

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU99

Endangered and Threatened Wildlife and Plants; Determination of Status for *Lepidium papilliferum* (Slickspot Peppergrass)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; reopening of comment period and document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public of the reinstatement of our July 15, 2002 proposed rule to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Endangered Species Act of 1973, as amended (Act), and announce the reopening of the public comment period on that proposed listing.

DATES: We will accept comments from all interested parties until 5 p.m. Mountain Standard Time on November 13, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709.

(2) You may send comments by electronic mail (e-mail) to: fw1srbocomment@fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may fax your comments to 208-378-5262.

(4) You may submit comments online via the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jeffery Foss, Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709; telephone 208-378-5243.

SUPPLEMENTARY INFORMATION:**Public Comments Solicited**

We intend that any final action resulting from the proposal to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Act (16 U.S.C. 1531 *et seq.*) will be as accurate and as effective as possible.

Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. We are providing further information for the public to consider, including a document we prepared entitled "Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)" (BAI), February 27, 2006, a number of peer reviews of this document, a matrix of the threats data to be used in making our listing determination, and a list of conservation measures for the species currently underway.

Comments particularly are sought concerning:

(1) Whether our proposed application of our Policy for Evaluation of Conservation Efforts (PECE) can be improved.

(2) Whether the threats matrix contains the best available commercial and scientific data and if not what other data we should consider.

(3) How might the Service best address the issues raised in the peer reviews of the Draft BAI.

(4) Any additional comments on the BAI.

(5) Whether the Service has identified all conservation actions underway, if any should be added and whether the actions are accurately characterized.

If you wish to comment, you may submit your comments and materials concerning the proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to fw1srbocomment@fws.gov in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "RIN 1018-AU99" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly (see **ADDRESSES**). Please note that the Internet address fw1srbocomment@fws.gov will be unavailable at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This

rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Previous Federal Actions

For a description of Federal actions concerning *Lepidium papilliferum* that occurred prior to January 22, 2004, please refer to our withdrawal of the proposed rule published in the **Federal Register** on January 22, 2004 (69 FR 3094).

On July 15, 2002, we published a proposed rule (67 FR 46441) to list *Lepidium papilliferum* as endangered under the Act. We accepted public comments on the proposal for 60 days, until September 13, 2002. We also held a public hearing on August 29, 2002. On September 25, 2002, and again on July 18, 2003, we reopened the public comment period on the proposed listing. On October 30, 2003, we made the Candidate Conservation Agreement and Best Available Information for Slickspot Peppergrass available for public review and comment (68 FR 61821).

On January 22, 2004, we published a document withdrawing our proposed rule to list *Lepidium papilliferum* as endangered (69 FR 3094). That withdrawal was based on our conclusion that there was "a lack of strong evidence of a negative population trend," and the formalized conservation plans (*e.g.*, the CCA and INRMPs) had "sufficient certainty that they will be implemented and will be effective such that the risk to the species is reduced to a level below the statutory definition of endangered or threatened."

On April 5, 2004, the Western Watershed Project filed a complaint challenging our decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project v. Jeffery Foss, et al.*, Case No. CV 04-168-S-EJL). On August 19, 2005, the U.S. District Court for the District of Idaho reversed the decision to withdraw the proposed rule (which effectively reinstated our July 15, 2002, proposed rule at 67 FR 46441), with directions that the case be remanded to the Secretary of the Department of the Interior for reconsideration of "whether a proposed rule listing the slickspot

peppergrass as either threatened or endangered should be adopted.”

Following the August 19, 2005, U.S. District Court for the District of Idaho remand order, we notified Federal, State, and local agencies, county governments, elected officials, and other interested parties of the District Court's decision in a letter dated October 13, 2005. We requested new scientific data and information, and comments, about *Lepidium papilliferum*, and requested that any such comments be submitted by November 14, 2005. We also stated that scientific information received from the public would be utilized in a document titled, “Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)” (BAI). We extended the comment period through December 14, 2005, and we received a total of 13 comment letters in response to our request for additional information. From February 27, 2006, through March 30, 2006, we opened a public comment and peer review period, during which we requested information on the BAI and on conservation efforts for the species. We received an additional 33 comments.

A number of threats and potential threats to *Lepidium papilliferum* were identified as a result of past listing actions and a number of conservation actions to address those threats have been identified. In evaluating the

contributions of these conservation actions under the PECE, where the Service is party to agreements regarding conservation actions for *Lepidium papilliferum*, we propose to consider whether the actions contained in those agreements are likely to be effective over time. For those plans that the Service is not a party to, the PECE policy evaluation is proposed to be based on their consistency with management guidance the Service has provided to other agencies and cooperators. We request that commenter's address whether the foregoing will result in an appropriate application of the PECE.

On October, 2006, the Court directed the Service to issue a final listing determination by January 4, 2007. The Service will complete its review of any information and comments submitted during this comment period to comply with that order.

Information Available for Review

Information received, developed, or analyzed since the August 19, 2005, U.S. District Court remand of our proposed listing withdrawal is available for review by accessing the following Web site: <http://www.fws.gov/idaho/>, or by contacting the Field Supervisor (see ADDRESSES above). This information includes the following:

(1) The document “Draft Best Available Biological Information for

Slickspot Peppergrass (*Lepidium papilliferum*)” (BAI), February 27, 2006.

(2) Peer review comments on the BAI.

(3) A threats matrix of the data used to make the listing determination;

(4) A spreadsheet containing a description of *Lepidium papilliferum* conservation measures in the CCA, including an explanation of how the Policy for Evaluation of Conservation Efforts (PECE) will be applied in making our determinations regarding the benefits of the conservation actions.

Following this public comment period, we will be using any new information, along with existing scientific and commercial information in assessing species status.

Author

The primary authors of this notice are staff of the Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service.

Authority

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

Dated: October 17, 2006.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

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