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Submitted via: http://www.fs.usda.gov/goto/gmug/forestplan_objections

Re: Objection to the Regional Forester's Species of Conservation Concern List for the Grand Mesa, Uncompahgre, and Gunnison National Forests

I. Introduction/Interest of Party

Intermountain Forest Association (hereinafter "IFA") hereby submit this objection letter (hereinafter "Objection") pursuant to the United States Department of Agriculture/ United States Forest Service's (hereinafter "USFS") objection procedures under 36 CFR [sect]219 Subpart B of the Pre-Decisional Administrative Review Process, also known as the "objection process." This objection challenges the concerns related the Regional Forester's Species of Conservation List for the Grand Mesa, Uncompahgre, and Gunnison National Forests (hereinafter,

"GMUG") 88 Fed. Reg. 60920 (Wednesday, September 6, 2023).

IFA is a member-based organization that advocates for healthy forests and healthy communities, including actively promoting sound forest management that provides a stable and sustainable supply of timber from public and private forestlands. IFA's members engage in many aspects of forest management and are an important stakeholder partner to the USFS. IFA's members presently (and plan in the future) to engage in timber removal in some capacity from the GMUG.

IFA has been involved with the planning process for GMUG since 2017. We incorporate by reference as though fully set out herein our formal comments and their corresponding spreadsheets listed below:

1. Formal comments dated, January 23, 2018, in response to the Draft "Identifying and Assessing At-Risk Species Assessment" and Draft Proposed List of Species of Conservation Concern;
2. Supplemental formal comments, dated February 14, 2018, in response to the Draft "Identifying and Assessing At-Risk Species Assessment" and Draft Proposed List of Species of Conservation Concern.

IFA recognizes that USFS is required to analyze species for potential listing as a SCC under the 2012 Planning Rule. However, for many of the species we maintain that there is not enough data to support "presence." In addition, IFA contends that new information received by USFS and subsequently used to change the findings of the SCC List between draft and final allows us to object under [sect] 219.53 (Objections must be based on previously submitted substantive formal comments attributed to the objector "unless the objection concerns an issue that arose after the opportunities for formal comment"). We further assert that USFS has failed to provide the public with an opportunity to review and comment upon new information in violation of NEPA and the 2012 Planning Rule.

This objection is filed in accordance with 36 CFR [sect] 219 Subpart B et. seq. and contains inter alia:

1) A statement of the issues and/or parts of the forest plan amendment to which the objection applies;

2) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the forest plan amendment is inconsistent with law, regulation, or policy, an explanation should be included;

3) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment.

II. Summary of the Issues Objected To

a. USFS Has Failed to Provide the Opportunity to Comment on New Information or Data in Violation of 36 CFR [sect] 219.14(d)(1-2) and 40 CFR [sect] 1506.6(b)

b. USFS Has Failed to Document the Best Available Science in Violation of 36 CFR [sect] 219.3 i. The USFS Has Failed to Provide the Underlying Data for His Decisions

1. The USFS' "Occupation" Analysis Methodology is Flawed and Inconsistent with 36 CFR [sect] 219.9 (c)

III. Statement and Explanation of the Objections

a. USFS Has Failed to Provide the Opportunity to Comment on New Information or Data in Violation of 36 CFR [sect] 219.14(d)(1-2) and 40 CFR [sect] 1506.6(b)

IFA provided comments on the Regional Forester's Draft Proposed List of Species of Conservation Concern early in the planning process. In our comments dated January 23, 2018 and February 14, 2018, we provided spreadsheets with our specific comments related to each species under consideration at the time, reference to those comments below refer to the February 2018 spreadsheet (hereinafter, "Comments"). Based on our review of the 2018 species overviews we found that either there was not enough reliable data to support a "known to occur" determination and/or a finding of "substantial concern."

When the draft LRMP was published in August of 2021 (86 Fed. Reg. 44711, August 13, 2021), USFS had removed from the list many of the species we had previously found did not meet at least one of the criteria for inclusion on the SCC List, including:

* * Green spleenwort (Comments at 3)
* * Reindeer lichen (Id.)
* * Simple kobresia (Id.)
* * Adobe beardtongue (Comments at 6)

The above list of species was subsequently added back to the Final SCC List based on comments received by USFS or "subsequent data" found the species range was in fact restricted (substantial concern indicator). However, the assessments have not been updated to include this new information or data, and the public has not been given the opportunity to provide input on whether the new data or information rises to the level of "best available scientific information," required under the 2012 Planning Rule. USFS need to make the information received through comments available to the public for review prior to publishing the Final SCC List in the Federal Register.

Volume II Appendix 3 of the FEIS is the Species of Conservation Concern Analysis and Determinations. After review of this Appendix, 31 species were added between the draft and final based on comments received. Twenty-four of these species had been previously analyzed and for which there is a species overview in the record. However, five of the newly added species do not appear to have a species overview in the record. In addition to the species we previously commented on, five new species have been added to the list based on new analysis and/or comments received, and to which no assessment is available in the project folders:

* * Park milkvetch
* * Dicranum moss
* * Mielichhofer's copper moss
* * Rollin's twinpod
* * Tongue-leaved gland moss

To be clear, the public has never been given the opportunity to review the data USFS used to make the decision to list the above five species and is inconsistent with the "transparency in decision-making" aspect of the 2012 Planning Rule ("The planning rule emphasizes providing meaningful opportunities for public participation early and throughout the planning process, increase[ing] the transparency of decision- 1 making[hellip]"). Further under section 219.14(d)(1-2)of the 2012 Planning Rule: "The responsible official shall keep the following documents readily accessible to the public by posting them online and through other means: assessment reports[hellip]The planning record includes documents that support analytical conclusions made[hellip]" emphasis added. USFS needs to make the information it received from comments and "subsequent data" available to the public for review and provide opportunity to provide feedback on the information in order to comply with the 2012 Planning Rule.

Additionally, when a key piece of information comes late and is not subject to fair comment, this is fatal to the mandatory "meaningfulness" of this NEPA process. See 40 CFR. [sect] 1506.6(b) "Agencies shall[hellip]provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected" by proposed actions of the United States (emphasis added)." This is especially pertinent as it relates to the subsequent data and information received and relied upon in making SCC determinations on the 31 species added between the draft and final planning documents.

In the FEIS USFS indicates additional "best available scientific information" and "information" provided by the public in comments on the draft plan has been considered for the final SCC analysis, and that for species for which the GMUG's information has been updated since the 2018 species overviews were completed, the FEIS, Volume II, Appendix 3 is the most current for those species. For those species not originally considered in the 2018 assessments but are known to occur and have since been considered for potential inclusion as SCC, new overviews are also located in the project record (FEIS at 176).

However, no new overviews have been found in the project record. Further, while Appendix 3 may be the most updated information, supporting data is not provided. Appendix 3 only describes how analysis is done and various tables with findings, the actual data inputs/science are not available with respect to information or data received after 2018. While Volume, III, Appendix 2 does provide "data sources" such as Global Biodiversity Information Facility no meaningful analysis is given regarding how or what new information lead to these species being added.

1 See, Preamble to the 2012 Planning Rule. 77 Fed.Reg. 21162, April 9, 2012.

Remedy

Under 36 CFR [sect] 219.53 219.53 objections may be based on issues that arose after opportunities for formal comment. Because the public has not been given opportunity to review the information used to make SCC determinations for the 31 newly added species, IFA contends we have standing to raise this issue here. For the reasons cited herein IFA recommends USFS provide updated species overviews for each of the species on the Final SCC List, incorporating reference to all information and data used, including that provided through public

comments.

b. USFS Has Failed to Document the Best Available Science in Violation of 36 CFR [sect] 219.3

When comparing Appendix 3, Volume II to Appendix 2 of Volume III of the FEIS: Aleutian maidenhair, Sartwell's sedge, Dicranum moss, Mielichhofer's copper moss, and status based entirely off of public comment. However, we do not know the reliability of this information without it being made available in the project folders for SCC.

Additionally, new information regarding threats received in comments has changed the substantial concern analysis for the following species:

* * Livid sedge
* * Reindeer lichen
* * Mountain bladderfern
* * Roundleaf sundew
* * Slender cottongrass
* * Hamatocaulis moss
* * Minute rush
* * Liverwort
* * Northern twayblade
* * Simple cliff break
* * Adobe beardtongue
* * Feathermoss
* * Little bullrush
* * Tongue leaved gland moss

While the public has not been given opportunity to review the information provided in the comments discussed supra 4-5, USFS has the responsibility under 36 CFR [sect] 219.3 to document the best available science.

"The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in [sect][sect] 219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered."

Remedy

IFA recommends that the information received in comments that changed the status of a species in the SCC analysis be made public, that the USFS explain how that information rises to the level of best scientific information as required by the 2012 Planning Rule, that the public have the opportunity to comment on that information and changes through a formal comment period, and that the USFS make any warranted final changes following such comment period. Alternatively, the USFS may revert to the list of SCC in the draft plan.

i. USFS Has Failed to Provide the Underlying Data for His Decisions

1. USFS' "Occupation" Analysis Methodology is Flawed and Inconsistent with 36 CFR [sect] 219.9 (c)

Under the 2012 Planning Rule SCC are limited to species "known to occur in the plan area" (36 CFR [sect] 219.9 (c)). IFA appreciates the challenges when deciding whether to include species that have not been documented in recent records. However, as expressed in the Applying the 2012 Planning Rule to Conserve 2 Species: a summarized practitioner's reference (hereinafter "Guidance") when presented with this situation, evaluating the available evidence related to occurrence the decision should be based on the weight of the evidence i.e. "does the available evidence suggest the species occurs" (Guidance at 8).

USFS elected in the draft LRMP that "known to occur" would be established by occurrence records, however, the methodology used by the USFS in the Final SCC analyses substantially changed. As such, IFA's standing to raise an objection is preserved. We do not believe the determination to base the validity of occurrence record on whether habitat exists from satellite imagery is reasonable. The overarching assumption is that the threats to the species are entirely habitat driven instead of other potential issues like predation, grazing or even severe whether events that may have caused extirpation decades ago.

Obviously, this would not be visible from satellite imagery.

2 Malcolm, K. D., M. M. Rowland, C. H. Flather, K. Mellen-McLean, M. G. Raphael, D. A. Boyce, and G.D. Hayward. 2016. Applying the 2012 Planning Rule to conserve species: a summarized practitioner's reference. Unpublished paper, USDA Forest Service, Washington, D.C., USA. Available at: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd534943.pdf

This methodology also ignores the requirement under the 2012 Rule that a species must be established ("Only species that are considered established or are becoming established may be considered as species of conservation concern") Several criteria can be used to determine if a species is established. While there may be varying ways to define "established" for a species, certainly something more than potential habitat is not enough (see FSH 1909.12.12.52c1). Moreover, it unreasonably expands the list of species to be considered, which without satellite imagery the scientific evidence is unreliable as illustrated with Aleutian Maidenhair.

Aleutian maidenhair had been previously excluded because occurrence data was considered too old. However, with the change between draft and final to include any record regardless of age and instead rely on satellite imagery this species has been included. Based on the information found in the 2018 assessment for this species only one known data source provided occurrence "evidence" which was derived from an herbarium sample in 1954 and anecdotal statements indicating it was present in a certain area. Another issue is related to the inclusion of Sartwell's sedge. In the draft LRMP USFS indicates it was not included on the list because the occurrence data was unreliable at 248.

Remedy

IFA believes the use of satellite imagery to determine if old or unreliable occurrence data is valid, based entirely on potential habitat is inappropriate and inconsistent with the purpose of the "known to occur" and "established" provisions of the 2012 Planning Rule. Importantly, the SCC List was never supposed to be all encompassing, which is why the two-step occurrence and substantial concern analysis has side bars.

For these reasons IFA recommends that for species where occurrence was established based on satellite imagery be removed from the Final SCC List.

ii. Certain Aspects of the FEIS Require Clarification Related to the SCC

* Table 35 of the FEIS at 179 -180 lists all 57 SCC for establishing the "Affected Environment." Interestingly, the corresponding Tables 36 to 57 only list 28 of the 57 SCC in association with the various ecosystems in the GMUG.

* Table 4 of Volume III, Appendix 2 indicates that Green spleenwort, Simple kobresia and Marsh felwort were not identified and only met three of the substantial concern indicators, and that no new information was received in the comments. Yet each of these species are on the Final SCC List. Tables 59, 60 and 62 indicate these species meets all four indicators.

Remedy

IFA recommends that USFS resolve the internal inconsistencies in the planning documents.

IV. Conclusion

The USFS based many of the decisions to include species on the Final SCC List on information that has not been made publicly available contrary to the 2012 Planning Rule and NEPA. IFA believes that the methodology used by USFS to establish occurrence evidence is flawed and unreasonably widens the pool of species for consideration.

We look forward to working with USFS on these issues through the objection resolution process.

Sincerely,

Megan Maxwell

Megan Maxwell

Colorado Programs Manager