests. On the Coronado National Forest, *R. orthoneurus* occurs in the Chiricahua and Huachuca mountains in Cochise County, and the Pinaleno Mountains in Graham County. On the Apache-Sitgreaves National Forests, *R. orthoneurus* is located in the White Mountains in Apache County and along the north side of the Mogollon Rim in Coconino County. On the Coconino National Forest, *R. orthoneurus* was recently found in the San Francisco Peaks and Barbershop Canyon in Coconino County. On the Tonto National Forest, *R. orthoneurus* occurs in the Sierra Ancha Mountains in Gila County, and was introduced in the south drainage of the Mogollon Rim (also in Gila County).

In New Mexico, *Rumex orthoneurus* is distributed on the Santa Fe, Lincoln, Gila, and Carson National Forests. On the Santa Fe National Forest, *R. orthoneurus* was recorded in Mora County, including the Pecos Wilderness. *R. orthoneurus* was found in Catron and Grant counties on the Gila National Forest, including the Gila Wilderness Area. Plants are documented in numerous locations on the Carson National Forest, and specimens were recently collected from the Lincoln National Forest.

Recent genetic work has clarified the distinction between *Rumex orthoneurus* and the closely related species, *R. occidentalis*. Bellsey (1998, in prep.) compared DNA among *R. orthoneurus*, *R. occidentalis*, and *R. obtusifolius* (a species known to be distantly related to *R. orthoneurus*) using the Random Amplified Polymorphic DNA (RAPD) technique. Bellsey discovered that the presumed *R. orthoneurus* from Arizona were significantly different from *R. occidentalis*, and that all three species shared less than 15% of the RAPD markers. The genetic analyses resulted

in classification of the White and Gila mountains populations as *R. orthoneurus* and not *R. occidentalis*, which they resemble morphologically. Morphological characteristics of specimens from the Carson and Lincoln National Forests now indicate that they are *R. orthoneurus* and not *R. occidentalis*. (Robert Bellsey, University of Arizona, pers. comm. 1999). However, genetic analysis has yet to be performed on these plants.

**Summary of Comments and Recommendations**

In the proposed rule we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. We also contacted all appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments.

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions of three appropriate and independent specialists regarding the proposed rule. We invited these peer reviewers to comment during the public comment period upon the specific assumptions and conclusions regarding the proposed listing. In response to our solicitation one reviewer provided comments that we considered in the preparation of this notice.

We published newspaper notices inviting public comment in the Silver City Daily Press (Silver City, NM) on April 7, 1998; the Arizona Republic (Phoenix, AZ), Tucson Citizen (Tucson, AZ), and Arizona Daily Star (Tucson, AZ) on April 9, 1998; and the White Mountain Independent (Pinetop, AZ), Sierra Vista Herald (Sierra Vista, AZ), Albuquerque Journal (Albuquerque, NM), Albuquerque Tribune (Albuquerque, NM), and Santa Fe New Mexican (Santa Fe, NM), on April 10, 1998. The comment period closed on July 30, 1998.

To provide for a requested public hearing, encourage participation from the public in the species listing process, and to await the submission of current species status information, we reopened and extended the comment period from July 30, 1998 until October 1, 1998 (63 FR 40389; July 29, 1998). We also held informational meetings with interested parties about the proposed rule in Silver City, NM on August 18, 1998.

We received 37 comments (e.g., letters, phone calls, facsimiles, and oral testimony) from individuals or agency or group representatives concerning the proposed rule to list *Rumex*

*orthoneurus*. Seven people provided comments supporting the proposed listing of the species, 13 people opposed the proposed listing, and 17 people provided informational comments. Several commenters provided additional information that we incorporated into this withdrawal, along with other clarifications. We organized all opposing and technical comments into five specific issues, and these along with our response are summarized below.

#### *Issue 1—Known Distribution of Rumex orthoneurus*

*Comment:* Several commenters stated that listing is not warranted because the plant has a much wider distribution than previously thought.

*Service Response:* Our knowledge of *Rumex orthoneurus* distribution has increased considerably since the proposed rule. At the time of the proposed rule, although *R. orthoneurus* was thought to occur in New Mexico and east-central Arizona, data from only 10 sites in southeastern Arizona were available to evaluate the status of the plant. We have since become aware of approximately 134 additional *R. orthoneurus* locations (non-introduced), many of which contain high numbers of plants with low levels of threats. See Factor A of "Summary of Factors Affecting the Species" section for additional information.

*Comment:* Several commenters stated that *Rumex orthoneurus* inhabits areas inaccessible to cattle, and thus is not exposed to threats from grazing.

*Service Response:* Although it is true that *Rumex orthoneurus* is located in some areas that are inaccessible to cattle, the plant is also located in many areas where cattle roam freely. In those areas, cattle grazing is documented to have substantial detrimental effects on smaller populations of the plant. Despite this, the range of *R. orthoneurus* is much larger than previously thought, and many populations have low levels of threats.

*Comment:* One commenter suggested that listing is warranted because the previous known range at the time of the proposed rule constitutes a significant portion of the species' range.

*Service Response:* At the time of the proposed rule, site-specific information was available for 10 *Rumex orthoneurus* locations. Although we were aware that the species occurred in other areas, data were not available for those sites. We have current information from approximately 134 additional sites containing natural populations of *R. orthoneurus*. The size of populations

within these sites ranges from just a few individuals to tens of thousands.

Site-specific information is available for four National Forests in Arizona and three National Forests in New Mexico (excluding the Lincoln National Forest). The plant is also known to occur in Mexico. Impacts to the plant in southeast Arizona (the previously known sites) continue, and these populations are important to the genetic variation of the species. However, conservation strategies for most southeast Arizona populations are already established and in place (See Factors A and D of the "Summary of Factors Affecting the Species" section) and threats within the balance of its range are not severe enough to threaten the continued existence of the species. Changes in our assessment of the level of threats to the plant are the result of new information indicating a larger known distribution of the plant, higher densities of populations, and diminished levels of overall threats stemming from the discovery of new populations.

#### *Issue 2—Adaptability and Resiliency of Rumex orthoneurus*

*Comment:* Several commenters stated that physiological adaptations such as asexual reproduction and dormancy during drought allow the plant to survive disturbance and stochastic (randomly occurring natural) events. Other commenters suggested that perceived declines in plant abundance may not be real because plants that are not visible one year may sometimes reappear in subsequent years.

*Service Response:* We recognize that *Rumex orthoneurus* may be tolerant of certain disturbance events because of its physiological adaptations. We are also aware that the plant has regenerated in areas where it appeared to have been destroyed. However, threats such as grazing, wildfire, water diversion, and recreation are known to cause irreparable damage to *R. orthoneurus* and the riparian areas it inhabits. These threats can cause stream-bank erosion, head-cutting (streambed erosion that migrates upstream resulting in channel destabilization and accelerated streambank erosion), and soil compaction, all from which the plant has difficulty recovering despite its physiological characteristics.

Water is a primary vector of seed dispersal for *Rumex orthoneurus*. Thus, if the plant is extirpated from upstream reaches, there is a lower probability that it can re-colonize those areas. Furthermore, unabated grazing can reduce plants to 1–2 cm (less than 1 in.) in height, when they are otherwise able

to grow up to 1 m (3.3 ft) tall. This prevents the plant from producing flowering stalks, which are necessary for sexual reproduction and the mixing of genetic material from unique individuals. The reduction of plant size also hampers the plant's ability to generate vital nutrients from photosynthesis, as the surface area of the plant is diminished by approximately two orders of magnitude. If the plant is forced to remain in this retarded growth form continuously, it may be destroyed. However, these threats, although they are in certain locations significant, are not manifested to a significant degree throughout the range of *R. orthoneurus*. Consequently, we find that listing is not warranted at this time (see Factor A of the "Summary of Factors Affecting the Species" section).

#### *Issue 3—Fire as a Threat*

*Comments:* Numerous commenters stated that fire is not a threat to the plant, because fire can thin vegetation and allow *Rumex orthoneurus* to colonize and grow in riparian areas where other woody plant species are encroaching.

*Service Response:* Wildfires are detrimental to *R. orthoneurus*, especially when they result in increased stream sedimentation and the scouring of drainages. The resultant soil loss can translate into long term, if not permanent, loss of habitat for *R. orthoneurus*. In the Tonto National Forest, wildfire has caused the extirpation of two introduced populations, and the potential for wildfire on National Forest lands remains a threat to *R. orthoneurus*. Despite this, wildfire is largely an isolated event, and for the vast majority of known *R. orthoneurus* populations, there is no indication of it being a significant threat.

#### *Issue 4—Genetic Diversity of Populations*

*Comment:* One commenter indicated that because *Rumex orthoneurus* populations from each mountain range are unique genetically, that maintaining these populations and their genetic diversity is important to the overall health of the species.

*Service Response:* Because *R. orthoneurus* can reproduce asexually, a population with many plants may actually be just a few individuals that developed from rhizomes. Asexual reproduction in *R. orthoneurus* may limit the level of diverse genetic information in some populations. Thus, preserving populations from each mountain range is important in

maximizing the genetic variation available to the overall gene pool of the species.

### Summary of Factors Affecting the Species

We must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to our decision to withdraw the proposal to list Chiricahua dock (*Rumex orthoneurus* Rech F.), are as follows:

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

The proposed rule (63 FR 15813) identified livestock grazing, recreation, water development and diversion, road construction and maintenance, logging, mining and associated activities, and wildfire as causing the loss and degradation of riparian and cienega habitat for *Rumex orthoneurus*. In the proposed rule, we identified some populations as extirpated because of these activities. It was believed that the extirpation of some natural populations in the Chiricahua and Huachuca mountains were possibly caused by water development and diversion, grazing, and mining activities. Frequent road maintenance in the Pinaleño Mountains was found to regularly impact one population. The Tonto National Forest (1993) noted evidence of soil compaction and unstable banks at the Workman Creek sites in the Sierra Ancha Mountains caused by recreational activities. In the Coronado National Forest (1993) Conservation Strategy for the Chiricahua Dock, the Forest Service addressed the possible extirpation of the type locality (the location where the plant was originally described) as a result of water diversions. Hodges attributed impacts to *R. orthoneurus* at Hospital Flat (Pinaleño Mountains) to trampling by recreationists and damming of the creek (David Hodges, Southwest Center for Biological Diversity, pers. comm. 1995).

At the time of the proposed rule, grazing was thought to impact *Rumex orthoneurus* at the system, population, and individual plant levels, as grazed populations often do not produce seeds. Also at the time of the proposed rule, it was thought that continued grazing could eventually preclude the plant's continued existence due to a lack of seed production, compacted soils discouraging seedling establishment, severe trampling of plants and underground rhizomes, and destabilization of streambanks resulting in habitat loss. At the time we prepared

the proposed rule, the population at Ramsey Canyon in the Huachuca Mountains was thought to be extirpated by grazing, which took place in the early 1900s (Van Devender 1980). The species is now known to occur in three different areas in upper Ramsey Canyon. The available information at the time of the proposed rule, indicated that virtually all reported occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests were adversely affected by grazing activities. However, many newly discovered occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests are not being adversely affected by livestock grazing, and because we have found many plant locations to be free of grazing, we cannot conclude that impacts to *R. orthoneurus* are occurring range-wide by this threat.

The proposed rule also cited Phillips *et al.* (1980), who reported a proposed uranium mining and milling operation as a threat to the Workman Creek population of *Rumex orthoneurus* in the Sierra Ancha Mountains. Plans called for the construction of a campsite, and the development of the bowl area of Carr Mountain (the watershed for the site) into a uranium mill. Although the Workman Creek drainage remains available for mineral entry, and mining continues to be a potential threat in that area, logging and mining operations are not widely documented as having adverse effects on *R. orthoneurus* populations. Finally the proposed rule identified that wildfire in the Tonto National Forest caused the extirpation of two introduced populations, and the decline of a third. Although wildfire continues to be a threat to some populations of the Chiricahua dock, its effects are localized.

While grazing, recreation, wildfire, and water diversions can adversely affect the plant in some areas, recent genetic research (see "Background" section) and survey efforts indicate that *Rumex orthoneurus* has a much larger distribution than previously thought, and not all populations are imperiled by the above threats.

Our decision to propose *Rumex orthoneurus* as a threatened species was based on the best scientific information available to us at the time of the proposed rule, and consisted of information from only 10 sites in southeastern Arizona (most with only a few individuals). *Rumex orthoneurus* is now known from approximately 144 sites in Arizona and New Mexico, and at least two sites in the State of Sonora, Mexico, within the forest reserve "Sierra de los Ajos." Numbers of plants at sites containing *R. orthoneurus* range from

just a few to tens of thousands of individuals. In Arizona, on the Coronado National Forest, *R. orthoneurus* occurs at 12 sites as natural populations in the Chiricahua, Pinaleño, and Huachuca mountains. There are four introduced sites in the Chiricahua mountains, most of which are either stable or increasing in number. Originally, plants from the White (AZ), Mogollon (NM), and San Francisco (NM) mountains were thought to be *R. occidentalis*. However, recent research indicates that plants in these mountains are, in fact, *R. orthoneurus* (see "Background" section; Mount and Logan 1993, Friar *et al.* 1994, Bellsey and Mount 1995, Bellsey 1998, in prep.).

On the Apache-Sitgreaves National Forests, *Rumex orthoneurus* is located in the White Mountains and along the north side of the Mogollon Rim. A total of 67 sites, many with thousands of plants, are documented thus far, and many areas have yet to be surveyed. Current genetic information, has revealed that four sites in the San Francisco Peaks on the Coconino National Forest currently support *R. orthoneurus*. A fifth site was discovered in Barbershop Canyon (Coconino National Forest), a site previously surveyed without *R. orthoneurus* detections (Barbara Phillips, Coconino National Forest, pers. comm. 1999). Additional locations are suspected to contain *R. orthoneurus*, but lack surveys. Four sites containing natural populations of *R. orthoneurus* were found on the Tonto National Forest in the Sierra Ancha Mountains and receive some protection, and many other sites contain introduced populations in the south drainage of the Mogollon Rim.

In New Mexico, the presence of *Rumex orthoneurus* is documented from recent survey efforts (Bellsey, pers. comm. 1999) on the Carson, Santa Fe, Lincoln, and Gila National Forests. On the Carson National Forest, 2 days of cursory surveys conducted from a vehicle found seven locations containing *R. orthoneurus*. On the Santa Fe National Forest, *R. orthoneurus* presence was recorded during approximately 4 days of surveys for Arizona willow (*Salix arizonica*). This effort resulted in the detection of 14 locations, many of which contain tens of thousands of plants. At the time of the proposed rule, *R. orthoneurus* was thought to be extinct on the Lincoln National Forest, but specimens were recently collected whose morphological characteristics indicate the plants are *R. orthoneurus* (Bellsey, pers. comm. 1999). The vast majority of habitat on these forests still remain unsurveyed.

Surveys and genetic analysis of *R. orthoneurus* specimens indicate that there are 34 sites containing natural populations on the Gila National Forest.

In contrast to the proposed rule, we are now aware of so many sites (many with low levels of threats), that despite the threats stated in the proposed rule, we cannot conclude that *Rumex orthoneurus* is threatened throughout all or a significant portion of its range.

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

Overutilization is not known to be a significant threat at the present time.

#### C. Disease or Predation

The primary predation threat to *Rumex orthoneurus* is from livestock or wild ungulate grazing due to its high palatability and occurrence in wetland habitats attractive to herbivores. Permitted grazing occurs at *R. orthoneurus* sites in the White Mountains on the Apache-Sitgreaves National Forests and at sites on the Tonto National Forest. The Gila Wilderness has not permitted grazing since 1952 (Paul Boucher, Gila National Forest, pers. comm. 1997), and grazing by cattle has not occurred since 1947 on *R. orthoneurus* sites in the Pinaleno Mountains (Coronado National Forest 1993). Sites on the Coconino and the Apache-Sitgreaves National Forests are affected by wild ungulates. There is documentation of both cattle and elk grazing at *R. orthoneurus* sites in the Carson and Santa Fe National Forests.

Despite the documented grazing on most of the forests where *Rumex orthoneurus* is found, the plant is protected in many areas by enclosures (barriers to exclude animals), by management efforts, or by virtue of its location. At the time of the proposed rule, there was reason to believe that grazing was a much more serious threat to *R. orthoneurus* because known sites were fairly small, and the proportion of sites affected was thought to be high. New information indicates that there are numerous secure sites with hundreds, thousands, or tens of thousands of plants. In some cases, sites are considered secure because population sizes are large, and in others grazing is absent or of little consequence (i.e., grazing periods are brief or there are few ungulates). In addition to the information that many sites appear secure, the proportion of affected sites decreased as we became aware of more non-threatened sites. These positive developments for the status of *R. orthoneurus* lead us to conclude that listing is no longer warranted.

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

Many Federal and State laws and regulations can protect *Rumex orthoneurus* and its habitat. However, Federal and state agency discretion allowed under these laws still permits adverse effects on listed and rare species. *Rumex orthoneurus* is not included in either of the three Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and it is unlikely to require the trade protections of CITES.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. Forest plans generally include a commitment to maintain viable populations of all native wildlife, fish and plant species within the Forest's jurisdiction. However, such general commitments do not, in themselves, preclude adverse effects to rare species by any National Forest.

The Coronado and Tonto National Forests developed assessments with management strategies for *Rumex orthoneurus* in 1993. To date, cattle grazing is somewhat limited on *R. orthoneurus* sites in both forests. The Tonto National Forest has taken extensive measures to keep cattle and recreation out of riparian areas inhabited by *R. orthoneurus*. The Forest has closed roads where vehicles and hikers could impact the plant, and they have moved gates to redirect traffic to areas not occupied by *R. orthoneurus*. Although the Coronado National Forest has a conservation strategy which has limited livestock grazing, some sites are grazed by horses, and recreation is still a problem at many sites. The Apache-Sitgreaves Forests are implementing a monitoring program in 1999 (John Bedell, Apache-Sitgreaves National Forest, *in litt.* 1999), and the Carson National Forest has designated funds for additional surveys in 1999 (Dick Braun, Carson National Forest, pers. comm. 1999). Management strategies were not developed for sites at other National Forests or the Ft. Huachuca Army Post.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. Sec. 4321-4370a) requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental

impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impact. The NEPA does not prohibit a Federal action agency from choosing an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The wetland habitats supporting *Rumex orthoneurus* have a degree of protection under section 404 of the Clean Water Act and under Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These authorities can only protect *R. orthoneurus* indirectly and have not curtailed population decline, extirpation, or habitat losses for *R. orthoneurus* in some locations.

Under the Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, it is unlawful for any person to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any state. The Lacey Act can provide a degree of protection to *Rumex orthoneurus* to the extent that the species is protected by Arizona State law (described below).

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Rumex orthoneurus* as "highly safeguarded." A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect this species from public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living "highly safeguarded" native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Damage to plants and habitat occur under the Arizona Native Plant Law.

Despite the potential inadequacies in existing regulatory mechanisms, we find insufficient evidence that the existing levels of threats to *Rumex orthoneurus* warrant its listing as a threatened or endangered species under the Act. In light of the expanded numbers and distribution of *R. orthoneurus*, the potential inadequacies of these regulatory mechanisms is no longer a significant factor.

### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

At the time of the proposed rule, a high proportion of known *Rumex orthoneurus* populations occurred as small sites in isolated mountain ranges. *Rumex orthoneurus* was thought to be vulnerable to chance extirpations because of the perceived low numbers of individuals in mostly scattered, isolated populations.

Any loss of such sites would have resulted in a significant curtailment of the species' range, and may have affected the species' ability to sustain itself over time. Wildfire was also thought to pose a significant threat, as it could be catastrophic to smaller, confined populations.

We now know that *Rumex orthoneurus* is well distributed in areas of Arizona and New Mexico. Many sites where *R. orthoneurus* is found contain thousands of plants. The present distribution and abundance of *R. orthoneurus* precludes a finding that listing the plant is warranted because chance, localized extirpations would not necessarily result in a significant curtailment of the species' range. Additionally, although wildfire can be detrimental to localized populations, wildfire is largely an isolated event. For the vast majority of known *R. orthoneurus* populations, there is no indication that wildfire is a significant threat. We find no indication of any other natural or manmade factors affecting the continued existence of *R. orthoneurus*.

### Finding and Withdrawal

Based on our review and consideration of the best scientific and commercial information available, we find that *Rumex orthoneurus* does not meet the definition of a threatened or endangered species and that its listing as a threatened species is not warranted. Recent genetic research (see Background section) and survey efforts indicate that *R. orthoneurus* has a much larger distribution than previously thought (see Factor A of the "Summary of Factors Affecting the Species" section), and not all populations are imperiled. Although mining and logging activities are suspected of affecting *R. orthoneurus*, the impacts of such activities are not widely documented, and wildfire is localized in its impacts on the plant. We can no longer conclude that *R. orthoneurus* is impacted throughout its range by the remaining threats of livestock and wildlife grazing in a manner that would threaten its continued existence.

Recognizing the need to ensure the continued existence of *Rumex orthoneurus*, the Forest Service established numerous monitoring and survey programs. Conservation strategies for the Tonto and Coronado National Forests were in place in 1993. In 1999, the Apache-Sitgreaves National Forests initiated a monitoring program (John Bedell, Apache-Sitgreaves National Forests, *in litt.* 1999), and the Carson National Forest has budgeted for additional survey efforts (Dick Braun, Carson National Forest, pers. comm. 1999). Due to the current distribution and associated level of threats to *R. orthoneurus*, we find that there is not substantial evidence to indicate that *R. orthoneurus* is threatened under the Act (likely to become endangered within the foreseeable future throughout all or a significant portion of its range).

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**Author:** The primary author of this withdrawal notice is Darrin Thome, Arizona Ecological Services Field Office (see ADDRESSES section).

**Authority:** The authority for this action is section 4(b)(6)(B)(ii) of the Endangered

Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 28, 1999.

**John G. Rogers,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 648

[I.D. 063099A]

RIN 0648-A178

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan; Correction

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

**ACTION:** Notice of availability of a fishery management plan; correction.

**SUMMARY:** On July 27, 1999, NMFS published a notice of availability (NOA) announcing that the New England Fishery Management Council had submitted the Atlantic Herring Fishery Management Plan for Secretarial review. Under its stated Management Measures of Concern, the NOA contained an error in its description of restrictions on the size of domestic fishing and processing vessels that would be prohibited from fishing for Atlantic herring in the exclusive economic zone (EEZ). This document corrects the error.

**DATES:** Comments must be received on or before September 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

#### SUPPLEMENTARY INFORMATION:

#### Background

The NOA for the Atlantic Herring FMP was published on Tuesday, July 27, 1999 (64 FR 40542). The NOA described restrictions on the size of domestic fishing and processing vessels. One measure would prohibit domestic vessels greater than or equal to 165 ft (50.3m) in length, or > 750 gross registered tons (GRT) (680.4 mt), or > 3,000 horsepower from fishing for Atlantic herring in the EEZ, but would allow domestic vessels > 165 ft (50.3m), or > 750 GRT (680.4 mt) to process herring if U.S. at-sea processing is