

personnel. This subpart implements section 263, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; Civil Space Employee Testing Act of 1991, Public Law 102-195, section 21, 105 Stat. 1516 to 1619.

1823.570-2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of this section.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence.

1823.570-3 Contract clause.

(a) The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts that require contractor employees to have access to classified information; perform in positions responsible for safety-sensitive, security, or National security functions in the performance of work under a Government contract; perform in positions designated "mission critical" pursuant to the "Mission Critical Space Systems Personnel Reliability Program" clause set forth at 1852.246-70; or when the contracting officer determines that the clause is necessary for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) The clause shall not apply to commercial or commercial type products as contemplated in FAR 11.001. The clause shall not apply to a contract, or to the part of a contract, that is performed outside of the United States and its territories and possessions. The clause shall not apply to any contract below the small purchase threshold as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of

the contract for default, and debarment and suspension of a contractor relative to failure to comply with NFS 1852.233-74, Drug- and Alcohol-Free Workforce.

(b) For purposes of NFS 1852.233-74, Drug- and Alcohol-Free Workforce, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to comply with the specific requirements of paragraphs (b), (c), (d) and (e) of the contract clause set forth at NFS 1852.233-74; or

(2) Such a number of contractor employees having been convicted of violations of criminal drug statutes or substantive evidence of alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223-74 is added to read as follows:

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-3, insert the following clause:

Drug- and alcohol-free workforce (xxxx 1993)

(a) *Definitions.* As used in this clause the terms *employee*, *controlled substance*, and *employee in a sensitive position*, are as defined in NFS 1823.570-2.

(b) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, and post-accident testing of contractor employees in sensitive positions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. NASA Management Instruction (NMI) 3792.3B, "NASA Plan for a Drug-Free Workplace," dated December 17, 1991, in Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. Contractors may follow these NASA guidelines in making determinations as to which of its employees performing on this contract are "employee(s) in a sensitive position," and are thus subject to the testing requirements of this clause.

Any employees performing in positions designated as "mission critical" pursuant to the clause set forth at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program" (if the clause is applicable to this contract), shall be subject to the testing requirements of this clause. The Contractor's drug testing program shall test for the use of marijuana and cocaine. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs"

published by the Department of Health and Human Services (53 FR 11970), April 12, 1988, and the requirements set forth in 14 CFR part 1272, "Procedures for NASA Drug Testing and Alcohol Testing Programs."

(c) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in any instance where a test conducted and confirmed under the Contractor's program indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(d) Any such employee determined to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after the initiation of contract performance who engaged in such use while on duty; or prior to such use had undertaken or completed a rehabilitation program described in paragraph (e) of this clause; or following such determination, refuses to undertake such a rehabilitation program; or following such determination, fails to complete such a rehabilitation program, shall not be permitted to perform the duties which such individual performed prior to the date of such determination. The Contractor's program shall further prohibit any such employee from working in a sensitive position on a NASA contract, unless such employee has completed a program of rehabilitation described in paragraph (e) of this clause and the Contractor has obtained the approval of the Contracting Officer.

(e) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(f) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(g) This clause shall apply to the prime contract and to any subcontract where work is performed by an employee in a sensitive position.

(End of clause)

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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 Petition To List the Alaska Breeding Population of Dovekie as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Alaska breeding population of the dovekie (*Alle alle*) to the List of Endangered and Threatened Wildlife. The Service finds the petition did not present substantial information indicating the requested action may be warranted. The Alaska breeding population of dovekies does not meet the definition of species under section 3(15) of the Endangered Species Act.

DATES: The finding announced in this notice was made on July 6, 1993. Comments and materials related to this petition finding may be submitted to the Field Office at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the Alaska dovekie petition may be submitted to the Field Supervisor, Anchorage Ecological Services Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G-62, Anchorage, Alaska 99501. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jean Cochrane, Endangered Species Specialist at the above address (telephone 907/271-2888).

SUPPLEMENTARY INFORMATION:
Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be promptly published in the *Federal Register*. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On March 29, 1993, Mr. Scott Felker submitted a letter to the Secretary of the Interior petitioning the Service to list the Alaska breeding population of dovekies as an endangered species pursuant to the Act. The petition was received on April 7, 1993. The petitioner describes dovekies in Alaska as endangered because of their very low numbers and great distance to the nearest breeding colonies.

This finding is based on various documents, including published and unpublished studies, agency

documents, and literature syntheses. Researchers, wildlife managers, and local residents familiar with the species were interviewed. All documents on which this finding is based are on file in the Service's Ecological Services Field Office in Anchorage, Alaska.

Any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. The term "species" is defined by the Act to include "subspecies" * * * and any distinct population segment of any species which interbreeds when mature" (16 U.S.C. 1532(16)).

Dovekies breed in the Palearctic at Greenland, Iceland, Russia, and, in Norway, at Jan Mayen Island, Bear Island and Spitsbergen (American Ornithologist's Union [A.O.U.] 1983). They probably breed on Bering Sea islands in Alaska and possibly in Canada (A.O.U. 1983, Smith 1973, Day et al. 1988). They winter in the North Atlantic and are seen infrequently south to Bermuda and the Mediterranean Sea (A.O.U. 1983). Dovekies are also seen infrequently along the Arctic coast of Alaska and Canada and in the interior of northeastern North America (A.O.U. 1983), and in southwestern Alaska (Kessel and Gibson 1978). Thus, the Service's primary objective was to determine whether the petition presented substantial information that indicated dovekies in Alaska meet the definition of species under section 3(15) of the Act.

The dovekie, a high-Arctic member of the alcidæ or auk family of sea birds, breeds in greatest abundance at large colonies in Greenland. Evans (1984a) estimated the total population size for Greenland may be in the region of 8-25 million pairs. Farther east, a few pairs remain in colonies in Iceland, and in Norway, 50,000 pairs nest at Jan Mayen, 10,000 pairs at Bear Island, and 400,000-1.6 million pairs at Spitsbergen (Evans 1984b). In the Russian high Arctic, they nest at Novaya Zemlya (10-50,000 pairs), Franz Josef Island (250,000 pairs) and Servernaya Zemlya on the Laptev Sea (>75,000 pairs) (Golovkin 1984). Dovekies from Franz Josef Island and possibly Servernaya Zemlya are considered a distinct subspecies, *Alle alle polaris*, slightly larger than the more widespread *A. a. alle* (Stenhouse 1930, Vaurie 1965, Cramp 1984, all in Day et al. 1988).

Day et al. (1988) reviewed the distribution and subspecies of the dovekie in Alaska and summarized the following. No ornithologist has documented successful nesting in Alaska, but recent, repeated dovekie observations at auklet colonies on Little

Diomede, King, St. Lawrence and St. Matthew islands suggest that dovekies are attempting to breed at these sites. The wintering area for Alaska dovekies is not known. The relative scarcity of dovekie sightings at sea in Alaska, despite thousands of hours of pelagic seabird surveys in the past 15 years, indicates how rare they are in Alaska (Day et al. 1988). Day et al. (1988) conclude that all 10 Alaska dovekie specimens they examined are the nominate race *A. a. alle*, rejecting the original identification of one St. Lawrence Island birds as *A. a. polaris* (Sealy et al. 1971).

While dovekies have not been documented breeding in Canada they are commonly sighted along the coast from Baffin Bay and Davis Strait to Hudson Bay, and rarely sighted westward to Banks and Victoria Islands, Northwest Territories and north to Melville and Ellesmere Islands (Smith 1973, Godfrey 1986). Smith (1973) reported that Native residents of western Victoria Island and Banks Island, Northwest Territories, have local names for dovekies, which they see almost every year.

The Service evaluated the petition's premise that dovekies in Alaska are a significant population segment distinct from abundant populations in Greenland, Norway and Russia. The petitioner states that "the fact that various Native groups [at Little Diomede and St. Lawrence islands] have given the dovekie Eskimo names indicates they must have once been more common than today." Further, since the presumed Alaska breeding sites are nearly 2,000 miles from the closest documented breeding colony, the petitioner states that neighboring populations would not be expected to naturally reestablish the Alaska population if it were extirpated.

All available published records, dating back to the first half of this century, indicate that dovekies have always been rare in Alaska. Gabrielson and Lincoln (1959) found only one record for the species in Alaska and Fay and Cade (1959) did not record dovekies at St. Lawrence Island. In the Alaska Seabird Management Plan, the Service estimated that only 10 dovekies breed in Alaska (U.S. Fish and Wildlife Service 1991), although the source of this estimate was not documented (V. Mendenhall, U.S. Fish and Wildlife Service, Anchorage, AK, pers. comm.).

R. Menadelook collected a dovekie specimen at Little Diomede Island in 1948 (Hanna 1961). He claimed the dovekie "is very rare on this island, its occurrence being in my estimation about one in 50,000 of other auklets"

(Hanna 1961:338). Holmes (1968:86) observed a dovekie at St. George Island in 1958 and was told at the time by local Natives that they "usually see a few every year." He concluded dovekies were uncommon inhabitants of the Bering Sea islands. And in 1965, Breckenridge (1966) was shown a captured dovekie on Little Diomed Island. Based on comments from Native hunters, Breckenridge (1966) concluded that a very small population of dovekies had been nesting on Little Diomed for some years.

Bedard (1966) spent eight months on St. Lawrence Island in 1965 and 1966 and saw five dovekies. He reported local Natives' claims that dovekies are present in small numbers year after year. Bedard presumed that dovekies spend the winter in the Bering Sea. "The only time for their reaching the Bering Sea is during their post-breeding dispersal in the early fall when several water routes are opened between their breeding grounds [in Greenland or Russia] and the Bering Strait. It is also apparent that this process must be repeated with some regularity in order to account for their continuous presence, at least in the St. Lawrence Island waters." In other words, Bedard thought dovekies are routinely dispersing in small numbers from their major breeding grounds to Alaska, where they apparently remain to nest occasionally. Bedard (1966) provides no evidence that dovekies were ever more abundant.

Finally, Sealy et al. (1971) reviewed the evidence for dovekies on St. Lawrence Island and concluded the species had arrived recently on the island. "Their small numbers and bi-racial characters [now identified as *A. a. alle*, but earlier confused with the similar *A. a. polaris*] indicate that these pioneers reached this area very recently. While some breeding colonies may have become established already on some of the islands, their numbers are probably augmented occasionally also by the

arrival of new immigrants from the North Atlantic centers. Specimens have been taken in recent years along the potential dispersion routes by which these birds must pass to reach the Bering Sea; e.g., * * * Northwest Territories * * * Barrow, Alaska * * * and New Siberian Islands * * *" (Sealy et al. 1971:332).

Alaskan ornithologists consider dovekies peripheral, "invasive" or naturally rare in Alaska (personal communications with B. Kessel, D. Gibson and E. Murphy, University of Alaska, Fairbanks; A. Fowler, T. DeGange, V. Mendenhall and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK; A. Sowls, U.S. Fish and Wildlife Service, Homer, AK; and R. Day, Alaska Biological Research, Fairbanks, AK). Native elders from Gambell, St. Lawrence Island, report that a few dovekies are seen locally and they nest on the local mountain (W. James, Sr., G. Koonoka, and C. Ungott, pers. comm.). None of the Gambell informants have noticed a decline in dovekies. Elders from Savoonga, St. Lawrence Island, report seeing "a few" dovekies locally and three informants have seen them nesting on the mountains near town (A. Akeya, A. Alowa, N. Alowa, F. Kingeekuk, Sr., E. Kogassagon, and E. Toolie, pers. comm.). Five of the Savoonga elders (ages 50-80 years) believe dovekies were more common in the past, but none have heard of dovekies being harvested. S. Steinaker (U.S. Bureau of Land Management, Fairbanks, AK, pers. comm.) interviewed residents at Little Diomed in 1985 and 1987, and was told that dovekies had always been rare there. Despite searching for dovekies, she saw only two. Dovekies are occasionally caught by Natives netting auklets for food at Little Diomed (A. Fowler and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK and S. Steinaker, pers. comm.).

In summary, ornithologists and marine bird specialists uniformly

classify Alaska dovekies as a peripheral immigrant to the Bering Sea from the species' enormous breeding colonies in Greenland and Russia. Based on available anecdotal information, summarized above, dovekies have been rare in Alaska since at least the 1940s. Due to their historical and present rarity, the Service concludes that dovekies in Alaska do not constitute a significant component of the species' overall population.

The Service finds that the data contained in the petition, referenced in the petition, and otherwise available to the Service do not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Dovekies in Alaska do not meet the definition of a species or distinct population segment under section 3(15) of the Act. Hence, the Service finds that Alaska breeding dovekies should not be listed as endangered or threatened under the Act.

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Anchorage Ecological Services Field Office (see ADDRESSES section).

Author

The primary author of this notice is Jean Fitts Cochrane (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1531-1544.

Dated: July 6, 1993.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

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