

precise consequences of a regulatory option may not be known with certainty, in many cases the probability of their occurrence can be developed. By examining the uncertainty of several key variables used in the analysis (by way of evaluating the probability of their occurrence), analysts and decision makers can become better informed as to which variables most significantly affect the benefit and cost results and where additional information or data collection (to reduce uncertainty) would be most beneficial.

As such, a primary benefit of an uncertainty analysis is that it highlights which variables in the analysis are the most important, and where additional information for given variables would most contribute to the accuracy of results. In the present analysis, FMCSA developed uncertainty distributions for 20 key variables. Examples include (1) the percent of long-haul drivers with "intense" schedules (or those drivers in long-haul operations who are fully utilizing the daily and weekly driving limits on a consistent basis), (2) the percentage of hours worked by commercial drivers in excess of allowed hours, and (3) the percent of all truck-related crashes where commercial driver fatigue was determined to be a factor. A complete list of the variables examined is included in the Addendum filed in the docket. It should be noted here that the original RIA examined the economic impacts of the 2003 final rule from two sets of baseline assumptions: the first, termed the "Current Rules/100%" option, assumed full compliance by commercial drivers with the pre-2003 HOS rules when estimating the economic impacts of the regulatory change, while the second, termed the "Status Quo" option, assumed less than full compliance with the pre-2003 rules prior to estimating economic impacts. However, the uncertainty analysis conducted here was limited only to the "Status Quo" (or less than full compliance) baseline assumption, since only under this set of assumptions did the annual costs of the rulemaking rise above the dollar threshold (*i.e.*, greater than \$1 billion in annual costs) outlined in OMB Circular A-4 that requires such an analysis. As such, when reporting on the range of possible cost, benefit, and net cost outcomes of this uncertainty analysis, all results are measured relative to the point estimates derived from the original RIA under the "Status Quo" baseline assumption.

Regarding total costs of the NPRM, the uncertainty analysis revealed that there was an 80 percent chance that total annual costs of this rulemaking would fall between \$1 and \$1.5 billion. Under

the "Status Quo" baseline, the original RIA derived a point estimate of total annual costs equal to \$1.3 billion. As such, the distribution of cost results derived from the uncertainty analysis closely tracked the point estimate of costs derived under the original RIA. Regarding total annual benefits of the NPRM, the uncertainty analysis revealed that there is about an 80 percent chance that annual benefits would fall between \$0.5 and \$0.8 billion. Under the "Status Quo" baseline, the original RIA had derived a point estimate of total annual benefits equal to \$0.7 billion. Regarding net costs, the uncertainty analysis indicated about an 80 percent chance that net costs of the NPRM would fall between \$0.3 and \$0.8 billion, and about a five percent chance that net benefits would accrue from implementation of the proposed rule. Under the "Status Quo" baseline, the original RIA had derived a point estimate of total net annual costs equal to \$0.6 billion.

Cost Effectiveness Analysis

The cost effectiveness of a regulatory action is typically measured as a ratio of the change in costs occasioned by the action compared to its positive results (*i.e.*, lives saved). A primary value of cost-effectiveness analysis is its ability to identify regulatory options that achieve the most effective use of the resources available without requiring monetization of all of the relevant benefits or costs. Regarding the results of the cost effectiveness analysis, the implementation of the NPRM was estimated to result in a total annual cost of \$10.8 million for each fatality prevented, and \$0.4 million for each injury prevented. It must be noted here that the CEA results presented here will tend to exaggerate the costs of preventing injuries and fatalities, because implementation of the NPRM would not just prevent injuries and fatalities, but would also prevent truck-related crashes limited to property-damage only. Additionally, the rule is expected to result in time savings as a result of the prevention of truck-related crashes. Full details regarding the results of these analyses may be found in Docket FMCSA-2004-19608.

Issued on: February 1, 2005.

Annette M. Sandberg,
Administrator.

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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 on a Petition To List *Ptilagrostis porteri* (Porter feathergrass) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list *Ptilagrostis porteri* (Porter feathergrass) as threatened or endangered under the Endangered Species Act of 1973, as amended (the Act). We find that the petition and additional information in Service files do not present substantial scientific or commercial information indicating that listing this species may be warranted. We will not be initiating a further status review in response to this petition. The public may submit to us any new information that becomes available concerning the status of or threats to the species.

DATES: The finding announced in this document was made on January 28, 2005. New information concerning this species may be submitted for our consideration at any time.

ADDRESSES: Data, information, comments, or questions concerning this petition finding should be submitted to the Western Colorado Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506. The petition finding and supporting information are available for public inspection, by appointment, during normal business hours at the above address. The petition and finding are available on our Web site at <http://r6.fws.gov/plants/feathergrass>.

FOR FURTHER INFORMATION CONTACT: Allan R. Pfister, Supervisor, Western Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (telephone (970) 243-2778; facsimile (970) 245-6933).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we 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 us at the time the finding is made. To the maximum extent practicable, we make this finding within 90 days of the date the petition was received, and notice of the finding must be published promptly in the **Federal Register**.

We received a petition, dated March 5, 2002, to list the plant *Ptilagrostis porteri* (Porter feathergrass) as threatened or endangered within its historic range. The petition was submitted by Jacob Smith, Executive Director of the Center for Native Ecosystems, and by the Colorado Native Plant Society, Joshua Pollock, Southern Rockies Ecosystem Project, and the American Lands Alliance. We received the petition on March 7, 2002. Action on this petition was precluded due to other priority actions and because funding in Fiscal Years 2002 and 2003 was not sufficient to process a preliminary finding. The petitioners filed a 60-day notice of intent to sue on June 26, 2002, alleging that the Service violated the Act by failing to prepare a 90-day petition finding. A lawsuit was filed in the Federal District Court for the District of Arizona on September 17, 2003. An agreement was reached on May 24, 2004, specifying that the Service would submit for publication in the **Federal Register** on or before January 31, 2005, a determination whether the petition presents substantial information indicating that listing may be warranted.

Species Information

Ptilagrostis porteri is a small, perennial bunchgrass with a tuft of fine, narrow basal leaves 2–12 centimeters (cm) (0.8–4.7 inches (in)) long. Stems are 20–35 cm (7.9–13.8 in) tall with single-flowered spikelets in a terminal panicle about 5–10 cm (2–4 in) long. Panicle branches can be closed or open. Awns are 1.5–2 cm (0.6–0.8 in) long, feathery, and bent below the middle.

Ptilagrostis porteri has very specific soil hydration requirements. It grows on the shoulders and sides of elevated hummocks that have formed in peat fens. The hummocks are elevated above the water table, providing a moist but not saturated peat substrate. Most of the species' habitat is classified as rich or extreme-rich calcareous fen. The pH of these fens is high (7.4–8.6) compared to other montane fens, and the peat accumulates at a much slower rate, about 11 cm (4 in) per thousand years (Sanderson and March 1996). Fens are

considered a category 1, irreplaceable resource in the Service's Region 6 (Hartmann 1999).

The fens where *P. porteri* grows are found at elevations from 2,800 to 3,400 meters (m) (9,200 to 11,200 feet (ft)) in the north end of South Park and surrounding Tarryall, Mosquito, and Kenosha mountain ranges in Park County, Colorado, about 130 kilometers (km) (80 miles (mi)) southwest of Denver. One small population occurs in neighboring Summit County, and one small outlier population occurs about 56 km (35 mi) to the southeast in El Paso County. Extreme-rich fens with a similar flora are found elsewhere in the United States in only a few locations in Wyoming and California.

Ptilagrostis porteri is the only *Ptilagrostis* species in North America. The Colorado Natural Heritage Program (CNHP) ranks *P. porteri* as imperiled globally (G2) and in the State of Colorado (S2). It was a Federal category 2 candidate species until 1996 when the candidate categories were discontinued (61 FR 64481). It is designated as a sensitive species on the U.S. Forest Service (USFS) Region 2 list for Colorado.

Twenty-two populations of *Ptilagrostis porteri* are recorded with data in the CNHP data system; three additional records have no available information and two historical records have not been relocated. The CNHP has determined that there are 284 hectares (ha) (702 acres (ac)) of occupied habitat, based on field survey maps of the populations recorded in their geographic information system (CNHP 2004). Other estimates from field observations compiled by Johnston (2004) indicate that the total occupied habitat could be 650 ha (1,600 ac). For this finding, we use the acreage determined by CNHP. Available plant inventory records are too inconsistent to provide reliable estimates of population sizes or trends (CNHP 2004, Johnston 2004, and Sanderson 2000).

Fourteen of the 22 known populations are on USFS land, primarily in Pike National Forest. They contain more than 50 percent of the plants on 183 ha (451 ac) of habitat. The remaining 8 populations are in private or mixed ownership, and contain less than 50 percent of the plants on 104 ha (258 ac) of the known habitat (CNHP 2004).

Each *P. porteri* population is ranked by CNHP for quality and viability. Six populations are ranked A (relatively large, intact, defensible and viable). Five A-ranked populations occur on USFS land, covering about 137 ha (338 ac) of occupied habitat; the remaining A-ranked population occupies an

estimated 7 ha (18 ac) of private land. Seven populations are ranked B (small but in good condition, or large but disturbed and/or not viable or defensible). Five B-ranked populations occur on 44 ha (108 ac) of USFS land, and one B-ranked population occurs on 54 ha (134 ac) of private land. Eight populations are ranked C (small, in poor condition, possibly not viable). Three C-ranked populations occur on 2 ha (5 ac) of USFS land, three C-ranked populations occur on 36 ha (89 ac) of USFS and private lands, and two C-ranked populations occur on 6 ha (15 ac) of mostly private lands. One population is ranked D (degraded or not viable); it occurs on 0.8 ha (2 ac) of private land (CNHP 2004).

The 13 A- and B-ranked populations occur in 2 separate watersheds (CNHP 2004). Eight populations are in the South Platte Headwaters watershed. They occur along two headwater tributaries flowing down from the rim of South Park on the west and north sides to the South Platte River, one via the Middle Fork of the South Platte and the other one via Tarryall Creek. Five populations are in the Upper South Platte watershed. Within this watershed, the populations are located in two separate drainages. One drainage runs east into the North Fork of the South Platte; the other exits through underground aquifers (von Ahlefeldt 1989). This distribution across two watersheds and four headwater sources reduces the potential impact to the total population that may result from one water project.

Conservation Status

Pursuant to section 4(a) of the ESA, we may list a species of a plant taxon on the basis of any one of the following factors—(A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other manmade or natural factors affecting its continued existence. The petitioners cite threats under factors A, D, and E. The petitioners did not mention any threats due to overutilization (factor B). This grass is not easily harvested for hay, nor is it currently of commercial or horticultural interest. Therefore, overutilization is not considered to be a threat to this species. The petitioners likewise did not cite any threats due to disease or predation (factor C). Predation from grazing is not considered to be a threat to the species because it is not known to be palatable to

livestock, and no diseases or pests are known to have any effect on the species (Johnston 2004; von Ahlefeldt 1989; CNHP 2004). Therefore, disease and predation are not considered to be threats to this species.

In regard to factor A (The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range), the petition states that *Ptilagrostis porteri* habitat is threatened by: (1) Water diversions and other hydrological alterations; (2) peat mining and other mining; (3) residential development; (4) livestock grazing; (5) motorized vehicle use; (6) hiking and other non-motorized recreation; and (7) beaver activity.

Potential impacts to the moisture regime for *Ptilagrostis porteri* arise from water projects that would draw down the ground water level and projects that would divert surface water from wetlands and irrigated agricultural lands. The water is purchased by municipalities in the Denver Metropolitan area. The South Park Conjunctive Use Project proposal, cited by the petitioners and active at the time of the petition, would have drawn water from creeks upstream of *P. porteri* populations and from the water table under the wetlands in South Park to supply the city of Aurora in the Denver Metro area with 2,500 hectare-meters (ha-m) (20,000 acre-feet (ac-ft)) of water per year. Water was to be delivered as stream flow in a main tributary creek to the South Platte River (U.S. Geological Survey 2002). The project would have impacted two of the four major drainages where high-quality *P. porteri* populations are found, and may, therefore, have constituted a threat to the species. Lowering the water table in the fen habitat would create conditions too dry for *P. porteri*, whereas construction of recharge reservoirs could over-water the microhabitat for *P. porteri* and could destroy the fen vegetation community. Petitioners state that the project threatened to severely impact 50 to 75 percent of the total habitat occupied by *P. porteri*, based on an assessment by Sanderson (2000).

The South Park Conjunctive Use Project proposal was rejected in District Court for Water Division No. 1 in 1998 in favor of the plaintiff, the Park County Water Preservation Coalition, based on augmentation modeling that showed that available water was insufficient. The Colorado Supreme Court rejected an appeal after the date this listing petition was submitted (Colorado Bar Association 2002). No other major water draw-down projects are currently being proposed in Park County (G. Nichols 2004, Eiseman 2004).

The City of Aurora recently purchased 900 ha-m (7,000 ac-ft) of water per year from an existing City of Thornton project that has been diverting water from 11 South Park ranches for about 20 years (McHugh 2004). There are no available data to indicate whether *Ptilagrostis porteri* habitat has been impacted by this ongoing diversion. The City of Centennial in the metropolitan Denver area has purchased surface water from another ranch that has a 35-ha (86-ac) C-ranked population of *P. porteri*. Two other populations described by the petitioners have been ditched and partially drained in the past. Both of these populations are ranked C because they are small, but the remaining habitat still has a water level sufficient to support the species (CNHP 2004). The town of Fairplay is no longer depending on Beaver Creek water that flows through two *P. porteri* populations; they are now using well water (G. Nichols 2004).

Conservation easement agreements including water rights have recently been completed for three private ranches as part of the South Park Basin Legacy Project. Completed easements now protect a 7-ha (18-ac) A-ranked population and a 0.8-ha (2-ac) D-ranked population (CNHP 2004).

Based on the foregoing, we have concluded that neither the petition nor our files contain substantial information indicating that listing this species may be warranted based on impacts from water diversions and other hydrological alterations.

Petitioners state that there is a moratorium on peat mining in Park County and that the threat is primarily the possibility that the moratorium could be rescinded. Park County regulations allow peat mining to continue if it was permitted before the new policy was adopted, but the County has no record of current activity, nor is there any expectation that new operations will be allowed (Eiseman 2004). Sanderson and March (1996) reported that nearly 20 percent of the total extreme rich fen area in South Park has been permanently lost due to past mining of peat. At least four populations of *Ptilagrostis porteri* have been partially destroyed by peat mining in the past. The remaining portions of these fens survive in good condition because they have subsurface water sources (CNHP 2004). The hypothetical possibility of repeal of protective regulations is not substantial information. Therefore, we conclude that there is not substantial information to indicate that listing the species may be warranted as a consequence of impacts from peat mining.

Placer mining has occurred in the past, and continues at one *Ptilagrostis porteri* location under a USFS permit issued in 1993. The permit covers small-scale recreational mining, comprising about 30 dredging days per year and other activities by about 20 people on weekends and 4 people on weekdays between May and October. A draft Biological Evaluation by the USFS in 2000 (Howard 2000) found no effect to sensitive plant species, although *P. porteri* is known to occur within the project area. The petition and our files do not contain substantial information indicating that placer mining might be a threat to the species.

Petitioners state that residential development alters local hydrology and removes wetland habitat by infilling and, therefore, is a threat to *Ptilagrostis porteri*. Based on private land ownership (CNHP 2004), about 7 of the 22 populations may be vulnerable to this threat; 2 of the 7 have recently been placed in conservation easements. These populations are located in the South Platte Headwaters watershed in 2 of the 4 main drainage systems that support the species. More new residential development has occurred in South Park in the last 5 years than in the 20 years from 1980 to 2000 (G. Nichols 2004). There are 4 centers of new residential development in South Park along Sacramento Creek and the Middle Fork of the South Platte, at Warm Springs Ranch and in the Silver Hills area, all of which are close to populations of *P. porteri*. No substantial information is provided in the petition or available in our files on actual impacts of the existing developments on nearby wetlands. Although there are potential cumulative effects on hydrology and physical structure of the fens, we conclude that there is no substantial information in the petition or our files indicating that these might warrant a listing proposal.

Petitioners state that excessive livestock grazing can cause trampling damage to the fen habitat of *Ptilagrostis porteri*. Grazing pressures have fluctuated historically. Records kept by the USFS for allotments where the largest *P. porteri* populations now occur show that cattle grazing was intense during the 1920s and 1930s. Since 1968, major changes in management have been implemented on the National Forest. Photographs taken in 1939 and 1989 show a dramatic increase in vegetation cover on the fens (von Ahlefeldt 1989), and von Ahlefeldt considered moderate grazing to have a minor impact on *P. porteri* because cattle find it unpalatable and they usually walk between the hummocks

without trampling the plants. Field observations of grazing impacts on *P. porteri* populations over the past 35 years indicate a significant change in grazing management and consequent improvement in the visible condition of vegetation on the fens (CNHP 2004, Johnston 2004). We conclude that neither the petition nor information in our files provides substantial information that grazing is, or is likely to be in the foreseeable future, a threat to the species.

Petitioners state that evidence of off-road vehicle use, including snowmobiles, has been observed at five of the *Ptilagrostis porteri* populations. Similar observations have been recorded by CNHP (2004). There is no available additional documentation of the effects of such impacts on this species or its habitat. Thus we conclude that there is no substantial information to indicate that off-road vehicle use presents a threat to the species.

Petitioners state that trail widening and erosion damage nearby peat bogs. Only minor impacts of this type have been recorded by field surveyors (CNHP 2004). Neither the petition nor our files provides additional information to support the petition's contention that this is a threat to the species. In addition, petitioners cite beaver activity as a potential threat, but state that it is not currently threatening any known populations of *Ptilagrostis porteri*. We have no information to contradict petitioner's statement that beaver activity is not currently threatening any known populations.

In regard to factor D (The Inadequacy of Existing Regulatory Mechanisms), petitioners state that existing regulatory mechanisms are inadequate to ensure protection and recovery for *Ptilagrostis porteri*. The USFS currently manages *P. porteri* as a sensitive species and the habitat is managed as wetlands, in accordance with the USFS Region 2 Policy on protection of fens (Hilliard 2002) and the Watershed Conservation Practices Handbook for Region 2 (2001). The USFS manages about 65 percent of the *P. porteri* habitat. The largest known population, A-ranked by CNHP, is in a Federal Wilderness Area on the Pike National Forest. The management practices under these regulations are discussed under Listing Factor A. Just as we determined that there is not substantial information in the petition or our files that the effects of these

regulations may warrant listing, there is also no substantial information that the regulations themselves are inadequate and might warrant a listing.

Petitioners cite the lack of regulations to prevent impacts caused by water diversions as a threat. However, as discussed above, existing law and regulatory mechanisms have resulted in termination of the project cited by petitioners as the greatest threat to the species. The petition does not present, nor do we have, substantial information on other specific threats related to water diversions. Hypothetical possibilities do not constitute substantial scientific information indicating a listing may be warranted. Thus we conclude that the petition has not presented substantial information to indicate that lack of adequate regulatory mechanisms is a threat to the species.

In regard to factor E (Other Natural or Manmade Factors Affecting the Continued Existence of *Ptilagrostis porteri*), the petitioners consider the species to be vulnerable due to the small size of most of its populations. They report that only 9 populations have more than 300 plants, 9 have 100 or fewer plants, and 5 populations have 20 or fewer plants. The CNHP (2004) reports 9 recorded populations smaller than 2 ha (5 ac); 1 is ranked A, 1 is ranked B, 6 are ranked C, and 1 is ranked D (the C and D populations are so ranked primarily because they are small). The size of these small populations refers to the extent of occupied habitat within fens that are more extensive. Therefore, size of the population may not be related to size or condition of the habitat or age or susceptibility to drying out. Size also may not indicate ability to reproduce, because the plants can self-fertilize. Thus available information is not substantial enough to indicate that small numbers of plants or acreage *by itself* pose a threat to this species.

Finding

We have reviewed the petition and its supporting documentation, as well as information in our files and other readily available information. On the basis of this review, we find that the petition does not present substantial information indicating that listing of *Ptilagrostis porteri* may be warranted, nor do we have such information. The petition is based primarily on the threat of habitat destruction by major water draw-down and diversion projects. The

major water draw-down project that was imminent at the time of petition submission (2002) is no longer proposed. No water projects are currently planned on Federal land within the species' range. Likewise, substantial information is not available to indicate that the other potential impacts cited by the petitioners rise to a level that threatens the species.

In making this finding we rely on information provided by the petitioners and that readily available to us, and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize information included in the petition and information that was available to us at the time of the petition review. Our review for the purposes of a so-called "90-day" finding under section 4(b)(3)(A) of the ESA and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition constitutes "substantial scientific or commercial information" indicating that listing may be warranted. Available information indicates that the primary threat cited in the petition has been eliminated, and the information relating to it is accordingly no longer applicable. We found that the petition did not provide substantial information on the other threats cited, many of which by the petition's own wording are potential or hypothetical threats rather than existing ones.

References

A complete list of all references cited in this finding is available upon request from the Grand Junction Ecological Services Field Office (*see ADDRESSES* section).

Author

The primary author of this document is Ellen Mayo, Grand Junction Ecological Services Field Office, U.S. Fish and Wildlife Service (*see ADDRESSES* section).

Authority

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

Dated: January 28, 2005.

Marshall P. Jones,

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

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