

relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 17, 1998.

David P. Howekamp,

Regional Administrator, Region 9.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC21

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Plant *Puccinellia parishii* (Parish's alkali grass) as Endangered

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) withdraws a proposal to list the plant *Puccinellia parishii* (Parish's alkali grass) as an endangered species under the Endangered Species Act of 1973, as amended. This small annual grass occurs near desert springs, seeps, and seasonally wet areas in Apache, Coconino, and Yavapai counties, Arizona; San Bernardino County, California; San Miguel County, Colorado, and Catron, Cibola, Grant, Hidalgo, McKinley, Sandoval, and San Juan counties, New Mexico. The sites in Apache and Coconino counties, Arizona, are on the Navajo and Hopi Indian reservations. This determination is based on the recent discovery of

additional populations and on new information concerning the species' habitat requirements and apparent tolerance to habitat impacts.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at the Service's New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald at the above address, or telephone 505/346-2525.

SUPPLEMENTARY INFORMATION:

Background

Parish's alkali grass was first collected by Samuel Bonsal Parish at Rabbit Springs in the Mojave Desert of California in 1915. A.S. Hitchcock described it as a new species in 1928. The genus *Puccinellia* contains about 100 species of mostly north-temperate grasses (Willis and Shaw 1973); there are 10 species in the United States (Hitchcock and Chase 1951). Most species of *Puccinellia* have polyploid chromosome numbers with only two diploid species in the United States, *P. parishii* and *P. lemonii* (Church 1949). Studies by Davis and Goldman (1993) indicate that *P. parishii* and *P. lemonii* are each genetically and morphologically distinct.

Parish's alkali grass is a dwarf, ephemeral (winter-to-spring), tufted annual. The leaves are 1-3 centimeters (cm) (0.4-1.2 inches (in)) long, firm, upright, and very narrow. Flowering stems are 2-20 cm (0.8-8.0 in) long, number 1-25 per plant, and appear from April to May. Plants grow from about March through June, but can only be positively identified during the flowering period. Plants die during the typically dry southwestern spring. By mid-July, there is usually no sign of plants at occupied sites.

Parish's alkali grass occupies alkaline springs, seeps, and seasonally wet areas that occur at the heads of drainages or on gentle slopes at elevations of 800-2200 meters (m) (2600-7200 feet (ft)). The amount of available habitat depends on the size of the wet area and can vary from a few square meters to 16 hectares (ha) (40 acres (ac)). The species requires continuously damp soils during its late winter to spring growing period. The number of plants in a population can fluctuate widely from year to year in response to growing conditions. Parish's alkali grass often grows in association with *Distichlis spicata* (salt grass), *Sporobolus airoides* (alkali sacaton), *Carex* spp. (sedge), *Scirpus* spp. (bulrush), *Juncus* spp. (rush),

Eleocharis spp. (spike rush), and *Anemopsis californica* (yerba mansa).

The geographic range of Parish's alkali grass extends about 1,000 kilometers (km) (600 miles (mi)) east to west from Sandoval County, New Mexico, to San Bernardino County, California, and about 600 km (370 mi) north to south from San Miguel County, Colorado, to Hidalgo County, New Mexico.

Parish's alkali grass is currently known from 30 sites. There are 17 sites in New Mexico, 11 in Arizona, 1 in California, and 1 in Colorado. In the proposed rule to list the species (59 FR 14378; March 28, 1994), it was reported from 10 sites, although 1 of these sites was later determined to be a misidentified specimen.

The known sites in New Mexico have increased to 17 from the 1 reported in the proposed rule. Personnel of the New Mexico Forestry Division discovered 12 new sites in Catron (1), Cibola (1), Hidalgo (1), McKinley (6), and Sandoval (3) counties (Sivinski 1995). Two new sites are in San Juan County (K. Heil, San Juan College, Farmington, New Mexico, pers. comm. 1995), and the Bureau of Land Management reported two new sites in Sandoval County (*in litt.* 1996). The one site reported in the proposed rule is in Grant County.

The known sites in Arizona have increased to 11 from the 7 reported in the proposed rule. The grass is described as common at one new site in Yavapai County about 240 km (150 mi) southwest of the nearest other Arizona site (P. Warren, The Nature Conservancy, Tucson, Arizona, pers. comm. 1996). Three new sites are in Apache County, one on the Apache-Sitgreaves National Forest (T. Myers, U.S. Forest Service, Springerville, Arizona, *in litt.* 1997), and two on the Navajo Indian Reservation (D. Roth, Navajo Natural Heritage Program, Window Rock, Arizona, pers. comm. 1997). The seven sites reported in the proposed rule are in Coconino County on the Navajo and Hopi Indian reservations.

The known sites in California have decreased to one from the two reported in the proposed rule. Dr. Andrew Sanders of the University of California, Riverside, has identified the plants from Edwards Air Force Base in Kern County as *Puccinellia simplex* rather than *P. parishii* (C. Rutherford, U.S. Fish and Wildlife Service, *in litt.* 1995).

The most recently discovered site occurs near Miramonte Reservoir in San Miguel County, Colorado (J. Ferguson, Bureau of Land Management, Montrose, Colorado, pers. comm. 1998). Arnold Clifford, a botanist with Ecosphere Inc.,

discovered this site, the first recorded for Parish's alkali grass in Colorado, in the summer of 1998 during environmental surveys for a proposed gas transmission line. The site has 2,200–2,700 plants. Additional suitable habitat is present in the area, but has not been surveyed.

Previous Federal Action

Federal action on this species began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The Smithsonian Institution presented this report, designated as House Document No. 94–51, to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plants named therein. On December 15, 1980 (45 FR 82479), we published an updated notice reviewing the native plants being considered for classification as endangered or threatened. We placed Parish's alkali grass in Category 1 in that notice. Category 1 included those plants for which we had sufficient information to support proposing to list them as threatened or endangered. We placed Parish's alkali grass in Category 2 in the November 23, 1983, supplement to the plant notice (48 FR 53640). Category 2 included those taxa for which available information indicated listing may be warranted, but for which information on status and threats sufficient to support listing proposals was lacking. We included Parish's alkali grass in Category 2 in the 1985 and 1990 plant notices (50 FR 39525, September 27, 1985; 55 FR 6183, February 21, 1990), and in Category 1 in the 1993 notice (58 FR 51144; September 30, 1993).

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 1 year of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because Parish's alkali grass was included in the 1975 Smithsonian report, which was accepted as a petition, we treated the petition to list this species as being newly submitted on October 13, 1982. In each year from 1983 to 1993, we made a finding that listing Parish's alkali grass was warranted, but

precluded by other listing actions of higher priority, in accordance with section 4(b)(3)(B)(iii) of the Act.

On March 28, 1994, we published a proposal in the **Federal Register** (59 FR 14378) to list Parish's alkali grass as endangered. We received one request for a public hearing. We published a notice announcing the public hearing and reopening the comment period in the **Federal Register** on August 30, 1994 (59 FR 44700). We held the public hearing on September 15, 1994, in Tuba City, Arizona.

In consideration of the length of time since the initial proposal and the acquisition of new information about Parish's alkali grass, we published a notice in the **Federal Register** on July 20, 1998 (63 FR 38803), that summarized the new information and reopened the comment period for 30 days.

Processing of this proposed rule conforms with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Comments and Recommendations

In the March 28, 1994, proposed rule, and the August 30, 1994, and July 20, 1998, notices reopening the comment period, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, Tribal and county governments, scientific organizations, and other interested parties and requested them to comment. We published notices of the proposed listing in mid-April, 1994, in three newspapers in New Mexico, two in Arizona, and four in California. We published notices announcing the public hearing and reopening of the

comment period in two newspapers in Arizona on September 10, 1994.

Three people attended the public hearing. One individual made oral comments opposing the listing. Fourteen comment letters were received, one from a Federal agency, three from State agencies, four from Tribal governments, two from private organizations, and four from individuals. Two commenters supported the listing, eight opposed the listing, and four offered comments or information without taking a position on the listing. Below we discuss specific comments or issues, which are contrary to our decision to withdraw the proposed listing. Comments of a similar nature or point are grouped into general issues for purposes of response.

Issue 1: Parish's alkali grass merits protection because of its small and isolated populations that are limited to a very specific habitat.

Response: Recent discoveries indicate that Parish's alkali grass, although still rare, is more common than previously supposed. Some of the newly discovered populations indicate Parish's alkali grass occupies a somewhat broader range of habitats than previously known. Several new populations were discovered at sites that are wet only during the winter and spring. These ephemeral seeps are not marked on maps and were discovered when searching springs in the same general area. The number of these seeps is unknown, but they greatly increase the available suitable habitat for Parish's alkali grass.

Issue 2: Parish's alkali grass is threatened by livestock grazing and other impacts that have modified desert springs in the southwest.

Response: We agree that a large number of desert springs in the southwest have been modified for various uses. Some of the newly discovered populations, however, cast doubt on the negative effects of livestock on Parish's alkali grass. Heavy grazing and trampling have occurred for decades at several springs where Parish's alkali grass is present. Disturbance around springs may reduce competition and create open microsites that benefit this small annual grass. The relationship between livestock impacts at springs and Parish's alkali grass requires further study.

Issue 3: Parish's alkali grass is threatened by the potential loss of entire ecosystems where it is found.

Response: We are aware that various factors have caused some springs in the Southwest to go permanently dry. Sivinski (1995) used topographic maps to determine the locations of 58 springs

in New Mexico that could be habitat for Parish's alkali grass. In surveys of these springs, he found five dry and the flow from six others completely captured for livestock or domestic use. Most of the remaining springs had been modified at some time, but still flowed.

Nevertheless, as discussed under factor A of the following "Summary of Factors Affecting the Species" section, Parish's alkali grass has been discovered at sites other than springs, which greatly increases the likelihood of finding more populations of this plant.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists and for withdrawing a proposed rule when warranted. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors as they apply to the withdrawal of the proposed rule for *Puccinellia parishii* Hitchcock (Parish's alkali grass) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Parish's alkali grass is vulnerable to alteration of the hydrology of the habitats upon which it depends. Sivinski (1995) observed that 11 of the 58 springs that he surveyed for Parish's alkali grass in New Mexico were either dry or completely captured for livestock or domestic use. In addition to natural drought, other factors causing springs to go dry in the Southwest include groundwater pumping, erosion and stream entrenchment, and salt cedar (*Tamarix* spp.) invasion. However, Parish's alkali grass is apparently able to withstand some types of human disturbance. For example, the grass occurs where there is farming, where springs have been modified into earthen impoundments, and where there is light to heavy livestock grazing and trampling. In one instance, a highway right-of-way fence protects part of a site from grazing. The protected area has a dense stand of sweet clover (*Melilotus* sp.) and no Parish's alkali grass, but the grass is abundant in the grazed area only a few meters away. Further study is needed to determine what types of disturbances are detrimental to Parish's alkali grass, and what types may benefit the species through reduced competition with other vegetation and the creation of favorable microsites for seedling establishment.

Parish's alkali grass is now known from 30 sites as opposed to 10 sites reported in the proposed rule. Some of the new discoveries have extended the overall range of the species. In particular, the site in southwestern Colorado extends the species' range about 330 km (205 mi) northeastward from previously known sites in Arizona, and the discovery in west-central Arizona extends the species' range about 240 km (150 mi) southwestward in that State. Many of the new sites fill gaps in the known distribution making populations much less disjunct from one another than previously supposed.

Characteristics of some recently discovered Parish's alkali grass sites indicate that the species occupies a somewhat broader range of habitats than previously supposed. Several sites were discovered where the soils are subirrigated and wet only during the winter and spring months. These sites are generally not identified as springs on maps and are only noticeable because their greener vegetation contrasts with the surrounding brown vegetation during the dry spring months. One newly discovered site occurs at 2,240 m (7,350 ft) in elevation, which is 410 m (1,350 ft) higher than any of the sites identified in the proposed rule. These discoveries greatly increase the number of potential sites where Parish's alkali grass might be found.

B. Overutilization for commercial, recreational, scientific, or educational purposes. We do not know of any commercial or recreational uses for Parish's alkali grass. Although we identified scientific collecting as a potential threat in the proposed rule, the newly discovered populations reduce this concern. In addition, this annual grass is abundant in favorable years within its limited habitat and should be unharmed by limited collecting for taxonomic or ecological research. We do not know of any trade of Parish's alkali grass and do not expect any to develop.

C. Disease or predation. Cattle generally do not graze Parish's alkali grass due to its small size. Jackrabbits (*Lepus californicus*) have been documented grazing the San Bernardino County, California, site during midsummer with unknown effects (T. Thomas, pers. comm. 1993). No significant disease has been observed in this species.

D. The inadequacy of existing regulatory mechanisms. Parish's alkali grass is included as a Highly Safeguarded species on the list of plants protected under the Arizona Native Plant Law ARS3-901, administered by the Arizona Department of Agriculture.

A Highly Safeguarded species is one “* * * whose prospects for survival in this State are in jeopardy * * *” The protections afforded a Highly Safeguarded species include restrictions on collecting and a requirement for salvage permits.

The Navajo Fish and Wildlife Department has developed the Navajo Nation Endangered Species List for Tribal lands under Title 17 Section 507(a) of the Navajo Tribal Code and Navajo Nation Council Resources Committee Resolution RCF-014-91. Parish's alkali grass is identified as a Group 2 species on this list, meaning that it is considered in danger of being eliminated from all or a significant portion of its range on the Navajo Nation. This designation became effective February 14, 1994 (L. Benallie, Navajo Fish and Wildlife Department, *in litt.* 1993).

Although the State of California does not list Parish's alkali grass as endangered, it is on List IB of the Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (California Native Plant Society 1992). List IB plants are considered “* * * rare, threatened, or endangered in California and elsewhere.” Under the guidelines of the California Environmental Quality Act, the State considers List IB species equivalent to State-listed species for the purposes of disclosing project impacts to sensitive resources in environmental assessments. However, such disclosures do not necessarily protect List IB species from project impacts.

Parish's alkali grass is listed as endangered under the New Mexico Endangered Plant Species Act (9-10-10 NMSA) and attendant regulation (19 NMAC 21.2). Species so listed are protected from unauthorized collection or take in New Mexico (Sivinski and Lightfoot 1995).

Parish's alkali grass was first discovered in Colorado in the summer of 1998. It is not yet protected under any Colorado endangered species laws.

The above designations provide conservation measures for Parish's alkali grass equivalent to many of the measures available through listing under the Act. State and Tribal listing provides recognition for the species that results in conservation actions by

Federal, State, and local agencies, private groups, and individuals. Section 7(a) of the Act, which requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, will not apply without Federal listing. However, it is the policy of most Federal agencies to protect State- and Tribal-listed species to a similar degree as federally listed species.

E. *Other natural or manmade factors affecting its continued existence.* The discovery of Parish's alkali grass at 20 more sites than reported in the proposed rule, and the fact that many new sites are at locations several hundred kilometers from the sites previously known reduces the concern for extinction through random environmental events such as drought.

Finding and Withdrawal

Data collected since Parish's alkali grass was proposed for listing indicate the species is more abundant and has a greater geographic range than previously supposed. Parish's alkali grass was formerly thought to occur only at springs, but some of the recently discovered sites show that suitable habitat exists where soils are subirrigated (irrigated below the surface) and wet only during the winter and spring months thus greatly expanding the amount of suitable habitat. Conditions at some recently discovered sites indicate the species may tolerate, or even benefit from, certain disturbances that were previously identified as threats.

Parish's alkali grass is designated as “endangered” under State and Tribal statutes in Arizona, New Mexico, and the Navajo Nation. In California, it is on List IB of the Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California. These designations provide recognition to the species and promote its conservation in many ways that are similar to listing under the Act.

Based on recent discoveries of additional sites and new information on suitable habitats and threats to the species, we have concluded that listing Parish's alkali grass as endangered or threatened under the Act is not warranted. Therefore, we withdraw our

March 28, 1994, proposed rule (59 FR 14378) to list Parish's alkali grass as endangered.

References Cited

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- Willis, J.C. and H.K.A. Shaw. 1973. A dictionary of the flowering plants and ferns, eighth edition. Cambridge University Press, Cambridge, England.

Author

The primary author of this notice is Charlie McDonald (See ADDRESSES section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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