



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR COMBAT COMMAND
LANGLEY AIR FORCE BASE, VIRGINIA

1 August 2003

Correspondence Control Unit
Attention: Information Quality Complaint Processing
U.S. Fish and Wildlife Service
1849 C Street, NW, Mail Stop 3238-MIB
Washington, DC 20240

Dear Sir/Madam:

On 25 Jul 03, Mr. Thomas O. Melius wrote to Dr. Terry L. Bashore of the Air Combat Command (ACC) Airspace and Range Division (Atch 1), asking ACC to consider the upcoming open review process concerning *Lepidium papilliferum* (Slick Spot Peppergrass) as a sufficient response to Dr. Bashore's request for correction to USFWS's initial proposal to list. Mr. Melius offered ACC the opportunity to appeal this decision if we believed this process might not provide a sufficient response to the issues Dr. Bashore addressed in his request for correction.

In light of this, we are appealing USFWS's assertion that the upcoming open review is the appropriate response to Air Force's Information Quality Act (IQA) requests of 18 and 31 March 2003 (Atch 2 and 3). This appeal is based on the IQA challenge of the science underlying the Notice to List *L. papilliferum* (67 FR 46441- 46450, July 15, 2002). Since the Notice to List has not been corrected or withdrawn, it remains the basis for the final determination. Reopening comments for 30 days (68 CFR 42666-42668, July 18, 2003) is certainly a step in the right direction, but until the Notice to List is corrected, we stand by our initial challenge. We are also prepared to discuss alternatives for responses to our request which permit us the opportunity to make meaningful comments for your consideration prior to a final listing decision.

Corrective Action:

We do understand USFWS's need to gather more scientific information to make an appropriate decision to not list or list *L. papilliferum*. Therefore, we agree to wait until USFWS has sufficient information to respond to our IQA request, provided:

We are given sufficient opportunity to reply to the response; and
We receive the response at least 30 days before the *L. papilliferum* final decision.

The U.S. Air Force is an "Affected Organization." Mt. Home Air Force Base's Juniper Butte Training Range, in Owyhee County Idaho, contained over 11,000 *L. papilliferum* plants distributed across the training range and will be directly impacted if *L. papilliferum* is listed.

The Requester's point of contact information is:

Terry L. Bashore, Ph.D
Chief Ecologist and Range Liaison
Ranges, Airfields, and Airspace Operational Requirements Division
HQ ACC/DORP
205 Dodd Blvd. Suite 101
Langley AFB, VA 23665-2789
DSN 574-3967 or (757) 764-3967
FAX: DSN 574-6009 or (757) 764-6009
<mailto:Terry.Bashore@langley.af.mil>

Thank you for giving us the opportunity to provide our input on this important matter. For technical issues, peer reviews, scientific analysis, etc., our POC is Dr. Terry Bashore (contact information above). For all other matters concerning Slick Spot Peppergrass (meetings, requests for review, questions concerning Air Force policy, etc.), please contact me or Mr. Bob Barrett, who leads ACC's Environmental Programs Division. Our contact information is listed below.



THOMAS P. BROWN, Lt Col, USAF
Deputy Chief, Environmental Division
HQ Air Combat Command
129 Andrews Blvd
Langley AFB, VA 23665
(757) 764-9300
tom.brown@langley.af.mil
robert.barrett@langley.af.mil

3 Attachments

1. USFWS Memo, 25 Jul 03 to Dr. Bashore
2. Dr. Bashore's Memo, 18 Mar 03 to USFWS
3. Dr. Bashore's Memo, 31 Mar 03 to USFWS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



JUL 18 2003

In Reply Refer To:
FWS/AEA/12094

Terry L. Bashore, Ph.D.
Chief Ecologist and Range Liaison
Ranges, Airfields, and Airspace Operational Requirements Division
HQ ACC/DORP
205 Dodd Blvd., Suite 101
Langley AFB, Virginia 23665-2789

Dear Dr. Bashore:

On March 31, 2003, you submitted to the U.S. Fish and Wildlife Service (Service), pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), also known as the Information Quality Act (IQA), a request for Correction of Information concerning the Service's proposed rule to list *Lepidium papilliferum* (slickspot peppergrass) as an endangered species. As you know, we have extended our response date concerning your IQA request to July 31, 2003.

On July 18, 2003, the Service announced a 6-month extension of the deadline for a final determination of whether to list slickspot peppergrass under the Endangered Species Act (ESA) and reopened the comment period on the proposed rule to list the species. We took this action because there is substantial disagreement regarding the sufficiency and interpretation of the available data relevant to the proposed listing rule, making it necessary for us to solicit additional information by reopening the public comment period. The date for submitting our final determination on the proposed listing to the Federal Register has been extended to January 15, 2004. Over the next six months, we intend to implement an open process for reviewing the information available and the issues raised in the prior comment period regarding this proposed listing action, including, but not limited to the comments you have provided.

Although our delay in the listing action was not predicated by your IQA request, delaying the listing action, and implementing an open review process does, in fact, respond to your request for correction. Specifically, this process will be the venue in which we insure that the final listing determination for slickspot peppergrass addresses your comments regarding quality, utility, and objectivity standards, as outlined in the U.S. Fish and Wildlife Service's Information Quality Guidelines. We, therefore, feel that this process addresses your request.

If you are interested in seeking a reconsideration of this response, you may submit an appeal to the Service within 15 business days from the date of this letter and should contain the following:

Atch 1

Dr. Terry L. Bashore

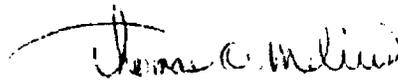
2

- Indication that the person is seeking an appeal of an FWS decision on a previously submitted request for a correction of information, including the date of the original submission and the date of FWS decision.
- Indication of how the individual or organization is an "affected person" under the provisions of the Service's guidelines;
- Name and contact information. Organizations submitting an appeal should identify an individual as a contact;
- Explanation of the disagreement with the FWS decision and, if possible, a recommendation of corrective action; and
- A copy of the original request for the correction of information.

Please submit your appeal to:

Correspondence Control Unit
Attention: Information Quality Complaint Processing
U.S. Fish and Wildlife Service
1849 C Street, NW, Mail Stop 3238-MIB
Washington, D.C. 20240

Sincerely,



Thomas O. Melius
Assistant Director - External Affairs

cc: Dave Allen (R1)

DCU 011882

Correspondence Control Unit
Attention: Information Quality Complaint Processing
U.S. Fish and Wildlife Service
1849 C Street, NW, Mail Stop 3238-MIB
Washington, DC 20240

18 March 2003

Dear Sir/Madam:

The U.S. Fish and Wildlife Service published a notice to list slick spot peppergrass (*Lepidium papilliferum*) as endangered (67 FR 46441- 46450, July 15, 2002). In accordance with Section 515(a) of the Treasury and General Government Appropriations Act of 2001 (P.L. 106-554), Office of Management and Budget (OMB) published guidelines (67 FR 8452, February 22, 2002), and the U.S. Fish and Wildlife Service's Information Quality Guidelines (2002) we are requesting the factual documentation used in the approval process, specifically information quality standards used in producing the listing information that substantiates the quality, utility, objectivity, and integrity of the listing information in a manner that conforms to OMB and your Departmental guidelines.

Additionally, except for those cases where data and analytic results have been subjected to formal, independent, external peer review, we request conformation and documentation that peer reviewers of the scientific information were: (a) selected primarily on the basis of necessary technical expertise, (b) have disclosed to agencies prior technical/policy positions they may have taken on the issues at hand, (c) have disclosed to agencies their sources of personal and institutional funding (private or public sector); and (d) and the procedures used in conducting the peer reviews in an open and rigorous manner as recommended by OMB's Office of Information and Regulatory Affairs (OIRA) to the President's Management Council (9/20/01) http://www.whitehouse.gov/omb/inforeg/oira_review-process.html).

The U.S. Air Force is an "Affected Organization." Mt. Home Air Force Base's Juniper Butte Training Range, in Owyhee County Idaho, will be directly impacted if slick spot peppergrass is listed. Providing this important information is vital. It will permit our reviewers the opportunity to fully appreciate your efforts in complying with federal government mandates and insure adequate, scientific, peer review, the only truly essential aspect of this process.

\\ Signed //

Terry L. Bashore, Ph.D
Chief Ecologist and Range Liaison
HQ ACC/DORP
205 Dodd Blvd., Suite 101
Langley AFB, VA 23665-2789
(757) 764-3967
Terry.Bashore@langley.af.mil

31 March 2003

Correspondence Control Unit
Attention: Information Quality Complaint Processing
U.S. Fish and Wildlife Service
1849 C Street, NW, Mail Stop 3238-MIB
Washington, DC 20240

Dear Sir/Madam:

This request for Correction of Information is submitted under Section 515(a) of the Treasury and General Government Appropriations Act of 2001 (P.L. 106-554), Office of Management and Budget (OMB) published guidelines (67 FR 8452, February 22, 2002), and the Department of Interior/U.S. Fish and Wildlife Service's Information Quality Guidelines (2002).

The Requester's point of contact information is:

Terry L. Bashore, Ph.D
Chief Ecologist and Range Liaison
Ranges, Airfields, and Airspace Operational Requirements Division
HQ ACC/DORP
205 Dodd Blvd. Suite 101
Langley AFB, VA 23665-2789
DSN 574-3967 or (757) 764-3967
FAX: DSN 574-6009 or (757) 764-6009
<mailto:Terry.Bashore@langley.af.mil>

Description of Information to Correct: The U.S. Fish and Wildlife Service's published notice to list slick spot peppergrass (*Lepidium papilliferum*) as endangered (67 FR 46441- 46450, July 15, 2002).

Explanation of Noncompliance: The following scientists have reviewed the listing document and made extensive comments regarding the lack of adequate reliable science: **Terry L. Bashore, Ph.D**, Chief Ecological Scientist, HQ ACC/DORI, Langley AFB, VA. USFWS considers him an independent expert reviewer for the listing of *L. papilliferum* (Attachment 8). Dr Bashore's comments are those numbers 1 through 42. **David R. Huff, Ph.D**, Associate Professor of Plant Genetics, Department of Crop and Soil Sciences, Pennsylvania State University, University Park, PA, 16802 (Attachment 7). **Charles R. Lee, Ph.D**, CPSS, Research Soil Chemist, U.S. Army Corps of Engineers, Waterways Experimental Station, Vicksburg, MS (Attachment 3). **Robert Lichvar, Ph.D**, Botanist, U.S. Army Corps of Engineers, Cold Regions Research and Engineering Laboratory, Hanover NH 03755-1290 (Attachment 1). **Steven D. Warren, Ph.D**, Center for Environmental Management of Military Lands, Colorado State University, Fort Collins, CO 80523-1490 (Attachment 9). **Antonio J. Palazzo, M.S.**, Research Agronomist, U.S. Army Corps of Engineers Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory, Hanover NH 03755-1290 (Attachment 10).

A brief summary of Expert comments is presented below. It is important to note that a commenter's silence on listing statements does not imply agreement; rather the commenter elected not to address that issue. Full text of the Experts comments may be read in the attachments:

Atch 3

1. Lack of scientific evidence to support or reject any of these claims (Bashore, Huff, Lee, Palazzo, and Warren)
2. HII needs scientific peer review of this new approach before it can be used for listing endangered species (Lee, Warren, and Bashore)
3. Whether this taxon is best treated at the species level or submerged under *L. montanum* at this time is not possible to determine without further rigorous investigation. (Lichvar, Lee, Huff, and Warren)
4. Inaccurate, confusing, and misleading presentation of listing arguments (Huff, Warren, and Bashore)
5. Lack of sufficient population surveys to support or reject arguments of population decline (Bashore, Lee, Huff, and Warren)
6. Lack of scientific data to warrant listing of the species (Bashore, Huff, and Warren)

The enclosed comments and attachments clearly show that the listing document does not meet the Quality, Utility, Objectivity guidelines. The listing document is not accurate or reliable because there are mere conclusions. Furthermore, there appears to some level of bias since there is no level of peer review. Most of the data was not developed using sound statistical and research methods, nor is it reproducible.

Effects of the alleged Error: It is clear from the listing document that data and information is being used to bias a decision towards listing slick spot peppergrass as endangered when there is no scientific evidence to support that determination.

Recommendation and Justification: Rewrite the notice to list slick spot peppergrass (*Lepidium papilliferum*) to reflect enclosed comments (Air Force comments and attachments). Abide by U.S. Fish and Wildlife Service's Information Quality Guidelines in order to meet the Quality, Utility, and Objectivity standards. Justification: high-level peer review.

Scientists have personal views on issues and to lesser extents the methods used to substantiate assertions; however, in this instance the science provided does not warrant listing. This is the thrust of our arguments. Perhaps at some later time, after more rigorous review, the listing consideration may be definitively answered. Clearly at this time a conclusion that listing is warranted cannot be supported by evidence that has been subjected to any credible peer evaluation or even simple solid science.

\\ Sign //
Terry L. Bashore, Ph.D
Chief Ecologist and Range Liaison