

§ 420.26 [Amended]

6. Section 420.26 is amended in paragraph (a)(1) by removing the date “November 19, 2012” and replacing it with the date “November 18, 1992.”

[FR Doc. 05-15834 Filed 8-9-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Slackwater Darter and Initiation of a 5-Year Review**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the slackwater darter (*Etheostoma boschungii*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that delisting of the slackwater darter may be warranted. Accordingly, we are not required to take any further action in response to this petition. However, we believe the information in our files indicates a decline in the status of this species since its listing. Therefore, we ask the public to submit to us any new information that has become available concerning the status of or threats to the slackwater darter since it was listed in 1977. This information will help us more accurately assess its status and complete a 5-year review as required under section 4(c)(2)(A) of the Act.

DATES: The 90-day finding announced in this document was made on July 7, 2005. To allow us adequate time to conduct this 5-year review, we request any new information and comments to be submitted to us by October 11, 2005. However, we will continue to accept new information about this listed species at any time.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition, our finding, or our 5-year review should be submitted to the Field Supervisor, Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi, 39213. The petition

finding, supporting data, and comments or information received in response to this notice will be available for public review, by appointment, during normal business hours at the above address.

New information regarding the slackwater darter may be sent electronically to

daniel_drennen@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Drennen, Fish and Wildlife Biologist, at the above address (telephone 601-321-1127; e-mail daniel_drennen@fws.gov).

SUPPLEMENTARY INFORMATION:**Public Information Solicited**

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the Act. However, we continually assess the status of species listed as threatened or endangered to ensure that our information is complete and based on the best available scientific and commercial data. Therefore, we are soliciting new information for the slackwater darter.

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, the finding is to be made within 90 days of our receipt of the petition, and published promptly in the **Federal Register**. If we find that substantial information was presented in the petition, we are required to promptly commence a review of the status of the species to determine whether the action is warranted.

In making the 90-day finding, we rely on information provided by the petitioner and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize that information included in the petition and that which was available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b), our review is limited to a determination of whether the information in the petition meets the “substantial information” threshold. “Substantial information” is defined in 50 CFR 424.14(b) as “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” We do not conduct

additional research at this point, nor do we subject the petition to rigorous critical review. Rather, in accordance with the Act and regulations, we accept the petitioner’s sources and characterizations of the information unless we have specific information to the contrary. As explained below, applying this standard we find that the petition does not state a reasonable case for delisting.

The factors for listing, delisting, or reclassifying species are provided at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Review of Petition

The petition to delist the slackwater darter (*Etheostoma boschungii*), dated February 3, 1997, was submitted by the National Wilderness Institute. The petition requested that we remove the slackwater darter from the List of Endangered and Threatened Wildlife and Plants on the basis of data error.

In response to the petitioner’s request to delist the slackwater darter, we sent a letter to the petitioner on June 29, 1998, explaining our inability to act upon the petition due to low priorities assigned to delisting petitions in accordance with our Listing Priority Guidance for Fiscal Year 1997, which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the Listing Priority Guidance for Fiscal Years 1998–1999 in the **Federal Register** (63 FR 25502) and, again, placed delisting activities at the bottom of our priority list. Subsequent to 1998, the delisting funding source was moved from the listing program to the recovery program, and delisting petitions no longer had to compete with other section 4 actions for funding. However, due to higher priority recovery workload, it has not been practicable to process this petition until recently.

The petition requested that we delist the slackwater darter on the basis of data error; however, the petition did not provide any information explaining how the data used to classify the slackwater

darter as a threatened species were in error. Rather, the petition cited our 1993 Fiscal Year Budget Justification as its supporting information. The 1993 Fiscal Year Budget Justification identified 33 species, including the slackwater darter, that appeared to be approaching the majority of their recovery objectives. The Justification stated the need to evaluate these species, including the slackwater darter, and determine the appropriateness of delisting them based on information obtained from status surveys. However, it did not contain any information showing that the original classification was in error, or that the darter had recovered to the point of delisting.

We listed the slackwater darter as a threatened species, and designated critical habitat for this fish, on September 9, 1977, due to threats associated with spreading urbanization, pollution, and stream channel modifications (42 FR 45526 and 42 FR 47840). The recovery objective of the slackwater darter recovery plan is to delist the species. Our criteria for delisting this fish include the establishment and protection of one or more specific habitats areas in three different tributaries of the Tennessee River system, and evidence that these populations are stable or increasing in size (U.S. Fish and Wildlife Service 1984).

Summary of Factors Affecting the Species as Presented in the Petition

Under section 4(a) of the Act, we may list, reclassify, or delist a species on the basis of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. A brief discussion of how each of the listing factors applies to the petition and the information in our files follows.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The slackwater darter is rare, sporadically distributed, and historically known from only five tributary streams to the south bend of the Tennessee River in the southwestern Highland Rim of the Nashville Basin in Tennessee and northern Alabama (Boschung and Neiland 1986; Etnier and Starnes 1993). In Tennessee, the populations were documented from

within the Buffalo River and Shoal Creek (Lawrence County) and Cypress Creek (Wayne County) watersheds. In Alabama, the slackwater darter has been found in the Flint River (Madison County), Swan Creek (Limestone County), and Cypress Creek (Lauderdale County).

The slackwater darter is a migratory species and occurs in non-breeding and breeding habitat (Boschung 1979; Boschung and Neiland 1986; U.S. Fish and Wildlife Service 1984) consisting of gentle riffles and slackwater (slow moving) areas of upland tributary streams (Williams and Robison 1980; Etnier and Starnes 1993). The non-breeding habitat must periodically flood to give the species access to the breeding habitat (slackwater) adjacent to the non-breeding habitat.

The petition stated that "other new scientific information gathered since the time of listing which is in possession of the Service, support delisting due to data error." We have no such information in our files that would support delisting. The petition did not include any detailed narrative justification for the delisting, provide information regarding the status of the species throughout all or a significant portion of its range, or include any supporting documentation for the recommended regulatory action of delisting the slackwater darter. We have found no evidence or data in the petition or in our files supporting the petitioned action or indicating an error was committed in listing the slackwater darter.

On the contrary, evidence in our files indicates that slackwater darters appear to have suffered a dramatic decline since the status surveys of Boschung (1976, 1979) and McGregor and Shepard (1992, 1995). Recent surveys indicate several historical spawning and breeding habitat sites have been destroyed or are not being used by slackwater darters, thus suggesting that reproductive success and recruitment may be declining (Dinkins and Dinkins 2003; Johnston and Hartup 2001, 2002).

Slackwater darters historically have been collected at a total of 31 sites within the five tributary streams. Numerous surveys and fish collections in the 1970s and mid-1980s in the south bend of the Tennessee River failed to document the presence of the slackwater darter outside these five drainages (U.S. Fish and Wildlife Service 1984; 42 FR 45526). At least 5 of the 31 original sites have been lost or degraded to point that they no longer provide suitable habitat for slackwater darters (U.S. Fish and Wildlife Service 1984; D. Drennen, U.S. Fish and

Wildlife Service, pers. observ., 2003; S. McGregor, Geological Survey of Alabama, pers. comm. 2004).

The slackwater darter is still sporadically present, in both breeding and non-breeding habitats, within the Buffalo River and Shoal Creek (Lawrence County) and Cypress Creek (Wayne County) watersheds of Tennessee (Johnston and Hartup 2001, 2002). However, recent surveys in 2001, 2002, and 2004 indicate declines both in the number of sites being utilized by the slackwater darter and in actual numbers of individuals (Johnson and Hartup 2001, 2002; S. McGregor, Geological Survey of Alabama, pers. comm., 2004). For example, in 2002, slackwater darters were only found in 2 of 14 historical localities sampled in tributary streams in Tennessee (Johnston and Hartup 2002). Further, sampling conducted in 2004 at three historical localities in the watersheds of Tennessee resulted in the collection of a single male slackwater darter in total; and sampling at four historic localities in Alabama resulted in collection of only two individuals in total (S. McGregor, Geological Survey of Alabama, pers. comm., 2004).

Furthermore, threats to the populations in Alabama and Tennessee have not decreased substantially and, in some cases, have increased. For example, Swan Creek in Alabama has been severely altered in the past decade. Much of the forest alongside the stream has been removed and heavy impacts to the stream bank continue to occur, resulting in channel modifications and the complete loss of in-stream aquatic vegetation. Repair and replacement of bridge crossings on the Natchez Trace Parkway, at sites known to have remnant populations of slackwater darters, have the potential to add significant sedimentation to Lindsey and Threet Creek in Lauderdale County, Alabama (Dinkins and Dinkins 2003). Cattle impacts on slackwater darter spawning habitat have increased significantly. For example, the "Dodd" site in Middle Cypress Creek, Tennessee, has been seriously impacted by cattle degrading bank sides and stream bottoms and consuming streamside vegetation (D. Drennen, U.S. Fish and Wildlife Service, pers. observ. 2003).

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide any information pertaining to Factor B. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor C: Disease or Predation

The petition did not provide any information pertaining to Factor C. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The petition did not provide any information pertaining to Factor D. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

The petition did not provide any information pertaining to Factor E. The original listing rule cited this factor as not applicable. No new information in our files suggests a change to this determination.

Finding

We have reviewed the petition and its supporting documentation, as well as our agency files. On the basis of our review, we find that no substantial information has been presented or found that would indicate that delisting of the slackwater darter may be warranted.

Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. Under section 4(c)(2)(B), we are then required to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the slackwater darter.

The 5-year review for the slackwater darter will consider the best scientific and commercial data that has become available since the species was listed, such as:

A. Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends;

E. Other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

To fully understand the apparent dramatic decline of the slackwater darter and its impact on this fish's current status, we believe initiating this 5-year review is appropriate.

New information and comments should be sent to the Field Supervisor of the Jackson Field Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

References Cited

A complete list of all references is available, upon request, from the Jackson Field Office (see **ADDRESSES** section).

Author

The author of this document is Daniel J. Drennen (see **ADDRESSES** section).

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

Dated: July 7, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.
[FR Doc. 05-15720 Filed 8-9-05; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist *Pedicularis furbishiae* (Furbish lousewort) and Initiation of a 5-Year Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of a 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove *Pedicularis furbishiae*, commonly referred to as Furbish lousewort, from the Federal List of Endangered and Threatened Plants, pursuant to the Endangered Species Act of 1973, as amended (ESA). We reviewed the petition and supporting documentation and find that there is not substantial information indicating that delisting of *P. furbishiae* may be warranted. Therefore, we will not be initiating a further 12-month status review in response to this petition.

However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the ESA that will consider new information that has become available since the listing of the species and that will offer the State, Tribes, agencies, university researchers, and the public an opportunity to provide information on the status of the species. We are requesting any new information on *P. furbishiae* since the original listing as an endangered species in 1978.

DATES: The finding announced in this document was made on August 10, 2005. To be considered in the 5-year review, comments and information should be submitted to us by October 11, 2005.

ADDRESSES: Data, information, comments, or questions concerning this finding and 5-year review should be submitted to the U. S. Fish and Wildlife Service, Maine Field Office, 1168 Main St., Old Town, ME 04468, or by facsimile 207/827-6099. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark McCollough, Ph.D., Endangered Species Specialist, (see **ADDRESSES**) (telephone 207/827-5938 ext. 12; facsimile 207/827-6099).

SUPPLEMENTARY INFORMATION: