

• After analyzing the public comments, the FAR Council withdrew the proposed definition. In recommending withdrawal of the rule, the June 26, 2003 report of the FAR Part 31 Streamlining Committee noted the following:

Upon further review, the Committee recommends that the proposed definition of catastrophic losses be deleted from the final rule. The Committee continues to believe that the proposed definition is consistent with the intent of the promulgators of the current language, as evidenced by the March 19, 1979 Committee report underlying DAR Case 78-400-7.

The intent of the proposed coverage was to distinguish catastrophic losses as used in the cost principle from the type of catastrophic loss anticipated by the illustration at CAS 416.60(h). In that illustration, motor vehicle liability losses in excess of a specified amount were absorbed by the home office and reallocated to all segments. In the particular case described, the specified amount was too low based on loss experience to be considered catastrophic under the provisions of CAS 416. However, the illustration appears to anticipate losses that may be catastrophic to a particular segment of a company but not necessarily catastrophic in a more general sense. The Committee does not believe the drafters of the cost principle intended to disallow self-insurance charges for the type of loss anticipated by the CAS illustration. However, since CAS does not include a definition of catastrophic loss, defining the term in FAR could cause confusion by the users of these regulations.

As to the commenter's recommendation that self-insurance charges for catastrophic losses should be allowable, the Committee disagrees. As was noted in the report on DAR Case 78-400-7, the Government should not allow self-insurance charges for catastrophic losses, such as earthquakes, which have a very small likelihood of occurring for any particular contractor.

#### Key Questions for Consideration

The CAS Board is soliciting comments on this issue from interested parties. In particular, the Board is interested in comments related to the following questions:

1. Do contractors and contracting agencies currently interpret the term "catastrophic losses" differently when applying CAS 416.50(b)(1) and FAR 31.205-19(e)? If so, how does the use of the term differ between the two applications?

2. Under CAS 416.50(b)(1), the contractor is required to assign insurance costs on the basis of the projected average loss. Actual losses cannot be used unless they approximate the projected average loss. FAR 31.205-19(c)(4) disallows self-insurance costs for catastrophic losses. Thus, if the term "catastrophic losses" is interpreted as having the same meaning in both CAS

and FAR, how does a contractor recover amounts related to catastrophic losses, since the costs cannot be assigned based on actual costs under CAS (and therefore are not allowable as actual costs), and the costs are unallowable as self-insurance charges under FAR?

3. How does the insurance industry use the term "catastrophic losses?"

4. How does the insurance industry's use of the term "catastrophic losses" differ from its use in CAS and FAR, if any?

5. Have there been problems in the implementation of CAS 416.50(b)(1) as a result of the use of the term "catastrophic?"

6. Provide any examples of instances where the use of the term "catastrophic" has resulted in contract disputes. For each example provided, include the nature of the dispute and the resolution.

7. Provide any comments as to whether the language at CAS 416.50(b)(1) should be revised. If the recommendation is to revise the language, please provide suggested revisions.

8. Provide any comments regarding use of the term "extraordinary item" as used in Generally Accepted Accounting Principles in lieu of the term "catastrophic insurance."

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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 the Mussentuchit *Gilia* 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 Mussentuchit *Gilia* (*Gilia* [= *Aliciella tenuis*]) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial information indicating that listing *Gilia* [= *Aliciella tenuis*] may be warranted. Therefore, 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 the species or threats to it.

**DATES:** The finding announced in this document was made on January 19, 2006. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Utah Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. Submit new information, materials, comments, or questions concerning this species to us at the above address.

**FOR FURTHER INFORMATION CONTACT:** Henry Maddux, Field Supervisor, Utah Fish and Wildlife Office (see **ADDRESSES**) (telephone 801-975-3330, extension 124; facsimile 801-975-3331).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) 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 indicate 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 readily available 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 section 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 added *Aliciella tenuis* to our list of candidate species on September 30, 1993, as a category 2 candidate species

(58 FR 51144). In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes. The *A. tenuis* was removed from the candidate list at that time. This species currently has no Federal regulatory status.

On March 10, 2004, we received a formal petition, dated March 9, 2004, from the Southern Utah Wilderness Alliance, Center for Native Ecosystems, and Utah Native Plant Society, requesting that the Mussentuchit gilia (*Gilia* [= *Aliciella*] *tenuis*) found in Utah be listed as threatened or endangered pursuant to section 4 of the Act. This petition was identical to a petition submitted on May 19, 2003, to which, due to funding limitations, we were unable to respond during Fiscal Year (FY) 2003. In addition, all FY 2004 listing funds were allocated to activities in response to court-approved settlements.

When we first receive a petition, we evaluate it in order to determine if an emergency exists such that an emergency listing may be warranted. In a response letter to the petitioners, dated March 16, 2004, we stated that "the petitioned plant lives primarily on Federal lands, including Capitol Reef National Park, and we know of no clear imminent threat to the species. Therefore, we see no evidence that would lead us to conclude that emergency reclassification of this species is appropriate."

On May 19, 2005, the petitioners filed a complaint in Utah Federal District Court alleging our failure to complete 90-day or 12-month findings on their petition. On August 26, 2005, the court approved a stipulated settlement agreement and dismissed the case, based on our agreement to submit to the **Federal Register** by January 19, 2006, a completed 90-day finding.

### Species Information

*Aliciella tenuis* is an herbaceous perennial vascular plant in the family Polemoniaceae. The plant grows from a multi-branched woody base, 2–14 inches (in) (5–35 centimeters (cm)) in height. Stems have fine hairs with sticky glands, to which sand usually adheres. The inflorescence is paniculately cymose (a loose arrangement of flowers where the central or terminal flowers generally flower first). Flowers are usually solitary, growing from branched ends. Blooming begins in May and often continues through July (Porter 1998).

The species was first collected as a botanical specimen in 1932 but

remained obscure until the 1980s. The species was described in the scientific literature in 1989 (Smith and Neese 1989) as *Gilia tenuis* and subsequently included in the resurrected genus *Aliciella* in 1998 (Porter 1998). We accept the name *Aliciella tenuis* as the valid name for Mussentuchit gilia.

*Aliciella tenuis* is a rare, edaphically restricted plant in southwestern Emery, southeastern Sevier, and northern Wayne Counties, Utah. The species' range spans about 45 miles (mi) (72 kilometers (km)) from its South Desert population in Waterpocket Fold within Capitol Reef National Park to its Secret Mesa population in the San Rafael Swell. The species has been delineated into 7 populations, with 1 to 8 separate sites in each population, for a total of 39 sites (Clark 2005). Based on Dr. Johnson (2005, memo to Clark), DNA studies between these populations indicate four genetic groups. The species' known population is estimated at 15,400 individuals (9,774 counted) on approximately 353 acres (ac) (143 hectares (ha)) (Clark 2005).

The largest concentrations of *Aliciella tenuis* are restricted to sandstone (including mudstone and siltstone) ledges and cracks with interbedded gypsum deposits, and on talus slopes derived from those sandstone formations. The species is found on several named geologic formations including the Curtis, Carmel, Dakota, Entrada, Navajo (contact with Carmel), and Summerville (contact with Curtis) formations. Most population sites are difficult to access due to steep treacherous terrain.

### Threats Analysis

Pursuant to section (4) of the Act, a species may be determined to be an endangered and threatened species on the basis of any of the following five 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 natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether the petition presented substantial scientific or commercial information to determine that listing *Aliciella tenuis* as threatened or endangered may be warranted. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats, based on information provided

in the petition and readily available in our files, is presented below.

### *A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petition claims that there are 17 populations of *Aliciella tenuis*, and that the species is threatened mainly by activities surrounding oil, gas, and mineral extraction; livestock trampling; off-road vehicle (ORV) use; recreational activities; and weed invasions.

### Oil, Gas, and Mineral Extraction

The petition cites general information on oil, gas, and mineral extraction. The petition asserts that 3 of 17 populations are in areas under lease for oil and gas development. Petitioners claim that oil, gas, and mineral exploration involve construction of well pads, roads, pipelines, and other associated facilities, which permanently reduce and fragment habitat. They assert that: (1) Infrastructure activities may lead to removing rock outcrops; (2) mineral development increases recreation activities, such as ORV use; (3) ground disturbance also may introduce noxious weeds and destroy biological soil crusts; and (4) seismic exploration also has long-lasting effects that provide similar ground-disturbing impacts. Additionally, the petitioners state that an increasing number of leases and permits for oil and gas will threaten known and unknown populations.

The petition contends that mining and associated facilities threaten *Aliciella tenuis* habitats. The petition states that the potential range of the plant corresponds to areas that have a high potential for gypsum occurrences. Additionally, it is stated that an active bentonite and zeolite mine owned by Western Clay Company is immediately adjacent to areas known to contain the species.

### Evaluation of Information in the Petition

The petition asserts that there are 17 populations of *Aliciella tenuis*. More recent information readily available in our files indicates that there are 7 *Aliciella tenuis* populations with 39 sites; these are the figures we use throughout this finding.

The petition provides some information regarding oil and gas production in the San Rafael Swell generally, but it does not present substantial information that this development has resulted in losses or threatens to result in actual losses of *Aliciella tenuis*. The species is not distributed uniformly across its range. The petition asserts that 3 of 17

populations are in areas under lease for oil and gas development. Currently, known sites of *A. tenuis* are not located in areas targeted for oil, gas, and seismic exploration (Debra Clark, Interagency Botanist, pers. comm. 2003; Fish and Wildlife Service 2006). The mine owned by Western Clay Company referred to in the petition is near 3 of the 17 *A. tenuis* populations in the petition, but these sites are not in the vicinity of the mine and are not being disturbed by mining activities (D. Clark, pers. comm. 2003). Much of the information in the petition identifies potential impacts rather than actual impacts, and there is no evidence presented in the petition or in our files to indicate that known populations are impacted by oil, gas, and mineral extraction. *A. tenuis* generally occurs on steep slopes, in rock cracks, or on ridges away from trail or road use. Most sites are very difficult to access, and therefore there is a low likelihood of disturbance from these activities.

The petitioners provide general characterizations of oil, gas, and mineral extraction impacts. They do not provide substantial information that documents that these activities occur in the areas where *Aliciella tenuis* is found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to oil, gas, and mineral extraction such that we can conclude that these activities threaten the continued existence of the *A. tenuis*.

#### Livestock Grazing/Trampling

The petition identifies livestock grazing as an important factor in habitat destruction and alteration in *Aliciella tenuis* habitat. The petition asserts that livestock grazing affects vegetation communities by altering species composition through direct loss of vegetation, and also by habitat degradation due to associated factors that may affect plant succession, wildlife use, time and length of plant flowering (and its effects on pollinators), native plant species presence, and the presence of invasive exotic plant species (especially annual weeds and grasses). Trampling of plants and soil may cause damage to soil crusts, reduce mycorrhizal fungi, increase erosion, and contribute to nonnative plant introductions. In addition, the petition claims that grazing management is of concern due to overgrazing or untimely grazing.

#### Evaluation of Information in the Petition

The petition describes various impacts associated with livestock and grazing management that could affect

*Aliciella tenuis*, and cites general information where impacts to vegetative communities similar to those in southern Utah have resulted from these practices. The petition alleges that 5 of 17 *A. tenuis* populations are on Bureau of Land Management (BLM) grazing allotments. The petition does not provide evidence of actual damage to *A. tenuis* by grazing. Cattle cannot access the majority of occupied sites (approximately 85 percent) and trampling has not been recorded at known sites (D. Clark, pers. comm. 2003; Clark 2005; Lenhart and Clark 2005).

The petitioners did not provide substantial information that documents that areas impacted by grazing management practices are also those in which *Aliciella tenuis* is found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to livestock grazing such that we could conclude that grazing practices threaten the continued existence of the *A. tenuis*.

#### Recreational Activities

The petition contends that recreation, especially ORV use, threatens to destroy *Aliciella tenuis* habitats.

#### Evaluation of Information in the Petition

The information provided by the petitioners does not provide substantial information demonstrating that recreational activities present a threat to *Aliciella tenuis*. *Aliciella tenuis* plants are mostly located on steep side-slopes, in rock cracks, or on ridges away from trail or road use. Most sites are very difficult to access, and the petition acknowledges that the BLM's Resource Management Plan (RMP) limits ORV use to designated roads and trails. Human disturbance, such as human footprints and all-terrain vehicle tracks, are recorded only at 4 of 39 sites; however, these sites are still occupied by *A. tenuis* (Lenhart and Clark 2005). Furthermore, only six of the known sites are in areas accessible by the general public, due to terrain (Lenhart and Clark 2005). In light of the information above, we conclude that the petition does not provide substantial information to indicate that recreational activities threaten the continued existence of *A. tenuis*.

#### Invasive Plants

The petition maintains that the spread of weeds by several factors (grazing, ORV use, and mining/drilling operations) across the arid West will result in the degradation of *Aliciella tenuis* habitat, thereby increasing

endangerment of the relatively slow-reproducing *A. tenuis*.

#### Evaluation of Information in the Petition

Information presented in the petition is speculative. The petitioners provide information about weed invasions within western arid ecosystems. The petitioners did not provide substantial information that documents that areas impacted by invasive species are the areas where *Aliciella tenuis* is found. Native plants are the dominant species found at *A. tenuis* sites, and highly associated plant species are not exotic weeds or grasses (Lenhart and Clark 2005). Furthermore, the petitioners do not provide substantial information on the magnitude and the extent of habitat impacts by invasive weeds such that we might conclude that they may threaten the continued existence of *A. tenuis*.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition claims that other gilia species are ornamental cultivars and sought after by rock-garden enthusiasts. The petition also claims that many of the threats identified under Factor A also represent overutilization for commercial, recreational, scientific or educational purposes. Since Factor B refers to "overutilization" of the species, and because we have already addressed these threats under Factor A, we will not reevaluate those claims here.

#### Evaluation of Information in the Petition

The petitioners provide information indicating that gilies are ornamental and collectable. Petitioners refer to the collection of a different, rare gilia species and conclude that Mussentuchit gilia (*Aliciella tenuis*) will likely be sought after when it is more widely known. However, no documentation of *A. tenuis* collection is provided, nor do we or the Interagency Botanist (D. Clark, pers. comm. 2005) know of any evidence of such collection. Furthermore, the majority of sites are in remote, difficult to access locations, with only 6 of 39 known sites considered readily accessible by the general public (Lenhart and Clark 2005). The petition provides only speculative information regarding threats presented by collection. Therefore, we cannot conclude that there is substantial information that this practice threatens the continued existence of *A. tenuis*.

#### C. Disease or Predation

The petition does not identify disease or predation as threats to *Aliciella*

*tenuis*. Additionally, the information in our files provides no instances where disease or predation has been documented to occur to *A. tenuis* plants (Porter and Heil 1994; Clark 2000; Clark 2001; Clark 2002; Grobner et al 2004; Clark 2004; Clark 2005; Lenhart and Clark 2005).

#### *D. Inadequacy of Existing Regulatory Mechanisms*

The petition contends that existing land use designations and regulatory mechanisms are insufficient to protect populations of *Aliciella tenuis*, and also alleges that State and Federal agencies have failed to conduct monitoring for the species in most of its range and to protect it from impacts associated with energy exploration and development, livestock grazing, recreation, and exotic weeds (see Factor A).

#### Federal Agencies

The petitioners claim that nearly all known populations of *Aliciella tenuis* occur on BLM lands. They acknowledge that BLM has designated *A. tenuis* as a special status species and that 9 of 17 populations of the species occur within Areas of Critical Environmental Concern (ACEC) and within BLM Wilderness Study Areas (WSA). The petition also acknowledges the existence of certain in-place management restrictions which serve to protect *A. tenuis* sites. However, the petition questions whether these designations and other mechanisms to regulate and control various activities, such as grazing and mining (see factor A), are sufficient to prevent harm to the *A. tenuis* in a significant portion of its range. They claim that 3 populations are not covered by a BLM RMP. Additionally, they claim that Federal agencies have failed to conduct comprehensive monitoring of the species.

#### Evaluation of Information in the Petition

The primary concern expressed by the petitioners is that the existing BLM special status designation and occurrence within BLM WSAs and ACECs is insufficient to provide adequate conservation for *Aliciella tenuis*. However, BLM special status designation does include BLM policy direction. The BLM "special status plants" include all of the following: (1) Federally-listed and proposed species; (2) Federal candidate species; (3) State-listed species; and (4) BLM sensitive species. BLM sensitive plants are those species that do not occur on Federal or State lists, but which are designated by the BLM State Director for special management consideration.

BLM Manual 6840 provides policy direction that BLM sensitive plant species are to be managed as if they were candidate species for Federal listing so that they do not become listed, while also fulfilling other Federal law mandates. The BLM has a policy of entering into conservation agreements and other conservation measures to protect both State- and BLM-listed species. Capitol Reef National Park (NP) similarly lists *A. tenuis* as a sensitive species.

Sensitive species designation by both BLM and Capitol Reef NP is important because the majority of the *Aliciella tenuis* population occurs on agency-managed lands. Seven *Aliciella tenuis* populations (39 sites) are known (Clark 2005). One population (7 sites) occurs in Capitol Reef National Park and is fully protected by applicable National Park System laws and regulations (Clark 2005). Twenty-six of 32 sites in the other 6 populations are on BLM-managed lands. Of the remaining 6 sites, 1 is on State lands, while ownership of the other 5 is documented as shared between BLM and the State of Utah (Clark 2005). Concerning the 3 populations that the petitioners claim are not covered by an RMP, only a very small number of *A. tenuis* sites are potentially affected by this, and the mere absence of explicit coverage under an RMP does not leave the populations wholly unprotected.

Despite the fact that few if any threats to the species are documented, both the BLM and NPS have continued to develop and implement conservation efforts for the species to ensure continued long-term protection and population monitoring. The Interagency Rare Plant Team was established in 1999 to direct conservation measures for listed and sensitive plant species endemic to central Utah sandstone habitats, including *Aliciella tenuis*. The team has conducted surveys for listed and sensitive plants on lands managed by Richfield and Price Field Offices of the BLM, Capitol Reef National Park, Fishlake National Forest, and the Teasdale District of Dixie National Forest. From 2000 to 2005, approximately 10,500 ac (4,249 ha) have been surveyed for *A. tenuis* on Capitol Reef National Park, BLM, and State lands (Lenhart and Clark 2005). During this period, approximately 2,650 person-hours were allocated by the Interagency Rare Plant Team for *A. tenuis* surveys (Lenhart and Clark 2005).

In addition, the species is included in conservation planning documents such as the 1996 *Gilia caespitosa* [*A. tenuis*] Conservation Agreement and Strategy and the soon to be completed Central

Utah Navajo Sandstone Endemics Conservation Strategy and Agreement (CAS), a multi-year joint project by BLM, NPS, U.S. Forest Service, and the Service (Clark, pers. comm. 2005).

Thus, we conclude that the petition does not present substantial information to indicate that *Aliciella tenuis* may be threatened by the inadequacy of existing Federal regulatory mechanisms across all or a significant portion of its range. Interagency cooperation for this species is high and all Federal agencies across the species' range will be signatory parties to the CAS.

#### State Agencies

The petition claims that lack of State policies leaves the species inadequately protected.

#### Evaluation of Information in the Petition

The petition states that 3 of 17 populations are on State lands, and acknowledges that 2 of these overlap populations on BLM lands. The petition also acknowledges that the species is currently monitored by the Utah Natural Heritage Program. The information in our files indicates that there are 7 populations with 39 sites; 1 site is on State lands, while 5 sites are documented as shared between BLM and the State of Utah (Clark 2005). No documentation indicates that habitat reduction is occurring on State or private lands. There is no evidence that existing regulatory mechanisms are inadequate to prevent harm to *Aliciella tenuis* populations on State lands. Therefore, the information presented in the petition regarding threats to *A. tenuis* populations on State lands is speculative and does not present substantial information to indicate that listing these populations may be warranted due to inadequate State regulatory mechanisms.

#### *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition contends that several other factors negatively impact *Aliciella tenuis* populations. They state that the small size of *A. tenuis* populations (many populations with fewer than 25 individuals) makes them vulnerable to extirpation because of a variety of environmental factors, such as stochastic events, drought, climate change, and potential disruption of plant-pollinator interactions.

#### Evaluation of Information in the Petition

While the petition provides information on the effects of these

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]

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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 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