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:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 et seq.) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)).

Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability of the information supporting the action advocated by the petition.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary.

The factors for listing, delisting, or reclassifying species are described 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 the Petition

The petition to delist *P. furbishiae,* dated February 3, 1997, was submitted by the National Wilderness Institute. The petition requested we remove *P. furbishiae* from the List of Endangered and Threatened Plants based on data error.

In response to the petitioner's request to delist *P. furbishiae,* 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, we 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 cited our 1993 Fiscal Year Budget Justification as its supporting information that the species should be removed from the List of Endangered and Threatened Plants based on data error. The 1993 Fiscal Year Budget Justification states that we would evaluate those species identified as approaching the majority of their recovery objectives. Our December 1990 Report to Congress, Endangered and Threatened Species Recovery Program, identified 33 species, including *P. furbishiae*, that were approaching their recovery objectives. The 1993 Fiscal Year Budget Justification identified the need to evaluate those species and determine the appropriateness of delisting them based on status surveys.

We listed *Pedicularis furbishiae* as endangered on April 26, 1978 (43 FR 17910). At the time of listing *P. furbishiae,* 880 individuals were known in 21 colonies from the St. John River Valley in Maine and New Brunswick, Canada. Critical habitat was not designated.

Summary of Factors Affecting the Species as Presented in the Petition

Under section 4(a) of the ESA, we may list, reclassify, or delist a species on the basis of any of the five factors, as follows: Factor (A), the present or threatened destruction, modification, or curtailment of its habitat or range; Factor (B), overutilization for commercial, recreational, scientific, or educational purposes; Factor (C), disease or predation; Factor (D), the inadequacy of existing regulatory mechanisms; and Factor (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 final rule adding *Pedicularis furbishiae* to the List of Endangered and Threatened Plants, listed the following as threats to the species: dumping, natural landslides, and construction and lumbering near the banks of the St. John River Valley in Maine and New Brunswick, Canada. In addition, the final rule stated that the proposed Dickey-Lincoln School Lakes hydropower project threatened 13 colonies of *P. furbishiae.* If the project was completed as planned, 40 percent of the known individuals would be extirpated (43 FR 17910).

The petition did not provide any information pertaining to Factor A.

The 1991 Furbish Lousewort Recovery Plan, First Revision, (Plan) states that unnatural alteration to the St. John River ecosystem within the range of the species constitutes a direct threat to the continued existence of the species. According to the Plan, one of the possible sources of adverse effects is the change in land use within and along the banks above lousewort habitat. In addition, the Plan also states that the proposed Dickey-Lincoln School hydropower project named as a threat in the final listing rule was deauthorized by Congress on November 17, 1986 (Service 1991).

The Plan (Service 1991) states that until further data on the long-term population dynamics of *Pedicularis furbishiae* are available, a delisting objective is pending. According to the Plan, *P. furbishiae* could be reclassified from endangered to threatened when a reproducing population and its habitat are protected and maintained along the St. John River.

The Plan contains two reclassification objectives. The first objective is further discussed under Factor E below. The second reclassification objective, permanent protection of 50 percent of the species' essential habitat, has not been met. The recovery plan defines essential habitat as current and potential habitat used by the plant. The Plan recommends that habitat protection be distributed among the four major river segments (segment 1: 3 to 5 miles (4.8 to 8.0 kilometers (km)); segment 2 :2 to 4 miles (3.2 to 6.4 km); segment 3: at least 2 miles (3.2 km); and segment 4: an unknown, but small amount). Currently, approximately 4.8 miles (7.7

km) (25 percent) of 18.85 miles (29.8 km) of current and potential habitat is protected. Habitat protection has occurred only in river segment 1. Thus the amount and distribution of the protected habitat falls short of the recovery objective.

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. The Recovery Plan (Service 1991) said that ''In lieu of legal protection of the plants, botanical collecting and/or vandalism could constitute threats to the species.'' However, there is no new information in our files that indicates collection or vandalism has become a problem.

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. The Recovery Plan (Service 1991) discusses that the State of Maine does not have any laws protecting endangered plant species. However, there is no new information in our files that indicates that this lack of State law have been a problem for *P. furbishiae.*

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

The petition did not provide any information pertaining to Factor E.

According to the Plan, another possible source of adverse effects to the range of the *P. furbishiae,* besides the change in land use within and along the banks above lousewort habitat mentioned under Factor A above, is a change in hydrology of the St. John River.

The Plan states that the species will be considered for reclassification, in part, when a geometric mean of at least 7,000 flowering stems is maintained for a 6-year period, and 50 percent of the species' essential habitat is permanently protected. For the purposes of recovery planning, the St. John River was divided into 4 major river sections, each containing 10 to 16 river segments. In addition to meeting the total population objective of 7,000 flowering stems, the Plan recommends that the population be distributed among the four major river segments (Segments 1, 2, and 3, each to contain 2,100 flowering stems; Segment 4, to contain 700 flowering stems).

The downlisting criteria were based on the 1989 survey of flowering stems, and that number, 6,889 flowering stems, was reflected in the 1990 Recovery Report to Congress. In 1991, one of the most formidable ice events in decades reshaped large portions of the river bank communities, and the *P. furbishiae* population was reduced by more than 50 percent to 3,065 flowering stems. Since the 1991 event, populations have increased to 5,647 flowering stems in 2002–2003, but still have not returned to the 1989 levels. Therefore, the population objective for reclassification has not been met.

The petitioner also stated that ''other new scientific information gathered since the time of listing which is in the possession of the Service,'' supports delisting because of data error. However, the petition did not identify this new information. In addition, the petitioner did not include any detailed narrative justification for the delisting or provide information regarding the status of the species. While we have documented an increasing population trend, and habitat has been protected, the Plan criteria for downlisting have not been met. We have found no evidence or data in our files or in the petition that indicates a data error was committed in listing *Pedicularis furbishiae* or that otherwise indicates the petitioned action may be warranted.

Finding

We have reviewed the petition and its supporting documentation, information in our files, and other available information. We find that the petition does not present substantial information indicating that delisting of *Pedicularis furbishiae* may be warranted.

Five-Year Review

Under the ESA, the Service maintains a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 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 *Pedicularis furbishiae,* currently listed as endangered.

Public Information Solicited

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on *Pedicularis furbishiae* from the public, other concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species, and threats to the species. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, 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; and

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.

If you wish to provide information for the status review, you may submit your comments and materials to the Supervisor, Maine Field Office (see **ADDRESSES**). 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, to the extent 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 at the Maine Field Office (see **ADDRESSES**).

References Cited

U.S. Fish and Wildlife Service (Service). 1991. Furbish Lousewort Recovery Plan, First Revision. U.S. Fish and Wildlife Service, Newton Corner, Massachusetts. 46pp.

Author

The primary author of this document is Mark McCollough, Ph.D., Endangered Species Specialist, Maine Field Office (see **ADDRESSES**).

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

Dated: July 19, 2005.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–15570 Filed 8–9–05; 8:45 am]

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