

possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice in the **Federal Register** (48 FR 6752) of our prior finding that the listing of *Delphinium bakeri* and *D. luteum* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act. Pursuant to section 4(b)(3)(C)(i) of the Act, such findings must be recycled annually, until the species is either proposed for listing or the petitioned action is found to be not warranted. Each October from 1983 through 1994, further findings were made that the listing of *D. bakeri* and *D. luteum* were warranted, but that the listing of these species was precluded by other pending proposals of higher priority.

On November 28, 1983, we published a supplement to the plant NOR (48 FR 53640). This supplement changed *Delphinium bakeri* and *D. luteum* from "category 1" to "category 2 candidates" (defined at the time as species for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules).

The plant NOR was revised again on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were included as category 2 candidates. Another revision of the plant NOR was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates, and remained as category 1 candidates in the plant NOR published on September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *D. bakeri* and *D. luteum* as candidate species. We define candidate species as those for which we have on file sufficient information on the biological vulnerability and threats to support proposals to list them as threatened or endangered. On June 19, 1997, we published a proposed rule in the **Federal Register** (62 FR 33383) to list *D. bakeri* and *D. luteum* as endangered.

On June 17, 1999, our failure to issue final rules for listing *Delphinium bakeri* and *D. luteum* and seven other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species, was challenged in *Southwest Center for Biological Diversity and California Native Plant Society v. U.S. Fish and Wildlife Service and Bruce Babbitt* (Case No. C99-2992 (N.D.Cal.)). We subsequently published a final rule listing *D. bakeri* and *D. luteum* as

endangered species on January 26, 2000 (65 FR 4156). On May 22, 2000, the judge signed an order requiring us to propose critical habitat for the two species by September 30, 2001. The court subsequently extended this deadline to June 10, 2002, based on a settlement agreement reached on October 1, 2001 (*Center for Biological Diversity, et al., v. Gale Norton, et al.* (D.D.C.) (Case No. Civ. 01-2063)). The agreement also established March 10, 2003, as the date by which we would reach a final critical habitat determination for the species.

We published a proposed critical habitat designation for *Delphinium bakeri* and *D. luteum* in the **Federal Register** on June 18, 2002 (67 FR 41367). Publication of the proposed rule opened a 60-day public comment period, which closed on August 19, 2002. On November 1, 2002, we published a notice announcing the availability of our draft economic analysis of the proposed critical habitat designation (67 FR 66599). The notice opened a public comment period on the draft economic analysis, and reopened the comment period on the proposed critical habitat designation. This second public comment period lasted approximately 30 days, closing on December 2, 2002.

Summary of Comments and Recommendations

In our June 18, 2002, proposed critical habitat designation (67 FR 41367) we solicited comments from all interested parties on all aspects of the proposed rule, including information related to biological justification, economic impacts, proposed critical habitat boundaries, and proposed projects. In our November 1, 2002, notice of availability for the draft economic analysis (67 FR 66599), we invited comments on the draft analysis and on the proposed critical habitat designation. In addition to these **Federal Register** publications, we also sent notification letters to appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. We solicited independent peer review of the proposed designation from three botanists with applicable areas of expertise (see Peer Review section below). We also invited public comment through the publication of notices in three local newspapers: the Marin Independent Journal (June 26, 2002), the Santa Rosa Press Democrat (June 27, 2002), and the Point Reyes Light (July 3, 2002).

Seven individuals, including one peer reviewer, responded with comments. One of those individuals initially

requested a public hearing, but subsequently decided to meet instead with Sacramento Fish and Wildlife Office's Listing Branch personnel to submit his comments verbally. Four of the seven commenters indicated their overall support of the proposed designation, two were neutral, and one was opposed. We have reviewed all the comments we received for substantive issues and new information regarding *Delphinium bakeri* and *D. luteum*, and for potential impacts of the proposed critical habitat designation. The comments are addressed in the following summary.

Issue 1: Comments on the Biology of the Species

(1) *Comment*: One commenter questioned whether *Delphinium luteum* qualifies as a valid species.

Our Response: Although Jepson (1975) reduced *Delphinium luteum* to a variety of *D. nudicaule*, it currently is recognized as a full species (Warnock 1993). Guerrant (1978) proposed, based on morphological, ecological, and chemical characteristics, that *D. luteum* might have originated as a species from the hybridization of *D. nudicaule* (red larkspur) and *D. decorum* (yellowtinge larkspur). However, genetic testing by Koontz *et al.* (2001) has shown that if this did in fact occur, it was many generations ago, and that naturally occurring *D. luteum* cannot now be "recreated" simply by hybridizing *D. nudicaule* and *D. decorum*. Thus, the best available scientific information supports the recognition of *D. luteum* as a valid species.

(2) *Comment*: One commenter argued that we lack evidence to conclude, with regard to *Delphinium luteum*, that "sheep grazing, fire, water run, rock quarry activities, etc. are a threat, and that there is a need to restrict them * * * The commenter also mentioned a study by Richard Knight of Colorado State University which found grazing land to be an important resource for many native wildlife species.

Our Response: The proposed critical habitat designation included "unmanaged sheep grazing" and "unseasonal fire" among potential threats faced by *Delphinium luteum* (67 FR 41367, at 41369), not just "sheep grazing" or "fire." We did not list "water run" as a threat, and we are not aware of any populations currently being threatened by rock quarrying, although this has threatened populations in the past (Service 2000). The CNDDDB (2001) lists sheep grazing as a threat for two of the three largest remaining occurrences of *D. luteum*, and specifically notes that flowers were