Black-Backed Woodpecker (*Picoides arcticus*)

Previous Federal Actions

On May 8, 2012, we received a petition dated May 2, 2012, from the John Muir Project of the Earth Island Institute, the Center for Biological Diversity, the Blue Mountains Biodiversity Project, and the Biodiversity Conservation Alliance (Earth Island Institute *et al.* 2012, pp. 1-16) (petitioners), requesting that the Oregon-Cascades/California population and the Black Hills population of the black-backed woodpecker each be listed as an endangered or threatened subspecies, and that critical habitat be designated concurrent with listing under the Act. The petition also requested that, should we not recognize either population as a subspecies, we consider listing each population as an endangered or threatened distinct population segment (DPS) under our policy published in the **Federal Register** for determining distinct vertebrate population segments under the Act (61 FR 4721; February 7, 1996). Included in the petition was information regarding the species' ecology, genetic sampling information, distribution, present status, and suggested actual and potential causes of decline. Our positive 90-day finding for the petition was published in the **Federal Register** on April 9, 2013 (78 FR 21086).

On September 24, 2014, the United States District Court for the District of Columbia issued a court order for a stipulated settlement agreement in the case of *Center for Biological Diversity* v. *S.M.R. Jewell,* No.1: 14-cv-0 1021-EGS. The order and stipulated settlement agreement required the Service to complete a 12-month finding for the "California-Oregon and South Dakota populations" of the black-backed woodpecker by September 30, 2017. This notice constitutes the 12-month finding on the May 2, 2012, petition to list the Oregon-Cascades/California population and Black Hills population as endangered or threatened species under the Act.

Background

The black-backed woodpecker is similar in size to the more-common American robin (*Turdus migratorius*) and is heavily barred with black and white sides (Dawson 1923, pp. 1007-1008). Males and young have a yellow crown patch, while the female crown is entirely black. Its sooty-black dorsal plumage camouflages it against the black, charred bark of the burned trees upon which it preferentially forages (Murphy and Lehnhausen 1998, p. 1366; Tremblay *et al.*2016, p. 1). The black-backed woodpecker has only three toes on each foot instead of the usual four. Black-backed woodpeckers have a narrow diet, consisting mainly of larvae of wood-boring beetles and bark beetles (Cerambycidae, Buprestidae, Tenebrionidae, and Scolytidae) (Goggans *et al.*1989, pp. 20, 34; Villard and Beninger 1993, p. 73; Murphy and Lehnhausen 1998, pp. 1366-1367; Powell 2000, p. 31; Dudley and Saab 2007, p. 593), which are available following large-scale disturbances, especially high-severity fire (Nappi and Drapeau 2009, p. 1382). The black-backed woodpecker is a cavity-nesting bird. It nests in late spring, with nest excavation generally occurring from April to June, depending on location and year.

The black-backed woodpecker occurs across dense, closed-canopy boreal and montane coniferous forests of North America from Alaska, Canada, Washington, Oregon, California, Northern Rockies, South Dakota, Minnesota and east to New England (Winkler *et al.* 1995, p. 296; Tremblay *et al.* 2016, pp. 10-11). This includes the Black Hills of western South Dakota (Drilling *et al.* 2016, pp. 251-252) and adjacent counties of northeastern Wyoming (Orabona *et al.* 2012, p. 76). It also includes the area of eastern Washington and Oregon where the species is found in the Cascade Range, south through throughout the Blue Mountains and Wallowa Mountains and into the Siskiyou Mountains in southwestern Oregon. From Oregon, the range continues south into California along the higher elevation slopes of the Siskiyou, Cascades, Klamath, and Sierra Nevada Mountains to eastern Tulare County, California (Dawson 1923, p. 1007; Grinnell and Miller 1944, p.

248; Tremblay *et al.* 2016, pp. 10-11). The black-backed woodpecker's breeding range generally corresponds with the location of boreal and montane coniferous forests throughout its range.

At the landscape scale, while not tied to any particular tree species, the black-backed woodpecker generally is found in older conifer forests that comprise high densities of larger snags (Bock and Bock 1973, p. 400; Russell *et al.* 2007, p. 2604; Nappi and Drapeau 2009, p. 1388; Siegel *et al.* 2012, pp. 34-42). The species is closely associated with standing dead timber that contains an abundance of snags (Tremblay *et al.* 2016, pp. 13-16). Black-backed woodpeckers appear to be most abundant in stands of trees recently killed by fire (Hutto 1995, pp. 1047, 1050; Smucker *et al.* 2005, pp. 1540-1543) and in areas where beetle infestations have resulted in high tree mortality (Bonnot *et al.* 2009, p. 220).

The black-backed woodpecker was first described in 1831 (Swainson and Richardson 1831, p. 313; American Ornithologists' Union (AOU) 1983, p. 392). The scientific community recognizes the black-backed woodpecker as a valid species (AOU 1983, pp. 392-393), and no subspecies of the black-backed woodpecker were included at the time that AOU, the scientific authority responsible for bird classification, last published subspecies classifications in 1957 (AOU 1957, p. 330). In addition, no other taxonomic authority has recognized any subspecies for the black-backed woodpecker (Tremblay *et al.*2016, p. 9).

Summary of Status Review

A recent genetic study identified some genetic differences between individuals found in three areas within the black-backed woodpecker's range. The three areas include: (1) The boreal forest of Canada, Washington, Northern Rockies, and northeastern United States, (2) the Oregon-Cascades/California (Sierra Nevada Mountains), and (3) the area around the Black Hills (southwestern South Dakota and northeastern Wyoming) (Pierson *et al.* 2010, entire; Pierson *et al.*2013, entire). The petitioners have relied on the Pierson *et al.* (2010) study results to propose that this new genetic information may warrant a revised interpretation of the taxonomic description of the species into three subspecies (EII *et al.* 2012, pp. 13-16). However, based on our review of the best available scientific and commercial information, as well as the expert opinion of the scientific community, we find that the Oregon-Cascades/California and Black Hills populations are not subspecies. Also in our analysis, we could not find significant differences in behavior, morphology, or habitat use for the species across its range, or that any genetic differences have yet manifested themselves into differences that can be pointed at that would support separation of the populations into subspecies.

We also reviewed whether the Black Hills population or the Oregon-Cascades/California population were distinct vertebrate population segments (DPSs) under our 1996 DPS policy (61 FR 4721, February 7, 1996). Based on a review of the best available information, we have determined that the Black Hills population and the Oregon-Cascades/California population are not significant in relation to the remainder of the taxon because they do not exist in an ecological setting unique or unusual to the taxon; the loss of the populations would not result in a significant gap in the range of the taxon; they are not the only surviving natural occurrences of the taxon; and the genetic makeup of neither population contains unique genetic characteristics not found elsewhere in the larger boreal population. Therefore, we have determined that neither the Black Hills population nor the Oregon-Cascades/California population qualifies as a DPS under our 1996 DPS policy, and neither is a listable entity under the Act. Because the Black Hills and Oregon-Cascades/California populations of the black-backed woodpecker are not listable entities, we did not perform a status assessment under the five factors found in section 4(a) of the Act.

Finding

Based on our thorough review of the best available scientific and commercial information as summarized in our Species Assessment (Service 2017f, entire), we find that the petitioned entities identified as the Oregon-Cascades/California population and the Black Hills population of the black-backed woodpecker are not subspecies and neither meets our criteria for being a DPS under our February 7, 1996, DPS policy (61 FR 4722). Therefore the Oregon-Cascades/California and Black Hills populations of the black-backed woodpecker do not meet the definition of listable entities under the Act and, as a result, cannot warrant listing under the Act. Our complete rationale and supporting information for our subspecies and DPS determinations are outlined in our Species Assessment document (Service 2017f, entire; available on the Internet at *http://www.regulations.gov* under Docket No. FWS-R8-ES-2013-0034).