

where there is no dispute pending as to the compensation reported for the periods covered by those records. The Board also proposes to amend its regulations to provide that the Board will accept payroll records in lieu of prescribed reports if there is no official of the employer available to prepare and certify to the accuracy of such reports and if the tax liability involved has been discharged.

The Board, with the agreement of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

#### List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, title 20, chapter II, part 209 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES**

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Part 209 is amended by adding §§ 209.16 and 209.17 to read as follows:

##### **§ 209.16 Disposal of payroll records.**

Employers may dispose of payroll records for periods subsequent to 1936, *provided that* the payroll records are more than five years old and that there is no dispute pending pertaining to the compensation reported for the period of those records.

##### **§ 209.17 Use of payroll records as returns of compensation.**

Payroll records of employers which have permanently ceased operations may be accepted in lieu of prescribed reports *provided that* there is no official of the employer available to prepare and certify to the accuracy of such reports and, *provided further that* any employer and employee tax liability incurred under the Railroad Retirement Tax Act has been discharged.

Dated: February 5, 1996.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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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 for a Petition To De-List the Maryland Darter (*Etheostoma sellare*)**

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service announces a 90-day finding for a petition to remove the Maryland darter from the list of Endangered and Threatened Wildlife and Plants due to extinction. The Service finds that the petition does not present substantial scientific or commercial information indicating that delisting of this species may be warranted.

**DATES:** The finding announced in this document was made on February 7, 1996.

**ADDRESSES:** Submit data, information, comments or questions concerning this petition to Field Supervisor, Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Andy Moser at the above address (telephone 410 573-4537).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the petition is submitted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published in the Federal Register.

The Service has made a 90-day finding on a petition to delist the Maryland darter. The petition, dated July 6, 1995, was submitted to the Service by the Maryland Farm Bureau, Inc., of Randallstown, Maryland and was received by the Service on July 14, 1995. The petitioners contend that the species was last seen in Deer Creek (in

Harford County, Maryland) more than 15 years ago and is now absent from Deer Creek, the only location where it had been found in recent decades.

The Service has carefully reviewed the petition and all other information currently available in the Service's files. On the basis of the best scientific and commercial data available, the Service finds the petition does not present substantial information that delisting this species may be warranted. This finding is based on the inadequacy of existing data to support the contention that the Maryland darter is extinct.

The following is a summary of the information available on the species' status. The species was originally described from two specimens taken from Swan Creek in Harford County, Maryland, in 1912 (Radcliffe and Welsh 1913). Over the next 50 years many efforts were made to collect this darter in this and nearby streams (USFWS 1985). All attempts failed until 1962, when a specimen was found in Gashey's Run, a tributary to Swan Creek. Although the species has not been documented in Gashey's Run since 1965, the species was subsequently found in 1965 at a single site in Deer Creek in Harford County, Maryland. It was first found at this site in 1965 and has since been observed there irregularly, but on numerous occasions, through 1988 by individuals using seines or snorkels. During this period the majority of sampling/observation efforts resulted in negative results. The last documented observation, seven years ago, was reported by Raesley (1991). Since 1988, despite fairly extensive efforts, no Maryland darters have been observed at the Deer Creek site; nor has the species been observed elsewhere.

In the past, there have been long gaps in the species being observed and collected in Maryland. This hiatus in reporting does not provide definitive evidence of the species' extinction in the wild. As pointed out by Etnier (1994), it is not uncommon for rare species to be absent from samples at a given location for long periods of time and then to reappear in samples taken subsequently in the same location. A recent example of this occurred with another darter, the stripeback darter (*Percina nottogramma*), in Maryland. The stripeback darter had been considered extirpated in Maryland because it had not been observed in Maryland streams for 51 years. However, it was rediscovered in Maryland in 1995 (Raesley, Frostburg State Univ., pers. comm.).

While the failure to find the Maryland darter in Deer Creek for the last seven

years provides evidence that the species has declined in Deer Creek and may be extirpated (at least temporarily) there, it does not provide sufficient evidence to declare the species extinct.

The species may continue to survive in the Susquehanna River adjacent to Deer Creek. To date, this area has not been extensively searched because of the very difficult sampling conditions there. Until this area has been adequately searched, we cannot rule out the survival of the Maryland darter there. Therefore, the Service finds that the information currently available to the Service is insufficient to support delisting of the Maryland darter.

#### References Cited

- Etnier, D.A. 1994. Our Southeastern Fishes—What have we lost and what are we likely to lose. Proc. Southeastern Fisheries Council.
- Radcliffe, L. and W.W. Welsh. 1913. Description of a new darter from Maryland. Bull. U.S. Bur. Fish 32:29–32.
- Raesley, R.L. 1991. Population status of the endangered Maryland Darter (*Etheostoma sellare*) in Deer Creek Unpubl. Rpt. submitted to Maryland Natural Heritage Program. 28 pp.
- U.S. Fish and Wildlife Service. 1985. Maryland Darter Recovery Plan, 1st revision. Newton Corner, MA. 38 pp.

#### Author

The primary author of this document is Andy Moser of the Service's Chesapeake Bay Field Office (see **ADDRESSES**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: February 7, 1996.

John G. Rogers,

*Acting Director, U.S. Fish and Wildlife Service.*

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