environmental factors on plant species in general, no substantial scientific or commercial information regarding *Aliciella tenuis* was provided. Drought, flood, climate change, and plant-pollinator interactions may have the potential to affect small populations. However, we find no indication of long-term species decline for *A. tenuis* due to these or any other factors. Most *A. tenuis* sites have greater than 100 individuals and, as more recent studies indicate, most populations have several hundred to several thousand documented individuals (Clark 2005). Such populations possess greater resiliency to the threats identified in the petition.

A few sites are in active floodplains where plants are periodically washed away (Clark 2005); however, seed source for recolonization of these sites is provided by larger sites found at higher elevations in the landscape (D. Clark, pers. comm. 2005).

The information presented in the petition regarding climate change and its potential impact on *Aliciella tenuis* is speculative.

Finding

We have reviewed the information as it is cited in the petition, along with other pertinent literature and information readily available in our files. After this review and evaluation, we find the petition does not present substantial scientific information to indicate that listing *Aliciella tenuis* may be warranted at this time. Most of the threats described in the petition are speculative in nature, and petitioners admit that only a few populations are susceptible to the threats raised.

We will not be commencing a status review in response to this petition. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding *Aliciella tenuis*, you may submit your information or materials to the Field Supervisor, Utah Fish and Wildlife Office (*see* **ADDRESSES**).

References Cited

A complete list of all references cited herein is available, upon request, from the Utah Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary author of this notice is Heather Barnes, U.S. Fish and Wildlife Service, Utah Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

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

Dated: January 19, 2006.

Thomas O. Melius,

Acting Director, Fish and Wildlife Service.

[FR Doc. E6–947 Filed 1–25–06; 8:45 am]

BILLING CODE 4310–55–P

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 the American Dipper in the Black Hills of South Dakota 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 on a petition to list the distinct vertebrate population segment (DPS) of American dipper (*Cinclus mexicanus unicolor*) in the Black Hills of South Dakota as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition and other readily available information do not provide substantial scientific or commercial information indicating that listing the American Dipper in the Black Hills of South Dakota may be warranted. This finding is based on our determination that the American Dipper in the Black Hills of South Dakota does not constitute a valid DPS and, therefore, cannot be considered a listable entity pursuant to section 3(15) of the Act. Therefore, we will not initiate a status review to determine if listing this species is warranted in response to this petition. However, the public may submit to us new information concerning the species, its status or threats to it at any time.

DATES: The finding announced in this document was made on January 19, 2006.

ADDRESSES: Information, data, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, South Dakota Ecological Services Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501. The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Ecological Services Office at the above address (telephone 605–224–8693; facsimile 605–224–9974).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (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 indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition and other information that is readily available to us (*e.g.*, in our files). To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific information was presented, we are required to commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and information in our files, and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific information'' threshold.

We do not conduct additional research to make a 90-day finding, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we acknowledge the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our 90-day findings consider whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that

issue only after a more thorough review of the species' status.

Petition

On March 28, 2003, we received a petition dated March 15, 2003, requesting that we list the distinct population segment (DPS) of American dipper (*Cinclus mexicanus unicolor*) in the Black Hills of South Dakota as threatened or endangered under the Act, and for the designation of critical habitat for that DPS. In addition, the petition requested emergency listing of the DPS. The petition, submitted by the Biodiversity Conservation Alliance, Center for Native Ecosystems, Native Ecosystems Council, Prairie Hills Audubon Society and Jeremy Nichols, was clearly identified as a petition for a listing rule, and it contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline.

We acknowledged the receipt of the petition in a letter to Mr. Jeremy Nichols, dated May 20, 2003. In that letter, we advised the petitioners that emergency listing was not justified and that, due to funding constraints, we would not be able to begin processing the petition in a timely manner.

On July 21, 2003, we received a Notice of Intent to sue from the petitioners contending that the Service had violated the ESA by failing to make a timely 90-day finding on the petition to list a DPS of the American dipper.

On August 20, 2004, the petitioners filed a complaint in Federal District Court against the Secretary of the Interior and the Service for failure to make a 90-day finding under section 4 of the ESA. In a stipulated settlement agreement, we agreed to submit a 90-day finding to the **Federal Register** by January 20, 2006 [*Black Hills Dipper, et al.* v. *Norton et al.* (04-cv-1293 (DDC))]. The settlement agreement was signed and adopted by the District Court for the District of Columbia on January 24, 2005. This notice constitutes our 90-day finding for the petition to list a DPS of the American dipper in the Black Hills of South Dakota as endangered or threatened, pursuant to the agreement.

Species Information

The American dipper is a small, gray passerine bird that inhabits western Canada and the western United States, including the Black Hills (Pettingill and Whitney 1965; Anderson 2002). The American dipper utilizes permanent, clean, cold, and swift mountain streams (Kingery 1996; Tyler and Ormerod 1994; Price and Bock 1983; Feck 2002) with abundant and healthy populations of benthic macroinvertebrate, the dipper's prey (Price and Bock 1983; Kingery 1996; Tyler and Ormerod 1994; Ealey 1977). Dippers are usually found in streams with rock, sand, and rubble substrates, which also are associated with the highest abundance of aquatic invertebrates. American dippers establish linear territories along a river in early spring (Kingery 1996). They remain in or near their territories most of the year, depending upon the availability of open water. Dipper nest sites can be found on streamside rock cliffs, waterfalls, on large rocks in midstream, or under bridges (Kingery 1996).

There are few records of American dippers making long distance flights, and these records do not substantiate that these movements contribute to the establishment of new populations. No instances of long distance dispersal of dippers between the Black Hills and the next nearest populations of American dipper to the west in the Big Horn Mountains of north-central Wyoming and the Laramie Range of east-central Wyoming have been documented.

Distribution, Abundance, Trends

The American dipper is at the eastern edge of its range in the Black Hills. The dipper is a permanent year-round resident of the Black Hills and has historically been known to inhabit nearly all permanent, fast-flowing streams in the area (Pettingill and Whitney 1965). The species is not known to disperse or migrate long distances; the extent to which it moves to any degree between the geographically separated areas that it occupies is undocumented (Tyler and Ormerod 1994). The dipper population in the Black Hills is isolated from other populations by geographical barriers to dispersal in the form of extensive grasslands, poor quality stream habitat, and the lack of water connections to dipper populations existing west of the Black Hills (Backlund 2001).

Verified historic American dipper reports have been recorded on six streams and/or their tributaries in the Black Hills: French Creek; Rapid Creek; Box Elder Creek; Elk Creek; Whitewood Creek; and Spearfish Creek (Backlund 2001). Other streams are unable to support self-sustaining populations of dipper due to habitat degradation, erratic water flows, loss of water flow, poor water quality, and other impacts (Backlund 2001). Currently, nesting dippers can be found on only two streams in the Black Hills—Spearfish Creek and Whitewood Creek.

Dipper nest surveys in the Black Hills were started in 1993 and became more extensive from 2003 to 2005. The lowest number of dippers reported on Spearfish Creek was 10 in 1997, with only 2 nests found (Backlund 2001). In 2004, the number of dippers reported on Spearfish Creek was approximately 49, with 31 nest attempts (Lovett 2004). In 2004, Whitewood Creek had 12 adults observed and 7 known nest attempts (Lovett 2004).

Distinct Vertebrate Population Segment

The petitioners have asked us to consider listing a DPS of the American dipper in the Black Hills of South Dakota. Under the Act, we can consider for listing any species, subspecies, or DPS of any species of vertebrate fish or wildlife that interbreeds when mature, if information is substantial to indicate that such action may be warranted. To implement the measures prescribed by the Act and its congressional guidance, we developed a joint policy with the National Oceanic and Atmospheric Administration entitled Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (61 FR 4722; February 7, 1996) (DPS Policy). Under the DPS policy, we must consider three elements in making our decision whether an entity qualifies as a DPS that warrants listing as endangered or threatened under the ESA. The three elements are: (1) The population segment's discreteness in relation to the remainder of the species to which it belongs; (2) the population segment's significance to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, when treated as if it were a species, is the population segment endangered or threatened?). Following is our evaluation of these elements in relation to the petitioned entity (the American dipper in the Black Hills of South Dakota).

Discreteness

The DPS policy states that a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: It must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, or it must be delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat conservation status or regulatory mechanisms exist

that are significant in light of section 4(a)(1)(D) of the Act.

Information Provided in the Petition

Substantial information is presented in the petition to indicate that the Black Hills population may be markedly separated from other populations of the American dipper as a consequence of physical factors. The Black Hills is an isolated mountain range located within the plains of western South Dakota and northeastern Wyoming (Raventon 1994). The Great Plains, which entirely surrounds the Black Hills, creates a major physical barrier separating the Black Hills American dipper from other Rocky Mountain populations to the west (Hall *et al.* 2002). The Bighorn Mountains, approximately 150 to 200 miles (mi) (241 to 322 kilometers (km)) to the west, is the closest mountain range to the Black Hills (Froiland 1990). The expanse of grassland separating the Black Hills from other mountain ranges is incapable of supporting American dippers and represents a significant barrier to dispersal (Backlund 2001; Voelker 2002). The streams and rivers of the Great Plains are described as typically silt-laden, turbid, alkaline, and subject to erratic flows which precludes their use by dippers (Smith and Hubert 1989).

Information in the petition, as supported by information readily available in our files, suggests that there is a substantial physical isolation of the Black Hills population of the American dipper. Therefore, the petition presents substantial information indicating that the Black Hills population of the American dipper meets a condition for discreteness under our DPS policy. The Black Hills population of the American dipper is not delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat conservation status or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

Significance

Pursuant to our DPS policy, in addition to our consideration that a population segment is discrete, we further consider its biological and ecological significance to the taxon to which it belongs, within the context that the DPS policy be used ''sparingly'' while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Information Provided in the Petition

a. Persistence of the population segment in an ecological setting that is unique for the taxon.

The American dipper occupies permanent, clean, cold, and swift mountain streams throughout the western half of North America, including the Black Hills (Kingery 1996). The petition contends that the streams in the Black Hills inhabited by dippers may be a unique ecological setting because the Black Hills themselves are a unique ecosystem. We recognize that the Black Hills have many unique ecological features, but information readily available in our files (*e.g.*, Kingery 1996) indicates that these mountain ecosystems share commonalities such as clean, cold, swift mountain streams with suitable substrate that provide the habitats for invertebrate species used by dippers. In that respect, the Black Hills are similar to other western mountain ecosystems.

In addition, the petitioners claim that Black Hills streams have features that make them ecologically unique. Streams throughout the Rocky Mountains vary in many features, including elevation, gradient, substrate, parent geological material, riparian vegetation, etc., such that virtually every stream could be considered ''unique.'' Information readily available in our files (*e.g.*, Kingery 1996) indicates that the key features of Black Hills streams used by dippers—cold temperatures, good water quality, suitable substrate, and swift flow—are the same key features of dipper-utilized streams elsewhere throughout the Rocky Mountains. Accordingly, we do not believe the petition presents substantial information that the clean, cold swift streams of the Black Hills occupied by dippers are an ecological setting that is unique for this subspecies.

b. Loss of the population segment would result in a significant gap in the range of taxon.

The petition claims that the Black Hills dipper population is at the eastern edge of its global distribution, and its loss would result in a significant gap in the range of the dipper. Information readily available in our files (*e.g.*, Kingery 1996) states that the American dipper's breeding range extends from western Alaska eastward across northcentral Alaska; southward along the Pacific Coast and throughout the Rocky Mountains into New Mexico. They are absent from the Great Basin area except for scattered populations. The range includes mountain streams in an area that is approximately 5,000 km from north to south and approximately 1,800 km from west to east at its widest point. Within that range, there are thousands of suitable streams and tens of thousands of kilometers of occupied streams. The Black Hills dipper population occupies two streams that represent less than 80 km of occupied stream habitat. The dipper-occupied streams in the Black Hills are on the eastern edge of the overall dipper's range and if lost would not create a gap in the overall species range with other dipper populations. The mountain streams of the Black Hills provide the easternmost habitat for the American dipper. We conclude that the petition does not present substantial information that loss of the population segment would result in a significant gap in the range of taxon.

c. The population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range.

The petition does not address this factor. The American dipper survives naturally throughout much of western North America.

d. The discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The petition does not address this factor. We are aware that a genetic analysis is being conducted to determine whether the Black Hills population of the American dipper is genetically distinct from other American dipper populations in North America (C. Anderson, Black Hills State University, pers. comm. 2005). To date, the research has analyzed samples from 6 populations (Black Hills, SD; Bighorns, WY; and four locations in west central Montana and east central Idaho). Preliminary information from this research suggests that genetic differences may exist among the dipper populations studied. However these results are too preliminary to determine the significance of the Black Hills population of American dipper to the taxon as a whole.

Finding

We have reviewed the information presented in the petition, and have

evaluated that information in relation to information readily available in our files. On the basis of our review, we find that the petition does not present substantial scientific or commercial information to indicate that listing the American dipper in the Black Hills of South Dakota may be warranted. This finding is based on the lack of substantial scientific evidence to indicate that the American dipper in the Black Hills of South Dakota constitutes a valid DPS. Although the population is discrete, neither the information in the petition nor the information readily available in our files constitutes substantial scientific information that the Black Hills dipper population is significantly unique in relation to the remainder of the taxon. Therefore, we conclude that the American dipper in the Black Hills of South Dakota is not a listable entity pursuant to section 3(15) of the ESA. We will not be commencing a status review in response to this petition. However, we will continue to monitor the taxon's population and status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the American dipper across its range. We encourage interested parties to continue to gather data that will assist with these conservation efforts. New information should be submitted to the Field Supervisor, South Dakota Ecological Services Office (see **ADDRESSES**).

The petitioners also request that critical habitat be designated for this species. The petition does not present substantial information that the American dipper is a DPS so we need not address the designation of critical habitat at this time.

References Cited

A complete list of all references is available upon request from the Field Supervisor (see **ADDRESSES**).

Author

The primary authors of this document are staff at the South Dakota Ecological Services Office (see **ADDRESSES**).

Authority

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

Dated: January 19, 2006.

Thomas O. Melius,

Acting Director, Fish and Wildlife Service.

[FR Doc. E6–943 Filed 1–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Marine Fisheries Service

50 CFR Parts 223 and 224

[Docket No. 060113009–6009–01; I.D. 010506D]

Endangered and Threatened Species; Notice of 90–day Finding on a Petition to List the North Pacific Right Whale as an Endangered Species Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of petition finding; request for information; and initiation of status review.

SUMMARY: NMFS announces a 90–day finding regarding a petition to list the North Pacific right whale, *Eubalaena japonica*, as an endangered species under the Endangered Species Act of 1973, as amended (ESA). After review, NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted. NMFS is initiating a review of the status of the North Pacific right whale, and is soliciting data, information, and comment on the subject action.

DATES: To be considered in the 12–month finding, information and comments should be submitted to NMFS by April 26, 2006.

ADDRESSES: Data, information, or comments concerning this petition should be submitted to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- E-mail: *0648–XB41–NPRW@noaa.gov*. Include in the subject line the following document identifier: North Pacific Right Whale Listing. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 W. 9th Street, Juneau, Alaska.
- Fax: (907) 586–7012.
- Federal e-rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271–5006, fax (907) 271–3030, Ms. Kaja Brix, NMFS, (907) 586–7235, fax (907) 586–7012; or Dr. Kate McFadden, NMFS, (301) 713–1401, fax (301) 427–2523.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA, as amended (16 U.S.C. 1531 *et seq.*) requires that NMFS make a determination as to whether a petition to list a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If NMFS finds that substantial scientific information is presented, it is required to promptly commence a review of the status of the species involved if one has not already been initiated.

NMFS has made a 90–day finding on a petition to list the North Pacific right whale. The petition, dated August 16, 2005, was submitted by the Center for Biological Diversity, P.O. Box 40090, Berkeley, CA 94704–4090, and was received by NMFS on August 19, 2005. Petitioner requests NMFS to list the North Pacific right whale as a new species, *Eubalaena japonica*, and to designate the species as endangered under the ESA. Its request is based, in part, on recent scientific information which establishes a new taxonomic classification for the right whale. This reclassification would recognize the North Pacific right whale as the new species *E. japonica*.

NMFS has reviewed the petition, the literature cited in the petition, and other literature and information available in NMFS files. On the basis of that information, we find the petition presents substantial scientific information indicating that the requested action may be warranted. NMFS' finding is based in part on recent scientific papers recognizing the North Pacific right whale as genetically distinct from the North Atlantic right whale, as well as recent findings of the International Whaling Commission on the subject. We request any information regarding the taxonomy and status of the North Pacific right whale, its habitat, biology, movements and distribution, threats to the species, or other pertinent information. A copy of the petition may be viewed at the NMFS website: *http://www.fakr.noaa.gov/protectedresources/whales/default.htm*

Authority

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