

and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We established an Internet web site for electronic submittal of comments and hearing requests by any party. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested three individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed rule by the close of the comment period. We received comments from two parties, including one designated peer reviewer. The comment is addressed in the following summary. We did not receive any requests for a public hearing.

Issue: Both commenters agreed with us that the morphological work and conclusion of both Michael Yoder-Williams and Alan Whitemore regarding the taxonomy of *Berberis sonnei* are scientifically sound as far as existing evidence, but requested that a molecular analysis of *B. sonnei* be conducted to determine if the molecular evidence correlates with the morphological evidence before delisting *B. sonnei*.

Our Response: We base our delisting decisions upon the best available commercial and scientific information. Currently, no one has performed a molecular analysis of *Berberis sonnei*. After a review of all available data, we have made the determination that *B. sonnei* is not a discrete taxonomic entity and does not meet the definition of a species. Therefore, our recommendation to delist *B. sonnei* remains unchanged. If new information becomes available through molecular analyses that shows that *B. sonnei* is a discrete taxonomic entity, we will reexamine the threats to determine if it should be listed again.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, or removing species from listed status. We may list a species as endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting a species. According to 50 CFR 424.11(d) of our regulations, we may delist a species if

the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

We have carefully assessed the best scientific and commercial information available regarding the taxonomic classification of *Berberis* (= *Mahonia*) *sonnei* and have determined that previous classification of the species is not taxonomically correct and that the entity listed as *B. sonnei* does not meet the definition of "species" in the Act. Therefore, we have determined that it is appropriate to delist or remove *Berberis* (= *Mahonia*) *sonnei* from the List of Endangered and Threatened Plants.

The five factors affecting the species, as described in section 4(a)(1) of the Act, and their current application to *Berberis* (= *Mahonia*) *sonnei* (Abrams) McMinn (Truckee barberry) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. *Berberis repens*, with which *B. sonnei* has been combined, is a common species ranging from California northward to British Columbia and Alberta and eastward to the Great Plains (Whitemore 1997). This wide-ranging taxon is not threatened. Although urbanization and other activities may destroy or modify its habitat in localized areas, there is no evidence that habitat destruction or modification threaten the continued existence of *B. repens*.

B. Overutilization for commercial, recreational, scientific, or educational purposes. The final rule adding *Berberis sonnei* to the endangered species list cited removal of plants from the one known population as a threat because *Berberis* species are widely used as ornamentals. Because *Berberis repens*, with which *B. sonnei* has been combined, is common and wide-ranging, removal of plants for ornamental purposes does not threaten this species.

C. Disease or predation. Neither disease nor predation were cited as threats in the final rule to list *Berberis sonnei* as an endangered species, and they do not threaten the common and wide-ranging taxon *B. repens*, with which *B. sonnei* has been combined.

D. The inadequacy of existing regulatory mechanisms. There is no evidence that the common and wide-ranging *Berberis repens*, with which *B. sonnei* has been combined, requires regulatory mechanisms to sustain it. The

California Department of Fish and Game tentatively plans to prepare a proposal to delist *B. sonnei* sometime in the future (Sandra Morey, California Department of Fish and Game, pers. comm. 2001).

E. Other natural or manmade factors affecting its continued existence. The final rule listing *Berberis sonnei* as an endangered species cited low seed set and seed viability as threats to the one known population. Neither of these factors threatens the common and wide-ranging *B. repens*, with which *B. sonnei* has been combined.

In summary, our regulations at 50 CFR 424.11(d) state that a species may be delisted if—(1) It becomes extinct, (2) it recovers, and/or (3) the original classification data were in error. We believe current scientific information demonstrates that *Berberis sonnei* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" in section 3(15) of the Act. In addition, we have determined that *B. repens*, with which *B. sonnei* has been combined, is not an endangered or threatened species. We, therefore, conclude that *B. sonnei* no longer warrants listing under the Act.

Effects of the Rule

This action removes *Berberis sonnei* from the List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act no longer apply to this species. Therefore, interstate commerce, import, and export of *B. sonnei* are no longer prohibited under the Act. In addition, Federal agencies no longer are required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *B. sonnei*. The use of *B. sonnei* must comply with State regulations. There is no designated critical habitat for this species.

Future Conservation Measures

There are no specific preservation or management programs for *Berberis sonnei*. Section 4(g)(1) of the Act requires us to monitor for at least 5 years species that are delisted due to recovery. Because *B. sonnei* is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this plant species following its delisting.

Effective Date

This rule relieves an existing restriction. Therefore, in accordance with 5 U.S.C. 553(d), we have determined that good cause exists to