DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU11

Endangered and Threatened Wildlife and Plants; Proposed Special Rule Pursuant to Section 4(d) of the Endangered Species Act for the Pacific Coast Distinct Population Segment of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are proposing special regulations under the authority of section 4(d) of the Endangered Species Act (Act) of 1973, as amended, that would promote the conservation of the Pacific Coast distinct population segment (DPS) of western snowy plover (*Charadrius alexandrinus nivosus*). We seek comment on our proposed rule from the public and other agencies, and welcome suggestions regarding the scope and implementation of a special 4(d) rule.

DATES: Information, suggestions, and comments must be received on or before June 20, 2006. Requests for formal public hearings must be received by May 22, 2006.

ADDRESSES: Data, information, comments, or questions concerning this notice may be sent to the Field Supervisor (Attn: WSP–4d), Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521 (telephone: 707–822–7201; fax: 707–822–8411).

FOR FURTHER INFORMATION CONTACT: Amedee Brickey, Fish and Wildlife Biologist, Arcata Fish and Wildlife Office at the address above (telephone: 707–822–7201).

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast population of the western snowy plover (Pacific Coast WSP) was listed under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), as threatened on March 5, 1993 (58 FR 12864). At the time of listing, the primary threat to the plover was the loss and degradation of habitat from human activities. Published concurrently in today's **Federal Register** is our 12-month finding on a petition to delist the Pacific Coast WSP. In that document, we determined that delisting of the Pacific Coast WSP was not warranted because it meets the criteria for discreteness and significance as outlined in our 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722), and is still likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we determined that the Pacific Coast WSP Distinct Population Segment (DPS) should remain classified as a threatened species, because it is not extinct, it is not considered to be recovered, and the original data used for classification were not in error. However, our 12-month finding also concluded significant progress has been made toward recovery in a relatively short period (approximately 10 years), but that additional recovery actions are needed. This proposed rule under section 4(d) of the Act was developed to further support and enhance the conservation of the Pacific Coast WSP.

Summary of Recovery Progress

A Notice of Availability for the Western Snowy Plover (*Charadrius alexandrinus nivosus*) Pacific Coast Population Draft Recovery Plan (Draft Recovery Plan) was published in the **Federal Register** on August 14, 2001 (66 FR 42676). The Final Recovery Plan, currently under development, will provide the comprehensive strategy for the collaborative stewardship approach needed to recover and ultimately delist this distinct population segment (DPS). Implementation of this proposed rule would provide an incentive to habitat managers to participate in the recovery strategy outlined in the Draft Recovery Plan (66 FR 42676). Below we discuss the three recovery criteria presented in the Draft Recovery Plan, and our progress to date in fulfilling those criteria.

First Recovery Criterion (Parts A and B)

Part A: Maintain for 10 years an average of 3,000 breeding adults distributed among 6 Recovery Units (RU) as follows: (RU–1) Washington and Oregon, 250 breeding adults; (RU–2) Del Norte to Mendocino Counties, California, 150 breeding adults; (RU–3) San Francisco Bay, California, 500 breeding adults; (RU–4) Sonoma to Monterey Counties, California, 400 breeding adults; (RU–5) San Luis Obispo to Ventura Counties, California, 1,200 breeding adults; and (RU–6) Los Angeles to San Diego Counties, California, 500 breeding adults.

Status: Population estimates are developed by multiplying the number of adult plovers observed during breeding window surveys by a correction factor of 1.3, which adjusts the observed number to that of a known population. As a result, the current population estimate for the U.S. portion of the Pacific Coast WSP is approximately 2,300 based on the 2005 breeding window survey (Stenzel, *in litt.* 2004; Page, *in litt.* 2005; Jensen, *in litt.* 2006; Kelly, *in litt.* 2006).

Not all Recovery Units are meeting their individual criteria. Recovery Units 1, 2, 3, and 6 are below their goals, while RU–4 and RU–5 are currently meeting or exceeding their goals. Collectively, recovery of the Pacific Coast WSP within each of the six Recovery Units is necessary to maintain breeding population dynamics, ensure protection and appropriate management of wintering and migratory habitat, and ensure the long-term health and sustainability of the Pacific Coast WSP across its current range. Attainment of the population goals in two of the Recovery Units is encouraging, and we believe that the population increases are directly attributable to a reduction in threats through implementation of management actions by our partners, including the Department of Defense, Federal and State resource agencies, local governments, non-governmental entities, private land managers, and academic researchers.

Part B: Implement monitoring of site-specific threats, incorporate management activities into management plans that ameliorate or eliminate those threats, and complete research necessary to modify management and monitoring actions.

Status: Each Recovery Unit has achieved success in managing plovers, their habitat, and non-compatible activities, and each has experienced a resulting increase in plover numbers. Significant progress has been made to recover the Pacific Coast WSP, yet additional recovery actions are needed. We will continue to encourage and support our partners to implement recovery actions. Successful partnerships are essential to the recovery of this DPS.

Second Recovery Criterion

Maintain a yearly average productivity of at least one fledged chick per male in each Recovery Unit in the last 5 years prior to delisting.

Status: Monitoring programs to assess this element have been implemented in the Monterey Bay Area and greater Humboldt County Area, California, and throughout coastal Oregon. Monitoring programs have not yet been developed for other portions of the Pacific Coast WSP's range. Monitoring has indicated that fledging success varies between

sites and between years. The monitoring program provides a mechanism to assess reproductive success over time (Colwell *et al.* 2005; Lauten *et al.* 2006).

Third Recovery Criterion

Develop and implement mechanisms to assure long-term protection and management of breeding, wintering, and migration areas in order to maintain the subpopulation sizes and average productivity specified above.

Status: Some progress has also been made to achieve this element, including the policies enacted by California and Oregon State Parks, the Department of Defense (DOD), Bureau of Land Management (BLM), U.S. Forest Service (USFS), National Wildlife Refuge System (NWR), and multiple local governments to protect Pacific Coast WSP habitat. Progress includes the State of Oregon's efforts to develop a Habitat Conservation Plan (HCP) as part of an incidental take permit application, and California State Park's HCP development for San Luis Obispo County, California. Although take may be authorized for legal activities, conservation measures associated with the incidental take permits are believed to offset adverse affects, and will promote recovery. We will continue to support similar types of recovery actions through implementation of a special 4(d) rule.

Specific Recovery Strategies Currently Underway in Each of the Recovery Units

RU–1 (Washington and Oregon)

The USFS, BLM, and Willipa Bay NWR have cleared nonnative vegetation and recontoured beach sand dunes to provide western snowy plover breeding and wintering habitat. Restoration actions at Willipa Bay NWR, New River, the North Spit of Coos Bay, and the Overlook (Siuslaw National Forest) have all attracted breeding plovers. Oregon State Parks is in the process of developing a Statewide coastal HCP for plovers. Predator management, including the use of nest exclosures and sparing use of lethal trapping, resulted in a record reproductive year in 2003. Although not as successful as 2003, 2004 was also a very good reproductive year for snowy plovers in Oregon and Washington (see Figure 1 (Jensen *in litt.* 2005; Kelly *in litt.* 2005)). Washington State has seen plovers from California and Oregon become established as breeders, benefiting from the management successes to the south.

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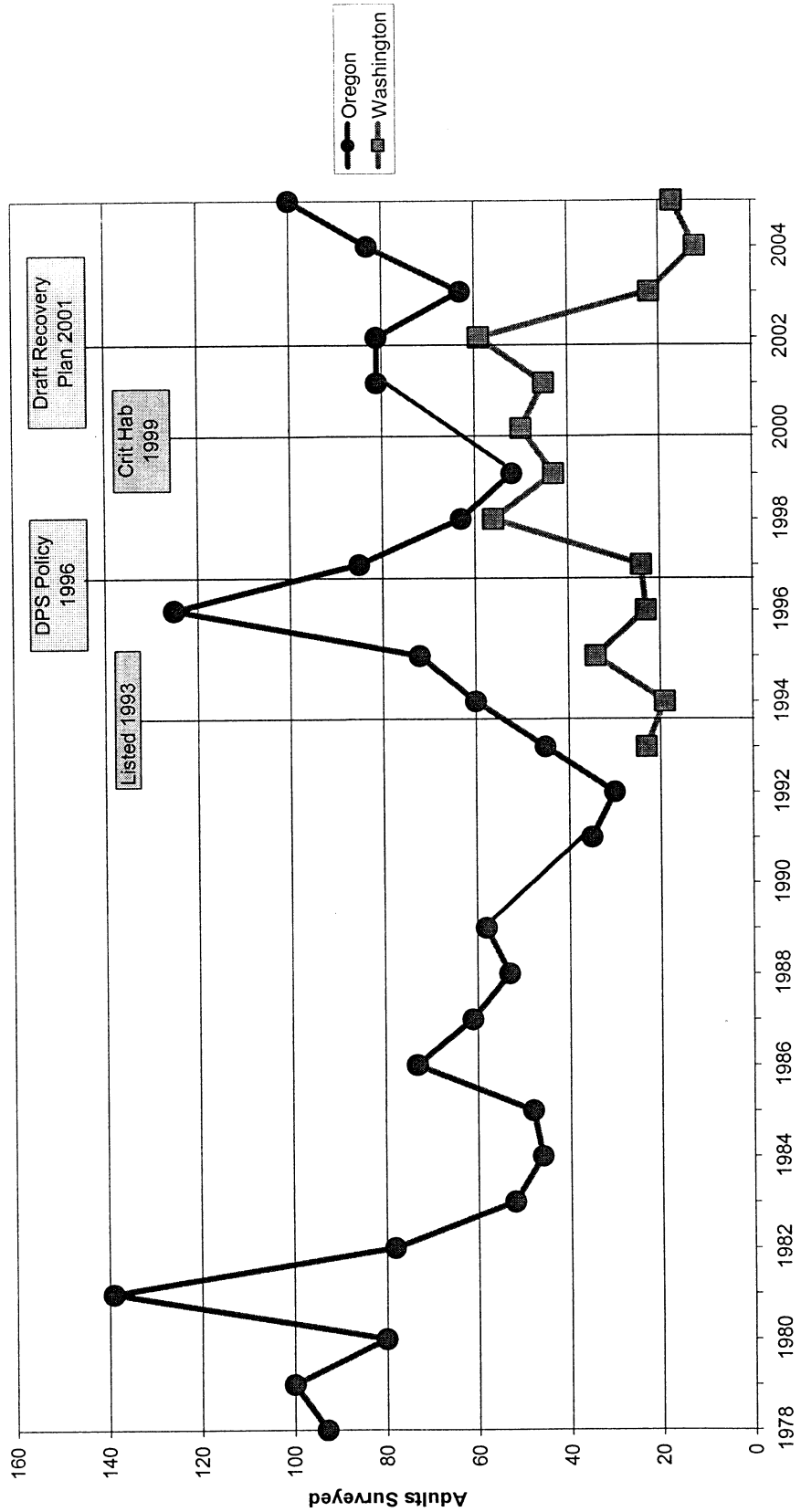

Figure 1 Oregon & Washington Population Trends

RU–2 (Del Norte, Humboldt, and Mendocino Counties, California)

Although snowy plovers had been known along the Eel River gravel bars in Humboldt County, a post-listing breeding site was discovered in 1995. That site has been the most productive plover breeding site within this Recovery Unit, and in California north of the San Francisco Bay. The California State Parks has been a leader with habitat restoration, monitoring, and the

use of symbolic fencing (temporary post and cable) to direct human use at the beach. Plovers nested at Manchester State Beach for the first time in 2003, and returned in 2004. A single plover nest was documented at Gold Bluffs Beach in 2004, which was the first since the early 1980s. Humboldt County Parks has enacted a ''plover friendly'' ordinance to reduce impacts to breeding plovers. The BLM and the California Department of Fish and Game (CDF&G) also manage winter and breeding habitat, and have conducted habitat restoration and human disturbance management. The Humboldt State University and a private contractor conduct the majority of the monitoring and implementation of recovery actions within the unit in partnership with Federal, State, and local agencies.

RU–3 (San Francisco Bay (Napa, Alameda, Santa Clara, and San Mateo Counties), California)

The Don Edwards-San Francisco Bay NWR has acquired lands and is working with the Cargill Salt Company to restore historic tidal salt marsh around San Francisco Bay. The CDF&G and the California Department of Transportation (Caltrans) also both manage plover habitat within the Recovery Unit. Monitoring is primarily conducted by San Francisco Bay NWR staff and the San Francisco Bay Bird Observatory. The San Francisco Bay NWR is a leader in plover management for the unit, and we expect plover numbers to increase as management measures are implemented.

RU–4 (Sonoma, Marin, San Mateo, Santa Cruz, and Monterey Counties, California)

The California State Parks and the Point Reyes Bird Observatory have developed some of the leading outreach tools that have been found to be effective rangewide. Both California State Parks and the Point Reyes Bird Observatory have worked cooperatively with the National Park Service (Golden Gate National Recreation Area and Point Reyes National Seashore), the Salinas River NWR, and the CDF&G to manage human use in plover wintering and breeding habitat adjacent to large population centers. The Salinas River NWR, along with California State Parks and Point Reyes Bird Observatory, has made significant achievements in habitat and predator management. Symbolic fencing, nest exclosures, lethal and nonlethal methods of predator control, and outreach techniques have all been pioneered within this Recovery Unit. Plovers had record reproductive success at Monterey Bay during 2003 (See Figure 2 (Page *in litt.* 2005)).

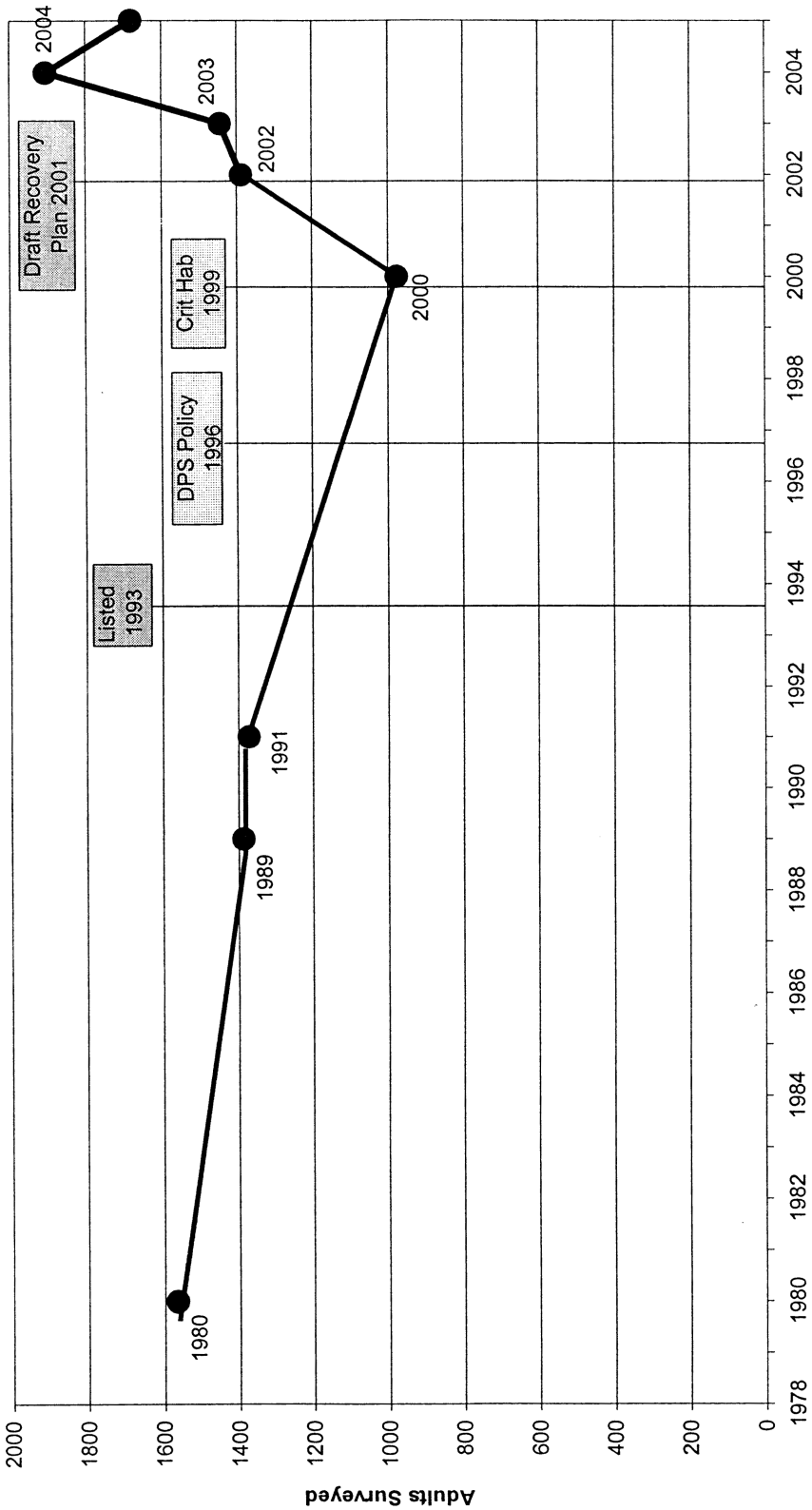

Figure 2 California Population Trends

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RU–5 (San Luis Obispo, Santa Barbara, and Ventura Counties, California)

This Recovery Unit manages the largest number of breeding and wintering plovers. The California State Parks and Vandenberg Air Force Base (AFB) are the primary managers within the unit. For the most part, plovers do not affect mission-related activities at Vandenberg AFB. Vandenberg AFB has increased its management measures since 2000, with a positive response in plover reproductive success. Management actions at Oceano Dunes State Vehicular Recreation Area have also bolstered the plover numbers. The California State Parks is developing an HCP for plovers for the San Luis Obispo District, including Oceano Dunes State

Vehicular Recreation Area. Unocal also has remediated impacts to plovers by restoring contaminated habitat.

RU–6 (Los Angeles, Orange, and San Diego Counties, California)

Plovers in this Recovery Unit have lost significant habitat through development and recreational use. The management of some practices, such as beach raking, could allow for additional habitat within the unit. Southern California beaches are highly impacted due to intense human use. As a result, plovers are dispersed. The primary beach managers within the unit are the California State Parks and the military (Camp Pendleton, North Island Naval Air Station). The San Diego NWR complex manages plover habitat at the Tijuana Slough NWR and at salt ponds within San Diego Bay. Plovers have benefited from protective measures afforded California least terns (*Sterna antillarum browni*), including fencing and predator control. Predator and vegetation management at the Bolsa Chica lowlands has improved plover hatch rates at that site. Overall, plover reproductive numbers have remained fairly constant throughout the recovery unit, with some increases experienced during the last few years.

The three recovery criteria (Service 2001) stated above define what is needed in order for the Pacific Coast WSP to be delisted, that is, when the DPS has recovered to the point where it no longer needs the protection of the Act. Delisting will be proposed when all Recovery Units meet their recovery criteria or threats have been adequately addressed. In the interim, however, we believe we have an opportunity to provide a mechanism through this rule pursuant to section 4(d) of the Act, which will encourage increased conservation efforts for the Pacific Coast WSP. This approach will recognize and reward successful conservation efforts in large portions of the range where Pacific Coast WSP have met recovery goals, and it will provide positive incentives to those land managers working in other parts of the range where recovery targets have not yet been achieved.

Proposed Special Rule

Section 4(d) of the Act provides that when a species is listed as threatened, we are to issue such regulations as are necessary and advisable to provide for the conservation of the species. Our implementing regulations (50 CFR 17.31) for threatened wildlife generally incorporate the prohibitions of section 9 of the Act for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. The prohibitions at 50 CFR 17.31 generally make it illegal to import, export, take, possess, ship in interstate commerce, or sell a member of the species. The ''take'' that is prohibited includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the wildlife, or attempting to do any of those things. A special rule for a specific threatened species would establish only those particular prohibitions that are necessary and advisable for its conservation. In such a case, the general prohibitions in 50 CFR 17.31 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species or DPS, which we consider necessary and appropriate to conserve the species.

At the time the Pacific Coast WSP was listed as a threatened DPS in 1993 (58 FR 12864), we did not promulgate a special section 4(d) rule, and as a result, all of the section 9 prohibitions, including the ''take'' prohibitions, apply to the DPS. Subsequent to the listing of the Pacific Coast WSP, certain Federal, State, and County agencies, and some local governments (collectively referred to as the Jurisdictions) have implemented conservation measures for the Pacific Coast WSP, such that several areas are now meeting or exceeding their Recovery Unit population objectives identified in the Draft Recovery Plan (Service 2001). We anticipate that the continued implementation of conservation measures by Jurisdictions throughout the range of the Pacific Coast WSP will likely result in additional areas meeting or exceeding their recovery goals in the future.

We are proposing to issue this section 4(d) rule of the Act because we believe that the regulations are necessary and advisable to provide for the conservation of the species. This proposed special rule (1) will recognize the positive recovery efforts and accomplishments that have resulted in increased regulatory flexibility, (2) will provide an incentive to other land managers within the range of the Pacific Coast WSP to implement similar recovery measures in areas where Pacific Coast WSP numbers have not yet reached recovery targets, and (3) better enable the Service and other conservation entities to target their limited resources to areas where Pacific Coast WSP recovery needs are greatest.

Therefore, through this special rule under section 4(d) of the Act, we propose to replace the currently applicable blanket prohibition against incidental take of Pacific Coast WSP. The special rule would remove Section 9 prohibitions applicable to activities that occur within Counties where the County has met its Breeding Bird Management Goal specified in Table 1 below and has provided documentation of Pacific Coast WSP conservation activities to the Service. This documentation, which is described below, should be provided to the Service within six months of adoption of this rule. The removal of prohibitions will apply to the actions of individuals and local and state entities within a County which has met the requirements above.

The conservation benefit of the 4(d) rule is (1) to encourage further recovery efforts for the Pacific Coast WSP, and (2) to more effectively target the regulatory and proactive powers of the Act to those areas in greatest need. Our goal is to recognize where existing conservation measures have resulted in population increases that meet recovery goals and to ensure the likelihood of those conservation measures expanding and continuing into the future. This 4(d) rule is also designed to encourage additional conservation measures in areas where recovery goals have not been met. Minor adverse impacts to the Pacific Coast WSP, consistent with provisions of a final 4(d) rule, if adopted, would not appreciably diminish the likelihood of survival and recovery of the DPS. The special 4(d) rule will exempt those Counties which have met recovery goals from the prohibition on take as long as populations remain above recovery goals.

Proposed Rule Application

The activities we propose to be exempt under this special rule include most of the common recreational and commercial activities occurring within Pacific Coast WSP habitat, as well as activities that promote conservation, such as habitat restoration and certain research (see below for discussion of recovery permits under Section 10(a)(1)(A) of the Act). We propose that all activities in those Counties which have met their recovery goals be exempt from take prohibitions. However, intentional take of Pacific Coast WSP as defined by the Act will continue to be prohibited (16 U.S.C. § 1532(19)) throughout the range of the plover regardless of whether recovery goals have been met in the County.

Research/monitoring actions that relate to the status of the Pacific Coast WSP or its reproductive success would

continue to be subject to the Service's Recovery Permit process under Section 10(a)(1)(A). Our rationale for permitting these research activities separate from this special 4(d) rule is that these activities will be tied to the Service's determination of the rangewide, Recovery Unit, and County status of the species. Continuing to regulate these activities under the Section 10(a)(1)(A) permit program allows us to maintain quality and consistency of data throughout the range of the Pacific Coast WSP.

Because we are proposing, in part, that take exemptions under this special 4(d) rule be based on County breeding Pacific Coast WSP numbers (Breeding Bird Management Goals), we believe that the Service should retain oversight of how data are collected and applied to reduce actual or perceived conflicts between surveyors and use advocates. Therefore, we propose that this special rule apply only to activities that would not involve handling any life stage of Pacific Coast WSPs. The activities that would continue to require a permit under the section 10(a)(1)(A) program include banding of adults or chicks, floating eggs to determine hatch dates, surveys to locate and monitor nests, and population surveys and censuses conducted during the breeding season.

The Service believes that as long as Pacific Coast WSP numbers in certain areas have increased to recovery levels and local measures are in place to maintain those numbers, exempting otherwise lawful activities carried out by local citizens in these areas from the take prohibitions still promotes the conservation of the Pacific Coast WSP. The approach will increase local public support for Pacific Coast WSP recovery; it will provide an incentive to other Counties to implement conservation measures and to meet recovery goals; and it will enable the Service to focus limited staff and financial resources to those Counties where the Pacific Coast WSP recovery need is greatest.

The ''documentation'' provided to the Service by a County should be a summary of what conservation measures have been carried out within that County and what is anticipated to occur in the future. This documentation may, but is not limited to, include existing Service-approved plans or other approved Federal actions. It may include, but is not limited to, local ordinances, agreements or plans which may be already developed and implemented by entities within the County as well as actions taken by the County itself. For example, documentation provided to the Service by a County may include (a) management agreements or plans developed and implemented on State and/or Federal lands within the County such as Biological Opinions, Habitat Conservation Plans, Safe Harbor Agreements, Partners for Fish and Wildlife Agreements, and/or conservation agreements, (b) County ordinances that have been implemented to alleviate threats to Pacific Coast WSP, (c) other beneficial agreements, plans and/or actions taken by individuals or entities that protect the Pacific Coast WSP, and/or (d) other voluntary measures implemented within the County.

We have chosen the County-level of government jurisdiction as the most appropriate measure for implementation of this special rule. The Pacific Coast WSP occurs along approximately 1,500 miles of coastline within the United States. Within this range there is a tremendous variety of ownership patterns, government jurisdictions, and land management challenges. Accordingly, governance at the County level seems the most appropriate and efficient level to implement the measures proposed in this rule. Counties are large enough to affect meaningful recovery actions, but they are not so small that coordination across the 1,500 mile range would strain the Service's limited staff resources. Also, the Service can organize Pacific Coast WSP monitoring data at the County level, which enables better tracking of Pacific Coast WSP recovery goals.

As indicated in Table 1, some counties have Breeding Bird Management Goals of zero or which are ''unknown'' because targets will depend on the results of restoration activities (Service 2001). Counties with Breeding Bird Management Goals of zero support wintering Pacific Coast WSP (Service 2001). These Counties could take advantage of this 4(d) rule by providing documentation (see above) that management focusing on maintenance of wintering habitat for Pacific Coast WSP is occurring in the County. Counties with Breeding Bird Management Goals currently identified as ''unknown'' should also be able to take advantage of this 4(d) rule even though they currently do not have breeding bird management goals identified. These Counties can provide documentation (see above) to the Service that management addressing breeding and/or wintering plovers is occurring in the County.

TABLE 1.—BREEDING BIRD MANAGEMENT GOALS BY LOCATION [1]

Location	Management goal breeding numbers (adult birds)
WASHINGTON:	
Grays Harbor County	38
Pacific County	40
OREGON:	
Clatsop County	4
Tillamook County	32
Lincoln County	4
Lane County	14
Siltcoos River to Tenmile Crk. (Lane and Douglas Counties)	20
Douglas County	4
Umpqua River to Horsfall Beach (Douglas and Coos Counties)	20
Coos County	54
Bandon St. Pk. to Floras Lk. (Coos and Curry Counties)	54
Curry County	16
CALIFORNIA:	
Del Norte County	18
Humboldt County	162
Mendocino County	20
Sonoma County	10
Marin County	64

TABLE 1.—BREEDING BIRD MANAGEMENT GOALS BY LOCATION [1]—Continued

Location	Management goal breeding numbers (adult birds)
San Francisco County *	0
San Francisco Bay * (Napa, Alameda, Santa Clara, and San Mateo Counties)	Unknown lands in SF Bay are dependant on Tidal Salt Marsh restoration.
San Mateo County (not SF Bay)	34
Santa Cruz County	42
Jetty Road to Mouth of Elkhorn Slough (Monterey and Santa Cruz Counties)	54
Monterey County	262
San Luis Obispo (SLO) County	182
Pismo Beach/Nipomo Dunes (SLO and Santa Barbara Counties)	350
Santa Barbara County	594
Ventura County	374
Los Angeles County *	0
Orange County	50
San Onofre Beach (Orange and San Diego Counties)	15
San Diego County	485

[1] Adapted from Appendix B of the Pacific Coast WSP Draft Recovery Plan.
* Management goals for numbers of breeding birds are zero or unknown in the Draft Recovery Plan. Recovery efforts for these Counties should focus on wintering habitat.

If this proposed rule is finalized, a County will apply for an exemption under the 4(d) rule by contacting the Service and providing documentation of the County's conservation efforts within six months. The Service will provide the most recent available survey information and work with the County to provide technical assistance as necessary when requested.

The number of breeding adults within a County will be determined by the results of rangewide breeding season window surveys. Determination of whether a County qualifies for this special rule will be based on Breeding Bird Management Goals and will depend on that County meeting those Goals for two out of the five previous years. On an annual basis, the Service will determine County plover adult numbers by mid-December, thereby allowing entities to know their eligibility for 4(d) exemptions under this rule by January 1st of each year. Using two out of five years to qualify for exemptions allows for natural fluctuations in population dynamics. We believe that the qualifying criteria would ensure that the Pacific Coast WSP does not decline below regional recovery goals as a result of implementing this proposed rule. Additionally, we believe that the two out of five year criterion assures that there are healthy numbers of plovers before take exemptions could apply and maintains currently healthy populations. Once a County has qualified for the 4(d) exemptions under this rule, the exemptions will apply as long as the jurisdiction continues to meet its recovery population goals.

We believe that this 4(d) rule would provide a conservation benefit to Pacific Coast WSP. We expect that it would increase and promote voluntary and cooperative efforts to conserve Pacific Coast WSP. We also expect that implementation of this special 4(d) rule for the Pacific Coast WSP would: (1) Recognize the positive conservation accomplishments that have improved the status of the species by offering take exemptions to landowners and managers within Counties that are meeting recovery goals, (2) remove inefficient or unnecessary Federal regulatory oversight in portions of the listed entity's range where recovery goals have been met and/or threats have been addressed, thus enabling limited management resources to be more efficiently targeted to other areas or conservation needs, and (3) serve as a positive incentive to beach managers and landowners to increase voluntary plover conservation in areas that have not yet met County Breeding Bird Management Goals.

Public Comments Solicited

Comments and suggestions are invited from all interested parties. We are interested in knowing if the relevant jurisdictions are interested in the development of such special regulations. We request comments on whether we should propose special regulations that would provide the opportunity for County jurisdictions, through their authorities, to attain compliance under the Act to implement and enforce land and water management activities. In addition, we request specific information and comment from Federal and State agencies, local municipalities, and private individuals or organizations on the following:

(1) The types of activities we should address in a special rule;

(2) Appropriate monitoring and reporting programs for covered activities;

(3) Whether wintering habitat should be taken into account in a 4(d) rule, and if so, how it should be addressed;

(4) How areas without breeding bird goals identified in the Draft Recovery Plan, but which are important for wintering plovers, such as Los Angeles County, should be treated in the 4(d) rule;

(5) What level of jurisdiction is the appropriate level at which such a special rule should be proposed;

(6) If and how the Service should consider including within this special rule consideration for individual landowners who develop and implement management strategies within Counties that have not yet met plover population recovery goals, but that adequately address threats to the species; and

(7) Whether using 2 out of the previous 5 years to assess whether a County has met its Breeding Bird Management Goals is appropriate;

In summary, we welcome comments and suggestions on this proposed special 4(d) rule to customize the section 9 take prohibitions for those Counties that are meeting or exceeding their population objectives identified Table 1 above.

Public Hearing and Informational Meetings

The Act provides for a public hearing on this proposal, if requested. Requests must be filed by the date specified in the DATES section above. Such requests must be made in writing and addressed

to the Field Supervisor (see **ADDRESSES** section).

We will hold informal public informational meetings at coastal locations in Washington, Oregon, and California during the comment period for this proposal (see **DATES** section). The locations and dates of the informational meetings will be widely publicized in advance in the press. The locations and dates of these public informational meetings can also be obtained by contacting the Arcata Fish and Wildlife Office (see **ADDRESSES** section).

Peer Review

Under our policy of peer review (59 FR 34270), we will obtain the expert opinions of at least three appropriate and independent specialists concerning appropriateness of exempting certain activities from take prohibitions where recovery goals have been met and the most efficient way to implement the measures proposed in this special rule.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action. This rule would not have an annual economic impact of more than $100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule would reduce the regulatory burden of the listing of the Pacific Coast distinct population segment of the western snowy plover under the Act as a threatened species by providing certain exemptions to the section 9 prohibitions. These exemptions would reduce the economic costs of the listing by removing for certain activities in certain areas, the need for Section 10 compliance with the Act, and by reducing enforcement by resource agencies; therefore, the economic effect of the rule would benefit managing entities, taxpayers, and the economy. This effect would not, however, rise to the level of ''significant'' under Executive Order 12866. This rule would not create inconsistencies with other Federal agencies' actions. Other Federal agencies would be mostly unaffected by this proposed rule. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule would allow individuals to engage in otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected individuals would be positive. This rule would not raise novel legal or policy issues. We have previously promulgated section 4(d) rules for other species.

Regulatory Flexibility Act

We have determined that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. To assess the effects of the rule on small entities, the Service referred to the recent Final Economic Analysis conducted as a requirement to designating critical habitat for the Pacific Coast WSP (Industrial Economics, Inc. 2005). That analysis identified management of beach recreation as having the greatest impact to tourism and therefore small, local businesses. Exempting certain activities from the Act's take prohibitions would likely reduce management requirements in areas where Management Goals have been met. The Final Economic Analysis can be obtained from the Arcata Fish and Wildlife Office (see **ADDRESSES** section), or at the following Web site: *http://arcata.fws.gov/es/birds/plover.html.*

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would not have an annual effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The Service refers to the Final Economic Analysis (Industrial Economics, Inc. 2005) conducted as a requirement to designate critical habitat for the Pacific Coast WSP. That analysis determined that the majority of the costs associated with designation of critical habitat for the Pacific Coast WSP stem from management of recreational activities (*i.e.*, managing habitat and minimizing incidental take associated with coastal activities). Reducing the regulatory oversight of beach-related recreational activities would benefit tourism and small businesses by promoting coastal use. Therefore, we believe that implementation of a special 4(d) rule that reduces the Service's regulatory involvement and promotes the continued conservation of the listed entity would likely have no effect, or a positive effect, on small local beachfront businesses. The analysis assumes that beach goers are more likely to not vacation in a coastal area with plover restrictions designed to avoid incidental take. Small beachfront businesses that depend on coastal tourism are therefore negatively impacted when beach users go somewhere else. Reducing the need to manage beaches as strictly as in the past due to the exemption of some forms of incidental take will reduce the likelihood tourists will go elsewhere, thereby improving conditions for small beachfront businesses.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*,) this rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule modifies existing regulatory burdens to the public, by allowing individuals to have more freedom to pursue activities (*i.e.*, legal beach driving) that impact the Pacific Coast WSP, without first obtaining individual authorization from the Service.

Federalism

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Implementation of a special 4(d) rule is expected to reduce Federal oversight associated with management of the Pacific Coast WSP by exempting specified forms of incidental take of plovers in areas where Breeding Bird Management Goals have been met, *and* where managing entities have entered into long-term management strategies. Exempting certain activities from the take prohibitions removes or reduces the need to comply with Section 10(a)(1)(B) of the Act.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a ''collection of information'' as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''10 or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12 month period. For purposes of this definition, employees of the Federal Government are not included. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposal does not contain any new collections of information that require OMB approval under the Paperwork Reduction Act. This rule refers to 10(a)(1)(A) recovery permits required for research and monitoring actions that relate to the status of the Pacific Coast WSP or its reproductive success. Our recovery permit applications are already approved by OMB under OMB control number 1018–0094, which expires September 30, 2007.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the Pacific Coast WSP, this proposed rule would have no effect on federally recognized Indian Tribes.

Energy Supply, Distribution or Use (Executive Order 13211)

We have evaluated this proposed rule in accordance with E.O. 13211 and have determined that this rule would have no effect on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons stated in the preamble, the Service proposes to amend part 17, subpart B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for the ''Plover, western snowy,'' under ''Birds,'' on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Plover, western snowy.	*Charadrius alexandrinus nivosus.*	U.S.A. (AZ, CA, CO, KS, NM, NV, OK, OR, TX, UT, WA), Mexico.	U.S.A. (CA, OR, WA), Mexico (within 50 miles of Pacific coast).	T	493	17.95(b)	17.41(c)
*	*	*	*	*	*		*

3. Amend § 17.41 by adding a new paragraph (c) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) Western snowy plover (*Charadrius alexandrinus nivosus*), Pacific Coast Population.

(1) *Applicable prohibitions.* All prohibitions and measures of §§ 17.31 and §§ 17.32 shall apply to any threatened Pacific Coast western snowy plover, *except* as noted in paragraphs (c)(4) and (c)(5) of this section.

(2) *How are various terms defined in this special rule?* We define certain terms that specifically apply to the Pacific Coast Western Snowy Plover (Pacific Coast WSP) and this special rule as follows:

(i) *Breeding Bird Management Goal* means the target number of breeding plovers by County, listed in the draft

Recovery Plan for the Pacific Coast WSP.

(ii) *Documentation* provided to the Service by a County should be a summary of what conservation measures have been carried out within that County and what is anticipated to occur in the future. This documentation may include existing Service-approved plans or other approved Federal actions. It may include local ordinances, agreements or plans which may be already developed and implemented by entities within the County as well as actions taken by the County itself. For example, documentation provided to the Service by a County may include (a) management agreements or plans developed and implemented on State and/or Federal lands within the County such as Biological Opinions, Habitat Conservation Plans, Safe Harbor Agreements, Partners for Fish and Wildlife Agreements, and/or conservation agreements, (b) County ordinances that have been implemented to alleviate threats to Pacific Coast WSP, and/or (c) other beneficial agreements, plans and/or actions taken by individuals or entities that protect the Pacific Coast WSP.

(3) *What activities are exempted from threatened species permits by this rule?* This rule exempts all activities in those Counties which have meet their recovery goals, subject to the conditions in paragraphs (c)(4) and (c)(5) of this section, in the habitat of the Pacific Coast population of the western snowy plover from the requirement for threatened species permits.

(4) *What activities continue to be subject to threatened species permits under this rule?* Research/monitoring actions that relate to the status of the Pacific Coast western snowy plover or its reproductive success continue to be subject to the Service's Recovery Permit process under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations at 50 CFR 17.22 and 17.32. The activities that would continue to require a permit under the section 10(a)(1)(A) program include banding of adults or chicks, floating eggs to determine hatch dates, surveys to locate and monitor nests, and population surveys and censuses conducted during the breeding season. Intentional take of Pacific Coast WSP remains prohibited under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

(5) *What must Pacific Coast western snowy plover jurisdictions do to be authorized under the special rule?* A County (or other appropriate entity acting on behalf of a County and with County approval) is exempt from incidental take of Pacific Coast western snowy plover associated with activities listed in paragraph (c)(3) of this section, if:

(i) The County has provided documentation to the Service that summarizes what conservation measures to benefit the Pacific Coast WSP have been carried out within the County and what is anticipated to occur in the future, *and*

(ii) The County has met its Breeding Bird Management Goal as provided in the table in paragraph (c)(5)(ii)(A) of this section, for at least 2 years out of the most recent 5 years.

(A) *Table of Breeding Bird Management Goals By Location.*

Location	Management goal breeding numbers (adult birds)
Washington:	
Grays Harbor County	38
Pacific County	40
Oregon:	
Clatsop County	4
Tillamook County	32
Lincoln County	4
Lane County	14
Siltcoos River to Tenmile Crk. (Lane and Douglas Counties)	20
Douglas County	4
Umpqua River to Horsfall Beach (Douglas and Coos Counties)	20
Coos County	54
Bandon St. Pk. To Floras Lk. (Coos and Curry Counties)	54
Curry County	16
California:	
Del Norte County	18
Humboldt County	162
Mendocino County	20
Sonoma County	10
Marin County	64
San Francisco County *	0
San Francisco Bay * (Napa, Alameda, Santa Clara, And San Mateo Counties)	Unknown Lands in SF Bay are dependant on Tidal Salt Marsh restoration.
San Mateo County (not SF Bay)	34
Santa Cruz County	42
Jetty Road to Mouth of Elkhorn Slough (Monterey and Santa Cruz Counties)	54
Monterey County	262
San Luis Obispo (SLO) County	182
Pismo Beach/Nipomo Dunes (SLO and Santa Barbara Counties)	350
Santa Barbara County	594
Ventura County	374
Los Angeles County *	0
Orange County	50
San Onofre Beach (Orange and San Diego Counties)	15
San Diego County	485

(B) A County that has a Breeding Bird Management Goal of zero, as listed in the table in paragraph (c)(5)(ii)(A) of this section, may qualify for incidental take exemption for the activities listed in paragraph (c)(3) of this section by providing documentation to the Service that management focusing on maintenance of wintering habitat for Pacific Coast WSP is occurring in the County.

(C) A County with a Breeding Bird Management Goal currently identified as ''unknown,'' as listed in the table in paragraph (c)(5)(ii)(A) of this section, may qualify for incidental take exemption for the activities listed in paragraph (c)(3) of this section by providing documentation to the Service that management addressing breeding and/or wintering plovers is occurring in the County.

(D) A County's 4(d) incidental take exemption for the activities listed in paragraph (c)(3) of this section will apply for as long as Pacific Coast WSP populations remain above recovery goals.

(6) *How will the Service inform the public of annual Breeding Bird Management Goal numbers?*

(i) We will provide the most up-to-date information on Breeding Bird Management Goals on the Arcata Fish and Wildlife Office Web site at *http://arcata.fws.gov/es/birds/ploverbreedingdata.htm.* We will post the Breeding Bird Management Goals on the Web site prior to January 31 of each year.

(ii) Jurisdictions may also obtain Breeding Bird Management Goals by contacting the Arcata Fish and Wildlife Office at 1655 Heindon Road, Arcata, CA 95521; 707–822–7201 (voice); 707–822–8411 (fax).

Dated: April 12, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish, Wildlife, and Parks.

[FR Doc. 06–3793 Filed 4–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fender's Blue Butterfly (Icaricia icarioides fenderi), Lupinus sulphureus ssp. kincaidii (Kincaid's Lupine), and Erigeron decumbens var. decumbens (Willamette Daisy)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and a public hearing on the proposed designation of critical habitat for the Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy).

DATES: *Written comments:* We will accept comments from all interested parties until 5 p.m. PST on May 19, 2006. *Public hearing:* The public hearing will be held on May 9, 2006, from 7 p.m. until 8:30 p.m. An informal informational meeting will precede the hearing from 5 p.m. until 6:30 p.m.

ADDRESSES: *Written comments:* If you wish to comment, you may submit your comments and materials concerning the proposal by any one of several methods:

(1) You may submit written comments and information to Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266.

(2) You may hand-deliver written comments to our Oregon Fish and Wildlife Office, at the above address.

(3) You may send comments by electronic mail (e-mail) to *fw1willamettech@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(4) You may fax your comments to 503/231–6195.

(5) You may submit your comments through the Federal E-rulemaking Portal at *http://www.regulations.gov.*

Public Hearing

The public hearing will be held at the Corvallis Benton County Library, 645 NW. Monroe Avenue, Corvallis, OR 97330.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266 (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act (Act), including whether the benefit of designation would outweigh any threats to the species due to designation;

(2) Specific information on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and their habitat, and which habitat or habitat components (i.e., physical and biological features) are essential to their conservation, such as soil moisture gradient, microsite preferences, and light requirements;

(3) Specific information on: The amount and distribution of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* habitat; what areas should be included in the designations that were occupied at the time of listing and contain the features that are essential to the conservation of the species and why; what areas were not occupied at the time of listing but are essential to the conservation of the species and why;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; we specifically solicit information including:

(a) The benefits provided by a management plan; specifically describe how the plan addresses each primary constituent element (PCE) in the absence of designated critical habitat; describe conservation benefits to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*; include citations that point to the certainty of implementation of those aspects of the management plans;

(b) The benefits of excluding from the critical habitat designation the areas