impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the vermilion darter would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development, road construction, wastewater treatment, stream alteration, and water withdrawal. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the vermilion darter is present, Federal agencies are already required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the vermilion darter. Since the Service and action agency are the only entity with direct compliance costs associated with the proposed critical habitat designation, this rule will not result in a significant impact on small entities. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Author

The primary author of this document is the staff of the Mississippi Fish and Wildlife Office (see **ADDRESSES** section).

Authority

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

Dated: June 8, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–15452 Filed 6–28–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2010-0038]
[MO 92210-0-0008-B2]

RIN 1018-AX26

Endangered and Threatened Wildlife and Plants; Listing the Mountain Plover as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reinstating that portion of our December 5, 2002, proposed rule that concerns the listing of the mountain plover (*Charadrius montanus*) as threatened under the Endangered Species Act of 1973, as amended (Act). We are not reinstating the portion of that proposed rule that concerned a proposed special rule under section 4(d) of the Act. We invite public comments on the proposed listing and announce the availability of new information relevant to our consideration of the status of the mountain plover. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

DATES: To ensure that we are able to consider your comments and information, we request that we receive them no later than August 30, 2010. Please note that we may not be able to address or incorporate information that we receive after the above requested date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 13, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. **FWS-R6-ES-2010-0038** and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: **FWS-R6-ES-2010-0038**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, Colorado Ecological Services Office; mailing address: P.O. Box 25486, DFC (MS 65412), Denver, CO 80225; telephone: 303-236-4773; office location: 134 Union Boulevard, Suite 670, Lakewood, CO 80228. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

For a detailed description of Federal actions concerning the mountain plover, please refer to the February 16, 1999, proposed rule to list the species (64 FR 7587); the December 5, 2002, proposed rule to list the species with a special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) (67 FR 72396); and the September 9, 2003, withdrawal of the proposed rule to list the species (68 FR 53083).

The document we published on September 9, 2003 (68 FR 53083), withdrew the entire proposed rule we published on December 5, 2002 (67 FR 72396), including our proposal to list the species as a threatened species and our proposed special 4(d) rule. The September 9, 2003, document also addressed comments we received on both the 1999 and 2002 proposals to list the mountain plover and summarized threat factors affecting the species. The withdrawal of the proposed rule was based on our conclusion that the threats to the mountain plover identified in the proposed rule were not as significant as previously believed and that currently available data did not indicate that threats to the species and its habitat, as

analyzed under the five listing factors described in section 4(a)(1) of the Act, were likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

On November 16, 2006, Forest Guardians (now WildEarth Guardians) and the Biological Conservation Alliance filed a complaint in the District Court for the Southern District of California challenging the withdrawal of the proposal to list the mountain plover. A settlement agreement between the plaintiffs and the Service was entered by the court on August 28, 2009. As part of the settlement agreement, the Service agreed to reconsider its September 9, 2003, decision to withdraw the proposed listing of the mountain plover (68 FR 53083) and to submit to the **Federal Register** by July 31, 2010, a document reopening the proposal to list the mountain plover that would also request public comment. It was agreed, that upon publication of the document, the 2003 withdrawal of the proposed rule would be vacated. The Service further agreed to submit a final listing determination for the mountain plover to the **Federal Register** no later than May 1, 2011.

This document notifies the public that we are reinstating that portion of our December 5, 2002 (67 FR 72396), proposed rule that concerns the listing of the mountain plover (*Charadrius montanus*) as threatened under the Act. We are not reinstating that portion of the proposed rule regarding a proposed special rule under section 4(d) of the Act. We invite public comments on the proposed listing, new information relevant to our consideration of the status of the mountain plover, and comments and information regarding threats to the species and its habitat.

Background

The mountain plover is a small terrestrial shorebird inhabiting open, flat lands with sparse vegetation. It averages 8 inches (21 centimeters) in length. Mountain plovers are light brown above and white below, but lack the contrasting dark breast band common to most other plovers such as the killdeer (*C. vociferus*). Sexes are similar in appearance. Mountain plovers feed on insects, primarily beetles, crickets, and ants. They forage with a series of short runs and stops, feeding opportunistically as they encounter prey. Mountain plovers are migratory, and form pairs and begin courtship on arrival at their breeding grounds. Nests consist of a simple ground scrape. The female usually splits the clutch, typically six eggs, between two nests. The first nest is incubated by the male, the second by the female. Chicks leave the nest within hours of hatching and obtain their own food. Parents stay with chicks until they fledge, which occurs at about 5 weeks of age.

The mountain plover is found on xeric (extremely dry) shrublands, shortgrass prairie, barren agricultural fields, and other sparsely vegetated areas. On grasslands they often inhabit areas with a history of disturbance by burrowing rodents such as prairie dogs (*Cynomys* spp.), native herbivores, or domestic livestock. Mountain plovers breed in the western Great Plains and Rocky Mountain States from the Canadian border to northern Mexico. Most breeding occurs in Montana, Wyoming, and Colorado. They winter in similar habitat in California, southern Arizona, Texas, and Mexico. While California's Sacramento, San Joaquin, and Imperial Valleys are believed to support the greatest number of wintering mountain plovers, relatively little is known about their winter distribution in other areas. For additional background on the natural history of the mountain plover, see the account of the species in *The Birds of North America* (Knopf and Wunder 2006) and our previous **Federal Register** notices.

The February 16, 1999 (64 FR 7587), proposed rule to list the mountain plover described the life history, ecology, and habitat use of the species; discussed abundance and trend estimates; and provided a description of threats affecting the mountain plover under the five listing factors identified in section 4(a)(1) of the Act. The December 5, 2002 (67 FR 72396), proposal, described as a "supplemental proposal," provided pertinent new information. Both of the proposed rules concluded that the mountain plover was likely to become an endangered species in the foreseeable future unless measures were taken to reverse its decline. Conservation measures to reverse the decline were discussed in both of the proposals.

The proposals addressed elements contributing to the proposed threatened status of the species, including the following:

(1) Historical and ongoing conversion of grassland in the breeding range;

(2) Cultivated areas in the breeding range acting as potential population sinks;

(3) Historical conversion of grasslands and changing agricultural practices in the winter range;

(4) Effects of range management on mountain plover habitat;

(5) Declines in burrowing mammals and the effect on mountain plover habitat;

(6) Oil, gas, and mineral development in mountain plover habitat;

(7) Federal and State protection and management of the mountain plover;

(8) Mountain plover lifespan and breeding site fidelity as related to persistence of local populations;

(9) Influences of annual weather variation on habitat and breeding success;

(10) Human disturbance;

(11) Control of grasshoppers and other insects that provide a food resource; and

(12) Exposure of mountain plover to pesticides.

Since the closure of the last comment period, new information has become available that is relevant to the status of the mountain plover and its proposed listing as a threatened species. To ensure that our review of the species' status is complete and based on the best available scientific and commercial information available, we request comments on the proposal to list the mountain plover as a threatened species, including all information that relates to the species' status and the proposed listing.

New Information Available for Review

Pertinent information received, developed, or analyzed since the public comment period closed on our December 5, 2002, proposed rule (67 FR 72396) is available for review at the following website: *http://www.fws.gov/mountain-prairie/species/birds/mountainplover/*, or by contacting the Field Supervisor, Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** above). Information cited below includes scientific publications, graduate theses and dissertations, and selected unpublished reports that are available on the website referenced above. Additional reports, compilations of data, correspondence, and information also are available on the website. See the website *http://www.regulations.gov* (Docket No. FWS-R6-ES-2010-0038) for additional comments and information received during the comment period for this proposal.

Three documents provide extensive reviews of the mountain plover and its conservation status:

(1) Mountain Plover (*Charadrius montanus*): a technical conservation assessment (Dinsmore 2003);

(2) Mountain Plover (*Charadrius montanus*) in *Birds of North America* (Knopf and Wunder 2006); and

(3) Conservation Plan for the Mountain Plover (*Charadrius*

montanus), Version 1.0 (Andres and Stone 2009).

The majority of relevant information that has become available since our 2002 proposal to list the mountain plover has resulted from local or Statewide studies on the mountain plover's breeding range. The new information is summarized below.

Colorado

For Colorado, newly available information includes results from a study that mapped habitat and surveyed breeding adults in a discrete mountain plover population in South Park, Park County (Wunder *et al.* 2003). The density of mountain plover in occupied habitat in South Park was shown to be high compared to other sites, and the population was estimated at 2,310 adults (Wunder *et al.* 2003, p. 661). In another Park County study, vegetation structure and forage available in habitat used by mountain plover were assessed (Schneider *et al.* 2006). Researchers documented differential habitat use between adults with and without broods (Schneider *et al.* 2006, p. 199), and proposed shrub–grassland edge and insect availability as factors that influence habitat use (Schneider *et al.* 2006, pp. 200-202).

A study on the plains of eastern Colorado looked at movements and home range sizes of adult mountain plover with broods across three habitat types (Drietz *et al.* 2005). Results proved similar for black-tailed prairie dog (*C. ludovicianus*) towns, rangeland, and agricultural fields (Drietz *et al.* 2005, pp. 129-131). A study of mountain plover nesting success in eastern Colorado found that hatching success was similar in native grasslands and agricultural fields, although causes of nest mortality differed between the two habitats (Drietz and Knopf 2007, pp. 684-685).

Another eastern Colorado study investigated types of habitat and habitat quality as related to chick survival and brood movements in mountain plover (Drietz 2009). Chick survival over 30 days was found to be higher on shortgrass habitat occupied by black-tailed prairie dogs than on shortgrass without prairie dogs or on agricultural lands (Drietz 2009, p. 875). Also in the Colorado shortgrass prairie ecosystem, mountain plover numbers were estimated in three habitats: black-tailed prairie dog colonies, grasslands without prairie dogs, and dryland agriculture (Tipton *et al.* 2009). Mountain plover densities observed on prairie dog colonies were approximately 5 times higher than those found on agriculture and 10 times higher than those found on grasslands without prairie dogs (Tipton *et al.* 2009, p. 496). The study estimated that there were 8,577 mountain plover in eastern Colorado (Tipton *et al.* 2009, p. 497).

Knopf (2009) provided an overview of mountain plover studies on the Pawnee National Grasslands (PNG), Weld County, from 1986 to 2007. He described annual population surveys, breeding studies, a burning program designed to enhance habitat, a historical account of mountain plover populations on PNG, and discussed the future of mountain plover on the area. Knopf suggested that mountain plover numbers on the PNG had been in decline since the late 1930s and early 1940s, and that the dramatic decline in the mid-1990s was the abrupt end point of a process of deteriorating habitat, exacerbated by other factors such as wet spring weather and the relocation of breeding mountain plovers to better habitats elsewhere (Knopf 2008, p. 61).

Montana

A number of recent breeding studies of mountain plover have been conducted in Montana. Capture–recapture techniques were employed to study the demographics of mountain plover in Phillips County, Montana (Dinsmore *et al.* 2003). Estimated annual survival rate for juveniles was 0.46 to 0.49 and for adults 0.68; estimated mean life span was 1.92 years (Dinsmore *et al.* 2003, pp. 1020-1021). The size of the adult mountain plover population closely tracked annual changes in the area occupied by black-tailed prairie dogs (Dinsmore *et al.* 2003, p. 1024).

A study of the same Phillips County population estimated annual rates of recruitment and population change (Dinsmore *et al.* 2005). Prairie dog numbers declined sharply in the mid-1990s in response to an outbreak of sylvatic plague (Dinsmore *et al.* 2005, pp. 1550-1551). Mountain plover numbers decreased significantly, then increased in concert with increases in prairie dogs (Dinsmore *et al.* 2005, p. 1552).

Childers and Dinsmore (2008) reported results of estimates of density and abundance from 2004 of mountain plover in Phillips and Valley Counties in north-central Montana. The density of mountain plovers was much greater on black-tailed prairie dog colonies than on other habitats. An estimated 1,028 mountain plovers inhabited the region in 2004 (95-percent confidence interval of 903 to 1,153), most on prairie dog colonies (Childers and Dinsmore 2008, p. 706).

A study that included Phillips County, as well as two sites in Colorado, looked at mountain plover nesting in black-tailed prairie dog colonies during recovery from plague and following plague outbreaks (Augustine *et al.* 2008). Findings indicated that nesting habitat closely tracked the area actively occupied by prairie dogs in a given year. Mountain plover nested within 1 or 2 years after areas were colonized by prairie dogs and nest numbers declined rapidly after prairie dog numbers declined on plague-affected colonies (Augustine *et al.* 2008, p.7).

Additional studies in north-central Montana examined the influence of various factors on the annual survival of mountain plovers (Dinsmore 2008). The annual survival rate for a juvenile mountain plover was 0.06 at hatching, but it increased with age and increased body mass (Dinsmore 2008, p. 51). The annual survival rate of adults of both sexes ranged from 0.74 to 0.96 yearly (Dinsmore 2008, p. 50). Annual survival proved higher during periods of drought (Dinsmore 2008, p. 52).

Skrade (2008) examined dispersal of juvenile (natal dispersal) and adult mountain plovers (both within-year and between years) in Phillips County. Mean dispersal of adult mountain plovers in consecutive years was 1.71 miles (2.75 kilometers) in males and 2.88 miles (4.64 kilometers) in females (Skrade 2008, pp. 14-15). Plovers with unsuccessful previous nesting attempts moved further on average than birds where previous nesting was successful (Skrade 2008, p. 18).

Wyoming

A Wyoming study located 55 mountain plover nests in grassland or desert scrub habitat in 6 counties (Plumb *et al.* 2005a). All nest sites were grazed by ungulates and prairie dogs were present at 36 percent of nest sites (Plumb *et al.* 2005a, pp. 226-227). Nest sites had less grass coverage and shorter vegetation height compared to random plots. Half of the nests were located on elevated plateaus.

Another Wyoming study estimated minimum mountain plover population size in 2003 (Plumb *et al.* 2005b). Distance sampling was used to estimate breeding mountain plover density in five areas and results were applied to the minimum occupied range Statewide. The minimum population estimate for mountain plover in Wyoming was 3,393 birds (Plumb *et al.* 2005b, p. 19-20).

Beauvais and Smith (2003) developed a model of mountain plover breeding habitat in shrub–steppe habitat of western Wyoming. They reported that mountain plover presence was negatively related to degree of slope and had a weak positive relationship to

cover type (Beauvais and Smith 2003, pp. 92-94). They related favored patches of breeding habitat to poor soil, low precipitation, and wind scour, features that they speculated would be persistent over time, especially on public lands.

Smith and Keinath (2004) provided a species assessment of mountain plover in Wyoming. They reviewed the species' natural history and discussed conservation measures, threats, and future conservation strategies.

In Carbon County, Wyoming, studies since 1994 have documented mountain plover presence at the Foote Creek Rim wind power facility (Young *et al.* 2007). Mountain plover numbers declined during the 1997 to 2000 period, when 1,333 wind turbines were erected on the area, but have since largely recovered (Young *et al.* 2007, pp. 16-17). It is not known whether the decline was attributable to displacement caused by the construction work. Carcass searches documented no mountain plover mortalities attributed to turbines. The lowest point of rotor sweep on site (57 feet (17 meters)) was above the typical heights flown by mountain plovers during courtship and breeding (Young *et al.* 2007, p. 18). Except in migration, mountain plover flights are of low altitude; in a common courtship display, a male flies to a height of approximately 16 to 33 feet (5 to 10 meters) and calls as he floats downward (Knopf and Wunder 2006, unpaginated, "Behavior" article).

Nebraska

Recent Nebraska studies addressed the mountain plover's nesting ecology, and attempted to identify the extent of breeding distribution and population size in Nebraska (Bly *et al.* 2008). Monitoring over the course of the study yielded a total of 278 nests, all but 6 on agricultural fields (Bly *et al.* 2008, p. 7). Most nests and the bulk of nest distribution were in Kimball County, in extreme southwestern Nebraska. The minimum breeding population was estimated to be 80 adults in 2007, based on nests found, with the range of the population estimate up to 360 birds (Bly *et al.* 2008, pp. 11-12).

Oklahoma

Studies similar to those conducted in Nebraska were designed to determine the breeding distribution and population size in Oklahoma (McConnell *et al.* 2009). Mountain plovers were found in Cimarron and Texas Counties in the Oklahoma panhandle. Randomized point counts were used to derive a Statewide population estimate of 68 to 91 birds (McConnell *et al.* 2009, pp. 32-33). Mapped mountain plover locations were largely in bare agricultural fields (90 percent), with 5 percent associated with prairie dog towns (McConnell *et al.* 2009, pp. 31-32).

Canada and Mexico

A review of breeding records for Canada concluded that the mountain plover is a peripheral species in Canada with no evidence that it was ever a common or regular breeder (Knapton *et al.* 2005, p. 32). The authors recommended additional searches in Alberta and Saskatchewan.

The first breeding record of mountain plover in Mexico was documented in Nuevo Leon (Gonzalez-Rojas 2006), following a history of breeding season observations in Mexican prairie dog (*C. mexicanus*) colonies.

Wintering Range

Relatively few recent studies have addressed the mountain plover on its wintering range. A survey of mountain plover and their use of cultivated fields in the Imperial Valley of California in 2001 found 4,037 birds (Wunder and Knopf 2003, p. 75). Grazed alfalfa fields and burned Bermudagrass fields were heavily utilized by mountain plover. The importance of the Imperial Valley to mountain plover, where the authors suggested half of the continental population of mountain plovers may winter, is linked to losses of wintering habitat in coastal and Central Valley, California (Wunder and Knopf 2003, pp. 77-78). Mountain plovers wintering in the Imperial Valley were surveyed in 2003 and 2004, in an attempt to develop a statistically reliable estimate of numbers (Knopf and Wunder 2004). Flocking behavior, mobility, and weather were among factors limiting the reliability of Imperial Valley surveys as an indicator of population trends.

Hunting and Edson (2008, pp. 180-186) provided a species account of mountain plover in California, where it is considered a bird species of special concern. They surveyed existing information, provided management recommendations for grassland and cultivated habitats, and suggested research into mountain plover use, movements, and survival as related to habitat type (Hunting and Edson 2008, pp. 184-185). Information gained from their suggested research may be particularly important given the dynamic, market-driven nature of agricultural production and the dependence of agricultural activity, especially in California and the arid Southwest, on irrigation water imported from other areas. Moreover, the changes in the availability of irrigation water that might result from the effects of global climate change and changes in the characteristics of agricultural lands as a result of improved or more broadly implemented water conservation techniques, or changes in cultivation practices could further affect the availability and quality of wintering habitat for the species.

Wunder (2007) studied geographic population structure in mountain plover through color-banding and stable isotope concentrations in feathers. He concluded that there is widespread mixing of mountain plover populations in winter and that birds may use alternate wintering sites in different years (Wunder 2007, p. 118). There was evidence that recruitment may be linked to regional patterns of climate, with highest recruitment coming from breeding areas with low precipitation (Wunder 2007, pp. 119-121).

Other Research

A genetic study using nuclear microsatellites concluded that mountain plover across sampled breeding locations in Colorado and Montana comprised a single, relatively homogenous gene pool (Oyler-McCance *et al.* 2008). Results suggested that there was sufficient gene flow among breeding areas to offset genetic effects of small populations and reported adult fidelity to breeding areas (Oyler-McCance *et al.* 2008, 496-497). From a genetic perspective this suggests that no single breeding population requires special conservation or protection.

Special Rule Under Section 4(d) of the Act

The December 5, 2002, proposed rule (67 FR 72396) included a proposal to list the species as threatened and a proposed special rule under section 4(d) of the Act. That proposed special rule was designed to help facilitate recovery of the mountain plover in the event that a final listing rule was enacted. We are not reinstating the proposed special rule now, as explained below.

The special rule proposed to allow the incidental take of mountain plovers during routine farming practices on summer fallow, cropland idle, or cropland harvested between April 1 and June 30 in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming. In the 2002 proposed rule, we specified the expiration date of the proposed special rule as December 31, 2004 to allow adequate time for research to be conducted regarding conservation of the species on agricultural lands. By the expiration date, we intended to decide whether or not to permanently adopt the

special rule. In the 2002 proposed rule, we suggested that the research results obtained might support continuation of a proposed special rule in the same or a modified form, or support the proposed expiration of the special rule. Since the publication of the 2002 proposed rule, several studies have been conducted; research results are reported in Drietz *et al.* (2005), Drietz and Knopf (2007), Drietz (2009), and Tipton *et al.* (2009). Additional research is ongoing.

The special rule also proposed to allow incidental take of mountain plovers for activities covered under a valid permit issued by the Fish and Wildlife Service for conducting research, educational purposes, scientific purposes, enhancement of or propagation for survival of the mountain plover, zoological exhibition, and other conservation purposes in accordance with 50 CFR 17.32 and under a cooperative agreement with the State under section 6 of the Act, if applicable. At this time, we believe that the regulations at 50 CFR 17.32 adequately address the circumstances described above and the conservation needs of the mountain plover, and that a special rule under section 4(d) of the Act to address these circumstances may not be necessary for this species.

Therefore, we are not reinstating that portion of the December 5, 2002, proposed rule (67 FR 72396) regarding the proposed special rule under section 4(d) of the Act for the mountain plover. However, we invite public comments on whether a special rule under section 4(d) of the Act would be necessary and advisable to provide for the conservation of this species.

For clarity, we are providing a Proposed Regulation Promulgation section in this document to specify the one regulatory change we are proposing: to list the mountain plover as threatened in the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11.

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. To ensure our determination is based on the best available scientific and commercial information, we request information on the mountain plover from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We request comments or suggestions on our proposal to list the mountain plover, on the new information contained in the sources we have made available, and on any other information. We particularly seek comments and information on:

(1) Life history, ecology, and habitat use of the mountain plover;

(2) Range, distribution, population size, and population trends;

(3) Positive and negative effects of current and foreseeable land management practices on the mountain plover, including conservation efforts; and

(4) Current and foreseeable threats to the mountain plover and its habitat in relation to the factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

We are especially interested in obtaining comments and information regarding:

- New information on life span, site fidelity, dispersal, and genetic diversity in the mountain plover;
- New estimates of total mountain plover numbers and their significance to the species' status;
- New information regarding mountain plover breeding in agricultural areas, and whether cultivated fields are beneficial or harmful to mountain plover persistence;
- Current and potential future impacts of oil and gas development, and wind energy development, on the mountain plover and its habitat;
- The significance of current and potential future changes in mountain plover wintering habitat, including those resulting from changes in water use in agriculture and conversion of agriculture to other land uses, especially in California; and
- The potential impacts of future climate change on the mountain plover and its habitat.

As noted earlier, we also invite comments on the merits of enacting a special rule under section 4(d) of the Act should we list the mountain plover as a threatened species under the Act. We specifically request comments on whether, following any final decision to list the mountain plover, a special rule would be necessary and advisable to provide for the conservation of the species and, if so, what form this rule should take and why.

You may submit your comments and information concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this proposal and other listing determinations for the species, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). If you submitted comments or information previously on the proposed rule or during any of the previous open comment periods related to this proposed rule, please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

The Service will finalize a new listing determination after we have completed our review of the best available scientific and commercial information, including information and comments submitted during this comment period.

Authors

The primary authors of this notice are staff members of the Colorado Ecological Services Office, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter 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), add an entry for "Plover, mountain" under BIRDS in 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, mountain	*Charadrius montanus*	U.S.A. (Western)	Entire	T		NA	NA
*	*	*	*	*		*	*

Dated: June 2, 2010

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–15583 Filed 6–28– 10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0069] [92210–0–0009–B4]

RIN 1018–AV89

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our October 13, 2009, proposed revised designation of critical habitat for the arroyo toad (*Anaxyrus californicus*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for the arroyo toad; revisions to proposed critical habitat; and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on the items listed above. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider public comments we receive on or before July 29, 2010. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. **FWS–R8–ES–2009–0069**.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: **FWS–R8–ES–2009–0069**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644–1766; facsimile (805) 644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party during this reopened comment period on the proposed revised designation of critical habitat for the arroyo toad published in the **Federal Register** on October 13, 2009 (74 FR 52612), including the changes to and considerations regarding proposed revised critical habitat in Unit 15 and Subunits 6b, 11b, 16a, 16d and 19a; the draft economic analysis (DEA) of the proposed revised designation of critical habitat for the arroyo toad; and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

• The amount and distribution of arroyo toad habitat included in the proposed revised rule,

• What areas within the geographical area occupied by the species at the time of listing that contain physical and biological features essential to the conservation of the species we should include in the designation and why, and