Federal Register

Tuesday,
May 20, 2008

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*) in Texas; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0055; 92210–1117–0000–FY08–B4]

RIN 1018–AV46

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*) in Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate revised critical habitat for the wintering population of the piping plover (*Charadrius melodus*) in 18 specific units in Texas under the Endangered Species Act of 1973, as amended (Act). In total, approximately 138,881 acres (ac) (56,206 hectares (ha)) fall within the boundaries of the proposed revised critical habitat designation. The proposed revised critical habitat is located in Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, Calhoun, Matagorda, and Brazoria Counties, Texas. Other previously designated critical habitat for the wintering piping plover in Texas or elsewhere in the United States is unaffected by this proposal.

DATES: Send your comments on or before July 21, 2008. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 7, 2008.

ADDRESSES: You may submit comments by one of the followingmethods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R2–ES–2008–0055; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. 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: Allan Strand, Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Office, 6300 Ocean Drive, TAMU–CC, Unit 5837, Corpus Christi, TX 78412–5837; telephone 361–994–9005; facsimile 361–994–8262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons we should or should not designate habitat as ''critical habitat'' in the 19 court-vacated units and adjacent areas in Texas 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 wintering piping plover habitat in the 19 court-vacated units and areas adjacent to those 19 units in Texas, and
- What areas occupied at the time of listing, but located within or adjacent to these specific units, are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed amended critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) The appropriateness of the possible exclusion of approximately 28,474 acres (ac) (11,523 hectares (ha)) of wintering piping plover habitat from the final designation based on the benefits to the conservation of the species and its habitat provided by the Comprehensive Conservation Plans (CCPs) being drafted for National Wildlife Refuge (NWR) lands (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). Specifically:

(a) The benefits to the conservation of the species provided by a CCP;

(b) How the CCPs address the physical and biological features in the absence of designated critical habitat;

(c) The specific conservation benefits to the wintering piping plover that would result from designation;

(d) The certainty of implementation of the CCPs; and

(e) The benefits of excluding from the critical habitat designation the areas covered by the CCPs.

We are particularly interested in knowing how existing or future NWR partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat;

(6) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(7) Whether there are areas we previously designated, but are not proposing for revised designation here, that we should include in our critical habitat designation.

(8) The existence of any conservation or management plans being implemented by public or private land management agencies or owners on lands proposed for designation that we should consider in connection with possible exclusion of those lands from the designation under section 4(b)(2) of the Act. Please include information on any benefits (educational, regulatory, etc.) of including or excluding lands from this proposed designation. We are interested in knowing how partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat, and costs and other relevant impacts associated with the designation.

(9) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed designation and, in particular, any impacts on seismic studies for oil and gas drilling, and the benefits of including or excluding areas that exhibit these impacts.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we

used in preparing this proposed rule, 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, Corpus Christi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to designating revised critical habitat in this proposed rule. For more information on piping plover wintering critical habitat, refer to the final rule designating critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038).

The piping plover is a small, pale-colored shorebird that breeds in three separate areas of North America: the Northern Great Plains, the Great Lakes, and the Atlantic Coast. The piping plover winters in coastal areas of the United States from North Carolina to Texas, along the coast of eastern Mexico, and on Caribbean islands from Barbados to Cuba and the Bahamas (Haig and Elliott-Smith 2004, p. 2). Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree. Therefore, we cannot determine the source breeding population of a given wintering individual in the field unless it has been banded or otherwise marked.

Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites. Northward migration peaks in late March, and by late May most birds have left the wintering grounds (Haig and Elliott-Smith 2004, p. 4). Individual plovers tend to return to the same wintering sites year after year as evidenced by multi-year observations of uniquely marked individuals (Nicholls and Baldassarre 1990; Drake 1999a).

Wintering plovers are dependent on a mosaic of habitat patches, and move among these patches depending on local weather and tidal conditions. One study by Drake (1999a) monitored the movement of 48 piping plovers in south Texas for one season. She found that these birds had a mean home range of 3,117 ac (1,262 ha). Drake (1999a) also noted that the mean linear distance moved per individual bird was 2 miles (mi) (3.3 kilometer (km)) from the fall through the spring. A complete description of the biology and ecology of the piping plover can be found in Haig and Elliott-Smith (2004).

Previous Federal Actions

The piping plover was listed as endangered in the Great Lakes watershed and threatened elsewhere within its range on December 11, 1985 (50 FR 50726). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are listed as threatened under the Act due to the difficulty of knowing where they bred or were hatched.

On July 10, 2001, we designated 137 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas as critical habitat for the wintering population of the piping plover (66 FR 36038). This designation included approximately 1,798 mi (2,892 km) of mapped shoreline and approximately 165,211 ac (66,881 ha) of mapped areas along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

In February 2003, Dare and Hyde Counties, North Carolina, and the Cape Hatteras Access Preservation Alliance challenged the designation of four critical habitat units on the Cape Hatteras National Seashore, North Carolina. A November 1, 2004, court opinion vacated and remanded these units for reconsideration (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior* (344 F.Supp.2d108(D.D.C. 2004)). On June 12, 2006, we published a proposed rule in the **Federal Register** (71 FR 33703) to amend the Service's critical habitat designation in North Carolina. We anticipate publishing a final designation in late 2008.

The Texas General Land Office (GLO) filed suit on March 20, 2006, challenging our designation of 19 units of critical habitat along the Texas coast (Units 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 22, 23, 27, 28, 31, 32, and 33). In a July 26, 2006, stipulated settlement agreement and court order, the court vacated and remanded the designation for these units to us for reconsideration (*Texas General Land Office* v. *U.S. Department of the Interior, et al.*, No. 06–cv–00032 (S.D. Tex.). This proposed rule addresses only those 19 court-vacated and remanded units (referenced above). It also addresses minor edits to the regulatory language found in 50 CFR 17.95(b). All other areas remain as designated in the July 10, 2001, final critical habitat rule (66 FR 36038), including Texas units 1, 2, 5, 6, 11, 12, 13, 20, 21, 24, 25, 26, 29, 30, 34, 35, 36, and 37.

For information on previous Federal actions concerning the piping plover, refer to the final listing rule published in the **Federal Register** on December 11, 1985 (50 FR 50726), or the final rule designating critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038). We are proposing this action in accordance with section 4(b)(2) of the Act and in compliance with the above-mentioned settlement agreement and court order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protections; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent

alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)), laid out in the appropriate spatial arrangement essential to the conservation of the species.

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protections. Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic (shifting spatially over time) and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant now or may not be required for recovery of the species in the future.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. These areas are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard for Federal agency actions, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may sometimes result in jeopardy findings. Similarly, if new information available to these projects and associated planning efforts calls for a different outcome, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas occupied at the time of listing that contain the physical or biological features essential to the conservation of the wintering population of the piping plover, areas unoccupied at the time of listing that are essential to the conservation of the wintering population of the piping plover, or both. We are not currently proposing any areas outside the geographical area presently occupied by the species because occupied areas are sufficient for the conservation of the species.

We have also reviewed available information that pertains to the habitat requirements of this species. These sources included, but were not limited to, data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, and recovery plans. To determine the most current distribution of wintering piping plovers in Texas, we evaluated these areas using wintering piping plover occurrence data from 1991, 1996, 2001, and 2006 international piping plover winter population censuses. We considered these data along with other occurrence data (including presence or absence survey data), research published in peer-reviewed articles and presented in academic theses and agency reports, and information received during the development of the July 10, 2001, designation of critical habitat for the wintering population of the piping plover (see final rule at 66 FR 36038).

To map bayside areas containing physical and biological features determined to be essential to the conservation of the species (see Primary Constituent Elements for the Wintering Population of the Piping Plover section below), we used data on known piping plover wintering locations, 1992 National Wetlands Inventory (NWI) data (except for Unit TX–22 which had 2001 data available) fitted to 2005 National Agriculture Imagery Program (NAIP) aerial photographs, and regional Geographic Information System (GIS) coverages that defined shorelines. The NWI data allowed non-PCEs to be removed from critical habitat designation and PCEs to be delineated more precisely. Based on their NWI classification, 10 wetland habitats for the bayside areas met our definition of PCEs (see Primary Constituent Elements section below). Their codes and brief descriptions are provided here; for a more complete description of each wetland habitat, go to *http://www.fws.gov/nwi/mapcodes.htm.*

M2USN—Marine (gulfside) sandy coastline (beach), regularly inundated by tides

M2USP—Marine (gulfside) sandy coastline (beach), irregularly inundated by tides

E2AB1N—Estuarine (bayside) algal mud or sand flats, regularly inundated by tides

E2AB1P—Estuarine (bayside) algal mud or sand flats, irregularly inundated by tides

E2AB3M—Estuarine (bayside) grass flats of mud or sand, irregularly inundated by tides

E2USM—Estuarine (bayside) sandy shore (beach/sandbar), rarely exposed by tidal fluctuation

E2USN—Estuarine (bayside) sandy shore (beach/sandbar), regularly inundated by tides

E2USP—Estuarine (bayside) sandy shore (beach/sandbar), irregularly inundated by tides

L1UBKhs—Impounded, artificially flooded open water dredge spoil pit, greater than 20 ac (8 ha)

L2USKhs—Impounded, artificially flooded sandy bottom dredge spoil pit, greater than 20 ac (8 ha)

We are aware that wintering piping plovers in Texas also use a NWI wetland

habitat that is classified as subtidal with rooted vascular vegetation which is usually five or more species of seagrass. Although that habitat is classified as subtidal and appears in the NAIP aerial photographs as such, when portions of it are exposed at very low tides, wintering plovers forage in them. However, because we are unable to identify those exposed portions on the aerial photographs, we are unable to map them and, therefore, we are unable to propose them for critical habitat designation.

To map the gulfside, we used 2005 NAIP imagery as a base from which the vegetation and water lines were digitized at a scale of 1:5,000 (using ESRI ArcMap 9.2 software) to produce polygons of critical habitat. The mean lower low waterline (MLLW) was used as the lower limit of the intertidal habitat used by wintering piping plovers. Due to the dynamic nature of the gulfside shoreline, the MLLW vector data from the National Oceanic and Atmospheric Administration (NOAA) was often misaligned with the shoreline in the 2005 NAIP aerial photography. To correct misalignments, we worked with unit TX–3, which had a well-aligned MLLW line. In that unit, we measured the average distance from the well-aligned MLLW line to the shoreline in the 2005 NAIP aerial photographs. We took measurements every 328 feet (ft) (100 meters (m)) along unit TX–03, and averaged them. The 184 ft (56 m) average distance was then used as an estimated MLLW line that was applied in all coastal (gulfside) areas. The landward limit of the gulfside critical habitat units was usually defined by densely vegetated dunes, which do not provide habitat for piping plovers.

We measured the accuracy of the aerial photographs we used by gathering Global Positioning System (GPS) readings at 29 locations and plotting them over the photographs to determine how close those photo points were to actual locations. The offset distance ranged from 10 to 43 ft (3 to 13 m). This information is in the GIS metadata to document the data's horizontal accuracy.

We included those areas within or adjacent to the 19 court-vacated units that contain essential physical or biological features along bay and gulf shorelines for which occurrence data indicate a consistent use by piping plovers, with observations over two or more wintering seasons between 1997 and 2007. We have not included the area of Allyn's Bight (court-vacated unit TX–17) because the PCEs have been reduced to two small, disjunct fragments that are not of sufficient size and spatial arrangement for wintering plovers. Therefore, we do not consider the vacated unit to be suitable for critical habitat designation. Within the remaining 18 court-vacated units, we also did not include very small areas (generally less than 5 ac (2.0 ha)) and areas disjunct from larger polygons containing the PCEs. We are assuming that when these areas were included in our original designation in 2001, either there were PCEs present that connected them to the larger polygons of PCEs or they were included in error because our mapping methodology was not as precise as the methodology we are using for this proposed revised designation. As a consequence, some of the units are smaller than when we originally designated them. In contrast, we expanded the boundaries of some units to capture complete polygons of PCEs, which we believe have shifted outside the boundaries we designated originally due to storms or other natural events. By expanding some boundaries to capture larger polygons and shrinking other boundaries to remove small and disjunct polygons, we believe we have provided a sufficient quantity of critical habitat in the appropriate spatial arrangement for the wintering population of the piping plover in Texas.

Delineating specific locations for designation as critical habitat for the wintering population of the piping plover is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geophysical alterations of beaches and shoreline. To ensure that areas containing features considered essential to the piping plover are included in this proposed designation, the textual unit descriptions in the regulation, definitively determine whether an area is within the critical habitat boundary. Our textual descriptions of the boundaries of each unit use reference points (such as roads or channels), latitude/longitude coordinates, the edge of a PCE (such as the edge of a sand flat or mud flat), the MLLW line, or the edge of a management unit (such as a park or municipality). Within the described boundary for each unit, the unit itself is restricted to only those areas that are utilized by the piping plover and contain the physical and biological features needed (the PCEs). These proposed unit boundaries are static and will not move over time unless we re-designate the boundaries. Unit boundaries were drawn to exclude manmade structures, such as roads or cuts to allow boat traffic. However, bollards, which are small posts placed to preclude driving on the beach, are not PCEs and we propose to exclude them from the boundary of critical habitat, although they are too small to digitally delete from maps at the scale of 1:5,000 that we used to delineate the critical habitat boundaries. Although we are not publishing UTM coordinates for the boundaries of the proposed critical habitat units in this proposed rule, they will be included in the final rule.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs required for the wintering population of the piping plover from the biological needs of the species as described in the Background section of the final rule designating critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038).

Space for Individual and Population Growth and for Normal Behavior

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1990; Drake 1999a, 1999b). When not foraging, plovers can be found roosting, preening, bathing, in aggressive encounters with other piping plovers and other shorebird species, and moving among available habitat locations (Zonick and Ryan 1996).

The habitats used by wintering birds support these behaviors and include beaches, mud flats, sand flats, algal flats, spits, and washover areas. The intertidal sand or mud flats are used by the plovers for foraging, bathing and

aggressive encounters and have no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae or fine shell. Spits are small points of land, especially sand, surrounded by water; they are used by wintering plovers for feeding and roosting. Washover areas, also used for foraging and roosting, are broad, unvegetated areas on the back side of sand dunes with little or no topographic relief formed by breaks in the dunes that are caused and maintained by extreme wave actions. Unvegetated or sparsely vegetated sand, mud, or algal flats above high tide are also used, especially for roosting. These sites may have debris or detritus (decaying organic matter). Some of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types, particularly dredge spoil sites. Although they are used less commonly by piping plovers, we proposed them for critical habitat designation when occupancy has been confirmed.

Wintering plovers are dependent on a mosaic of these habitat patches, and move among them depending on local weather and tidal conditions. The habitats are found in geologically dynamic coastal areas that support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. The most dynamic of these areas are those that are on barrier islands or on mainland areas that are not protected by barrier islands; these areas are adjacent to the Gulf of Mexico. Areas that are on the barrier islands or mainland and adjacent to the bay between the barrier islands and mainland are less dynamic.

Food

Primary prey of wintering plovers include polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1996). Wintering piping plovers peck for prey from on top of or just beneath the surface. Foraging usually takes place on moist or wet sand or mud flats, or fine shell that covers the sand or mud. These substrates may sometimes contain surfcast algae or be covered by a mat of blue-green algae.

Cover or Shelter

Wintering piping plovers roost and take shelter from storms and cold weather in backbeach areas that are above mean high tide and seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. These backbeach areas consist of unvegetated or sparsely vegetated sand, mud, or algal flats. These flats may have microtopographic relief (less than 20 in (50 cm) above the substrate surface), which offers important shelter from high winds, storms, and cold weather.

Primary Constituent Elements for the Wintering Population of the Piping Plover

Within the geographical area we know to be occupied by the wintering population of the piping plover, we must identify the primary constituent elements (PCEs) laid out in the spatial arrangement essential to the conservation of the species (*i.e.*, essential physical and biological features) that may require special management considerations or protections. All areas proposed as critical habitat units in Texas in this proposed revised rule are currently occupied and contain sufficient PCEs to support at least one life history function.

In *Cape Hatteras Access Preservation Alliance* v. *U.S. Dept of the Interior*, 344 F. Supp. 2d 108 (D.D.C. 2004), the Court upheld the PCEs identified in our July 10, 2001, final rule designating critical habitat for the wintering population of the piping plover (66 FR 36038). Thus, we are not changing PCEs previously identified which remain based on the best available scientific information. They constitute the features that are essential for the conservation of wintering piping plovers along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. The PCEs in Texas are found in geologically dynamic coastal areas along the Gulf of Mexico and along the shores of bays linked to the Gulf.

Based on the above needs, our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life history functions of the species on its wintering grounds, we have determined that PCEs for the wintering population of the piping plover are:

(1) Intertidal sand beaches (including sand flats) or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

(2) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.

(3) Surf-cast algae for feeding.

(4) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.

(5) Spits, especially sand, running into water for foraging and roosting.

(6) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.

(7) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.

(8) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (*e.g.*, dredge spoil sites).

We have designed this proposed revised designation for the conservation of the PCEs necessary to support the life history functions of the species and the areas containing those PCEs in the appropriate spatial arrangement essential for the conservation of the species where it winters.

Because not all life history functions require all the PCEs, not all proposed revised critical habitat units in Texas will contain all the PCEs. We propose units for designation based on sufficient PCEs being present to support at least one of the species' wintering life history functions.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain features essential to the conservation of the species that may require special management considerations or protections.

Primary threats to the wintering population of piping plover that may require special management or protection are:

(1) Disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals;

(2) Predation, especially falcons, hawks, coyotes, bobcats and feral cats; and

(3) Modification and loss of habitat due to uncontrolled recreational access and beach stabilization efforts (*e.g.*, beach nourishment, beach maintenance, sediment dredging and disposal, inlet channelization, construction of jetties and other hard structures).

Foraging and roosting piping plovers may be disturbed by events that result in flushing birds or disrupting normal feeding or roosting times and causing excessive alertness or abandonment of the area. Such disturbance can be caused by humans carrying out recreational activities such as walking on the beach, flying kites, or shooting fireworks. Driving vehicles on the beach also can disturb foraging and roosting plovers, as can pets being allowed to run or roam freely on the beach. Predation rates on piping plovers may increase above normal because human activities attract predators thereby increasing their numbers. Wintering piping plover habitat can be modified or lost by uncontrolled recreational access, such as off-road vehicle (ORV) use, pedestrians, and domestic animals. Additionally, habitat modification and loss occurs with beach stabilization activities that prevent the natural transfer and erosion and accretion of sediments along the ocean shoreline. Beach stabilization efforts that threaten to impact wintering piping plover habitat include beach nourishment, beach maintenance, sediment dredging and disposal, inlet channelization, and construction on jetties and other hard structures. However, when these efforts, in particular sediment dredging and disposal, result in PCEs that mimic natural PCEs, habitat is created. To address the threats affecting the wintering population of the piping plover within each of the proposed critical habitat units, certain special management actions may be needed. For example, the high level of vehicle and pedestrian use of some areas may require managing access to piping plover foraging habitat and adjacent upland roosting habitat during migration and overwintering periods. Managing access to these foraging and roosting areas may assist in the protection of all of the PCEs and reduce piping plover disturbance and predation caused by vehicle use, pedestrians, and pets. Managing access might also improve the available habitats for conservation of piping plovers.

Criteria Used To Identify Critical Habitat

All proposed revised critical habitat units in Texas are within areas that we have determined were occupied at the time of listing, and that contain sufficient PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the species where it winters. All units for which we are proposing to designate critical habitat have occurrence data that indicate a consistent use. That is, occupancy has been documented over more than one wintering season, which is the same criterion used in the original 2001 designation. We used the best scientific data available in determining areas that contain the features that are essential to the conservation of the wintering population of the piping plover, as discussed in the Methods section above.

The units were delineated by compiling existing relevant spatial data of the unit descriptions described in our 2001 final rule designating critical habitat for the wintering population of the piping plover (66 FR 36038), refining the existing descriptions using our National Wetlands Inventory data, and mapping in such a manner that the units contain the PCEs (as described) and do not contain any structures or other features that are not identified as PCEs. However, as described in the Methods section, bollards are excluded, but are too small to be removed digitally from our maps. We have no information indicating that bollards negatively affect piping plovers. To further ensure that no manmade features are included in critical habitat, bollards are expressly excluded by text in the proposed rule and are not proposed for designation as critical habitat. Using the information compiled above, GIS was used to analyze and integrate the relevant data layers for the areas of interest in order to determine those areas that include PCEs. See the Methods section above for additional discussion of mapping techniques.

We did not consider for designation areas that do not contain one or more of the PCEs or areas that: (1) Are highly degraded and may not be restorable; and (2) are small, highly fragmented, or isolated and may provide little or no long-term conservation value. We included areas containing one or more PCEs where occurrence data exist and where the area: (1) Provides a patchwork of the features essential for the conservation of the species; (2) offers dispersal capabilities or are in proximity to other wintering piping plover occurrences that would allow for survival and recolonization following major natural disturbance events (*e.g.*, hurricanes); (3) are of sufficient size to maintain the physical and biological features that support occurrences; and (4) are representative of the historic geographic distribution of occupied areas that will help prevent further range collapse of the species and will provide for the conservation of the species.

Within the areas (TX–3, TX–4, TX–7, TX–8, TX–9, TX–10, TX–14, TX–15, TX–16, TX–18, TX–19, TX–22, TX–23, TX–27, TX–28, TX–31, TX–32, and TX–33) vacated and remanded to the Service for reconsideration in *Texas General Land Office* v. *U.S. Department of the Interior, et al.*, No. 06-cv-00032 (S.D. Tex.), we had found no unoccupied areas that we considered essential to the conservation of the species. The 18 units in Texas we are considering for designation cover a small area relative to the total area used by wintering piping plovers along the coasts of the Gulf of Mexico, Atlantic Ocean and Caribbean islands. That total occupied wintering area is vast. In comparison, unoccupied areas along the Texas coast are relatively small. Thus, we do not consider unoccupied areas in Texas to be essential to the conservation of the species. Therefore, we propose no areas in Texas outside the geographical area occupied by the species at the time of listing. In vacated unit TX–17 the PCEs have been reduced to two small and disjunct fragments and it has not been observed to have been occupied since 1997. Therefore, we do not consider it suitable now for critical habitat designation. When it was originally designated in 2001, it had been occupied at least 2 of the previous 10 years, and the PCEs covered a larger, less fragmented area. We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing, are currently occupied, and contain sufficient PCEs to support life history functions essential for the conservation of the species.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the areas we designated as critical habitat for the wintering population of the piping plover on July 10, 2001 (66 FR 36038). The main differences include the following:

(1) The 2001 final rule used a more generalized methodology for delineating critical habitat, which resulted in the inclusion of non-PCEs within the 19 court-vacated critical habitat units for the wintering population of the piping plover in Texas. We based this proposed revised designation on a more specific methodology (see Methods section) that resulted in the proposal of 18 units, which are changed in size and configuration. It also resulted in the elimination of an additional unit (vacated unit TX–17). The boundaries of the proposed revised units exclude areas without PCEs. The exception is that we include areas with bollards, which are too small to detect at the mapping resolution we used (1:5,000), but which the text of the rule makes

clear are not part of the designation. Table 1 presents the size of the vacated and proposed units.

TABLE 1.—ACRES (HA) OF VACATED AND PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE WINTERING POPULATION OF THE PIPING PLOVER IN TEXAS

Unit	Acres (Hectares)	
	Vacated	Proposed
TX–03	168,725 (68,281)	107,673 (43,574)
TX–04	38,641 (15,638)	17,218 (6,969)
TX–07	208 (84)	295 (120)
TX–08	478 (194)	620 (251)
TX–09	447 (181)	171 (69)
TX–10	683 (276)	344 (139)
TX–14	1,103 (446)	590 (239)
TX–15	1,778 (719)	805 (325)
TX–16	927 (375)	1,376 (557)
TX–17	161 (65)	N/A
TX–18	8,423 (3,408)	2,467 (999)
TX–19	1,957 (792)	2,419 (979)
TX–22	1,823 (738)	545 (221)
TX–23	1,537 (622)	1,808 (732)
TX–27	1,464 (593)	906 (367)
TX–28	648 (262)	478 (193)
TX–31	849 (344)	399 (161)
TX–32	658 (266)	555 (225)
TX–33	770 (312)	212 (86)
Total	231,280 (93,596)	138,881 (56,206)

By eliminating areas without PCEs we decreased the overall area and increased the area of ''islands'' of non-PCEs surrounded by proposed units for the following proposed units: TX–04, TX–09, TX–15, TX–18, TX–22, TX–27, TX–28, TX–31, TX–32, and TX–33. The overall area of proposed units TX–07, TX–08, TX–16, TX–19, and TX–23 increased from that originally designated in 2001 because, in addition to eliminating non-PCEs, we expanded boundaries to capture entire polygons of PCEs. Those polygons appeared in recent aerial photographs (see Methods section) to have shifted since the original designation in 2001 due to storm events.

(2) The area in unit TX–3 has been reduced to 68 percent of what was designated in our July 10, 2001, critical habitat designation (66 FR 36038), primarily due to a decrease in the size of subunit TX–3C. Approximately the northern one-third of what was originally designated no longer contains PCEs or the PCEs that remain have been reduced in size and are fragmented and disjunct from the large polygon that was originally designated. Based on our review of recent aerial photographs, we believe that the PCEs became lost or fragmented as a result of storm events.

(3) The area in unit TX 0910 has been reduced to 50 percent of what was designated in our July 10, 2001, critical habitat designation (66 FR 36038), primarily due to a decrease in the size of subunit TX 0910 C. Using revised mapping methodology (see Methods section), we expanded the boundaries of TX 0910C to include all PCEs surrounding a large lagoon. The entire polygon of each PCE was included within the boundary of the subunit unless we encountered a road. When that occurred, the boundary of the unit was the edge of the road. The lagoon itself does not contain PCEs and is not included within the boundaries of subunit TX 0910 C, although a large portion of it had been included in the original 2001 designation.

(4) The area in unit TX 0914 has been reduced to 54 percent of what was designated in our July 10, 2001, critical habitat designation (66 FR 36038). Approximately the western half of what was originally designated no longer contains PCEs or the PCEs that remain have been reduced in size and are fragmented and disjunct from the large polygon that was originally designated and remains in the eastern portion. We expanded the original northern and eastern boundary to capture complete polygons of PCEs that, based on our review of recent aerial photographs, appear to have shifted.

(5) The court-vacated unit TX 0917 is an island. When it was designated in 2001, it was relatively small (Table 1). When we eliminated the non-PCEs in evaluating whether a proposed revised designation was appropriate, only two polygons, each less than 4 ac (1.6 ha) and separated by 0.8 mi (1.3 km), remained. In addition, we had no records of recent occupancy by wintering piping plovers. Therefore, we concluded that it was no longer essential to the conservation of the species.

Proposed Revised Critical Habitat Designation

We are proposing 18 units as revised critical habitat in Texas for the wintering population of the piping plover. The critical habitat units we describe below constitute our current best assessment of areas that meet the definition of critical habitat for wintering piping plovers. We have retained the same unit and subunit numbers that were vacated by the court. Units that were not vacated and remain critical habitat are not described, and vacated unit TX 0917 is not described because. we are not proposing that it be designated. Table 2 shows the occupancy, ownership, and approximate size of the proposed revised units.

TABLE 2.—OCCUPANCY AND THREATS TO THE PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE WINTERING POPULATION OF THE PIPING PLOVER IN TEXAS

Unit	Occupied at time of listing?	Currently occupied?	Threats requiring special management or protections
Subunit TX–3A: South Padre Island—Gulf of Mexico Shoreline.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and nourishment.
Subunit TX–3B: South Padre Island—Interior.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
Subunit TX–3C: North Padre Island—Interior.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
Subunit TX–3D: North Padre Island—Gulf of Mexico.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and nourishment.

TABLE 2.—OCCUPANCY AND THREATS TO THE PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE WINTERING POPULATION OF THE PIPING PLOVER IN TEXAS—Continued

Unit	Occupied at time of listing?	Currently occupied?	Threats requiring special management or protections
Subunit TX–3E: Mesquite Rincon	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–4. Lower Laguna Madre Mainland	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–7. Newport Pass/Corpus Christi Beach.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and nourishment.
TX–8. Mustang Island Beach	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and nourishment.
TX–9. Fish Pass Lagoons	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
Subunit TX–10A: Shamrock Island	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
Subunit TX–10B: Mustang Island—Unnamed sand flat.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and rehabilitation.
Subunit TX–10C: Mustang Island—Lagoon Complex.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and stabilization.
TX–14. East Flats	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–15. North Pass	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and restoration.
TX–16. San Jose Beach	Yes	Yes	Domestic animal disturbance, predation, pedestrian recreational access.
TX–18. Cedar Bayou/Vinson Slough	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use; beach cleaning and nourishment.
TX–19. Matagorda Island Beach	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–22. Decros Point	Yes	Yes	Domestic animal disturbance, predation; pedestrian recreational use., sea turtle monitoring efforts.
TX–23. West Matagorda Peninsula Beach.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–27. East Matagorda Bay/Matagorda Peninsula Beach West.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–28. East Matagorda Bay/Matagorda Peninsula Beach East.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–31. San Bernard NWR Beach	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.
TX–32. Gulf Beach Between Brazos and San Bernard Rivers.	Yes	Yes	Domestic animal disturbance, predation, pedestrian recreational access.
TX–33. Bryan Beach and Adjacent Beach.	Yes	Yes	Human, vehicle and domestic animal disturbance; predation; uncontrolled recreational use.

The 24 areas we propose as revised critical habitat are: (1) Subunit TX–3A: South Padre Island—Gulf of Mexico Shoreline, (2) Subunit TX–3B: South Padre Island—Interior, (3) Subunit TX–3C: North Padre Island—Interior, (4) Subunit TX–3D: North Padre Island—Gulf of Mexico, (5) Subunit TX–3E: Mesquite Rincon, (6) Unit TX–4: Lower Laguna Madre Mainland, (7) Unit TX–7: Newport Pass/Corpus Christi Pass Beach, (8) Unit TX–8: Mustang Island Beach, (9) Unit TX–9: Fish Pass Lagoons, (10) Subunit TX–10A: Shamrock Island, (11), Subunit TX–10B: Mustang Island—Unnamed sand flat, (12) Subunit TX–10C: Mustang Island—Lagoon Complex, (13) Unit TX–14: East Flats, (14) Unit TX–15: North Pass, (15) Unit TX–16: San Jose Beach, (16) Unit TX–18: Cedar Bayou/Vinson Slough, (17) Unit TX–19: Matagorda Island Beach, (18) Unit TX–22: Decros Point, (19) Unit TX–23: West Matagorda Peninsula Beach, (20) Unit TX–27: East Matagorda Bay/Matagorda Peninsula Beach West, (21) Unit TX–28: East Matagorda Bay/Matagorda Peninsula Beach East, (22) Unit TX–31: San Bernard NWR Beach, (23) Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers, and (24) Unit TX–33: Bryan Beach and Adjacent Beach.

The approximate area encompassed within each critical habitat unit by ownership is shown in Table 3.

TABLE 3.—OWNERSHIP AND SIZE OF PROPOSED REVISED CRITICAL HABITAT FOR THE WINTERING POPULATION OF PIPING PLOVER IN TEXAS

Unit	Size of unit in acres (hectares)	Land ownership in acres (hectares)			
		Federal	State	County	Private
Subunit, TX–3A: South Padre Island—Gulf of Mexico Shoreline	2,888 (1,169)	728 (295)	287 (116)	28 (11)	1,845 (747)
Subunit, TX–3B: South Padre Island—Interior	44,083 (17,840)	18,778 (7,599)	16,583 (6,711)	.....	8,722 (3,530)

TABLE 3.—OWNERSHIP AND SIZE OF PROPOSED REVISED CRITICAL HABITAT FOR THE WINTERING POPULATION OF PIPING PLOVER IN TEXAS—Continued

Unit	Size of unit in acres (hectares)	Land ownership in acres (hectares)			
		Federal	State	County	Private
Subunit, TX–3C: North Padre Island—Interior	50,855 (20,580)	.....	46,027 (18,626)	.....	4,828 (1,954)
Subunit, TX–3D: North Padre Island—Gulf of Mexico	269 (109)	.....	212 (86)	.....	57 (23)
Subunit, TX–3E: Mesquite Rincon	9,578 (3,876)	.....	398 (161)	.....	9,180 (3,715)
TX–4. Lower Laguna Madre Mainland	17,218 (6,969)	6,300 (2,550)	8,576 (3,471)	.....	2,342 (948)
TX–7. Newport Pass/Corpus Christi Beach	295 (120)	.....	143 (58)	.....	152 (62)
TX–8. Mustang Island Beach	620 (251)	.....	367 (149)	5 (2)	248 (100)
TX–9. Fish Pass Lagoons	171 (69)	.....	169 (68)	.....	2 (0.8)
Subunit TX–10A: Shamrock Island	12 (5)	.....	8 (3)	.....	4 (1.6)
Subunit TX–10B: Mustang Island—Unnamed sand flat	3 (1)	.....	3 (1)	.....	.....
Subunit TX–10C: Mustang Island—Lagoon Complex	329 (133)	.....	237 (96)	.....	92 (37)
TX–14. East Flats	590 (239)	.....	12 (5)	.....	578 (234)
TX–15. North Pass	805 (325)	.....	154 (62)	.....	651 (263)
TX–16. San Jose Beach	1,376 (557)	15 (6)	691 (280)	.....	670 (271)
TX–18. Cedar Bayou/Vinson Slough	2,467 (999)	115 (47)	2 (0.8)	.....	2,350 (951)
TX–19. Matagorda Island Beach	2,419 (979)	2,135 (864)	284 (115)	.....	.....
TX–22. Decros Point	545 (221)	.....	325 (132)	.....	220 (89)
TX–23. West Matagorda Peninsula Beach	1,808 (732)	.....	877 (355)	.....	931 (377)
TX–27. East Matagorda Bay/Matagorda Peninsula Beach West	906 (367)	.....	481 (195)	.....	425 (172)
TX–28. East Matagorda Bay/Matagorda Peninsula Beach East	478 (193)	.....	146 (59)	.....	332 (134)
TX–31. San Bernard NWR Beach	399 (161)	119 (48)	193 (78)	.....	87 (35)
TX–32. Gulf Beach Between Brazos and San Bernard Rivers	555 (225)	.....	555 (225)	.....	.....
TX–33. Bryan Beach and Adjacent Beach	212 (86)	.....	212 (86)	.....	.....
Total	138,881 (56,206)	28,190 (11,409)	76,942 (31,139)	33 (13)	33,716 (13,645)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the wintering population of the piping plover, below. Description information is summarized in Tables 1 and 2.

Unit TX–3: Padre Island

Subunit TX–3A: South Padre Island—Gulf of Mexico Shoreline. This subunit consists of 2,888 ac (1169 ha) in Cameron and Willacy Counties Texas. It is a beach 30.0 mi (48.2 km) in length on the gulfside of South Padre Island, which is a barrier island. The subunit is located within an area bounded on the south by the southern boundary of Andy Bowie County Park, and on the north by the south jetty of Mansfield Channel, which divides North and South Padre Islands. The jetty itself is outside the boundary of the subunit. The eastern boundary is the estimated MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW), and the western boundary is the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This subunit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used.

Approximately one quarter of the subunit is in Federal ownership and managed by the Service's Laguna Atascosa NWR, and approximately 64 percent is in private ownership. Ten percent is State land managed by the GLO, and a small portion at the southern end is County park land managed by Andy Bowie County Park (Table 3).

Subunit TX–3A is the southernmost unit of the proposed revised critical habitat for the wintering population of the piping plover. It was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this subunit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1), surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and nourishment efforts. These threats are of greatest magnitude at the southern end of the subunit where housing developments are to the west of the subunit. Laguna Atascosa NWR is preparing a Comprehensive Conservation Plan (CCP) that will address the wintering population of the piping plover as well as other listed species. We are considering the possible exclusion of NWR land in subunit TX–3A from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being prepared and which will be released shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any additional management plans that address this species in this area.

Subunit TX–3B: South Padre Island—Laguna Madre side. This bayside subunit consists of 44,083 ac (17,840 ha) in Cameron and Willacy Counties, Texas. Its southern boundary extends from the Gulf of Mexico south of the

Laguna Madre west along latitude 26°09′19.00″ N, paralleling the existing anthropogenic (manmade) dike, to the edge of the intertidal mudflats bordering the eastern shore of the lower Laguna Madre. The dike is not within the boundary of the subunit. The northern boundary is the channel at Mansfield Channel. The eastern boundary is dense vegetation or, if there is no dense vegetation or dune, the boundary of subunit 3A. The western boundary is the western edge of the intertidal mudflats bordering the eastern shore of the lower Laguna Madre.

Approximately 42 percent of the land is Federally owned and managed by the Service's Laguna Atascosa NWR, and approximately 38 percent is State-owned and managed by the GLO (Table 3). The remainder is in private ownership.

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand and mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. These threats, particularly vehicle access, are of greatest magnitude at the southern portion of the subunit where roads are near or adjacent to PCE 1. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–3C: North Padre Island—Laguna Madre side. This bayside unit consists of 50,855 ac (20,580 ha) in Kenedy and Kleberg Counties, Texas. It is along and within the Laguna Madre and extends from the western boundary of Padre Island National Seashore (PAIS) to the Gulf Intracoastal Waterway (GIWW). The northern boundary of the subunit is a line extending westward from the PAIS (at latitude 27° 4′ 29.9″ N), and its southern boundary is a line extending westward from the southern boundary of PAIS along the northern edge of the Mansfield Channel. The eastern boundary of this subunit is the western boundary of PAIS when the PCEs extend as far as PAIS or the eastern edge of the sand flats where the PCEs end. The portion of the western boundary north of longitude/latitude coordinate 26°48′38.2″ N, 97°28′11.6″ W is the eastern edge of the GIWW, and the portion of the western boundary south of the coordinate is the western edge of the intertidal mudflats bordering the eastern shore of the Laguna Madre. Most of the land is State-owned and managed by the GLO. A small portion is in private ownership (Table 3).

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and mud flats with sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This subunit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (*e.g.*, dredge spoil sites) for feeding (PCE 8).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, the location of the subunit and the lack of roads near it tend to limit access to the PCEs for recreational use, particularly PCEs 1 and 2. At the north end, dredge disposal may threaten plover habitat. At this time we are not aware of any management plans that address this species in this area.

Subunit TX–3D: North Padre Island—Gulf of Mexico. This gulfside subunit consists of 269 ac (109 ha) of beach in Kleberg County, Texas. It extends along the gulf shore of North Padre Island from the northern boundary of PAIS northward 6.2 mi (10 km) to the Nueces County line. The southern boundary is the north boundary of the northeast section of the PAIS. The subunit extends eastward to the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This subunit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Most of the land is owned by the State and managed by the GLO. Approximately one-fifth is in private ownership (Table 3).

It was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this subunit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and nourishment efforts. These threats are of greater magnitude at the north end of the subunit where more roads provide easy access to the PCEs and the subunit is in close proximity to houses. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–3E: North Padre Island—Mesquite Rincon. This triangular bayside subunit of 9,578 acres (3,876 hectares) lies on the western shore of the lower Laguna Madre in Kleberg County, Texas. The subunit is generally bounded by Rincon de la Soledad on the southwestern side, Mesquite Rincon on the north, and the GIWW and Rincon de San Jose on the east. The southwestern boundary is an irregular line along the PCEs between the latitude/longitude coordinate points: 26°44′10.5″ N, 97° 28′ 04.5″ W at the southeastern point of Rincon de San Jose and 26°50′58.1″ N, 97°34′19.5″ W. The northern boundary is the line described between the latitude/longitude coordinate points: 26°51′24.2″ N, 97°33′25.8″ W and 26°51′24.2″ N, 97°27′52.7″ W. The northern portion of the eastern boundary is the western edge of the GIWW south to latitude/longitude coordinate point 26°48′52.7″ N,

97°28′12.9″ W. There the subunit curves westward and skirts a small horseshoe-shaped inlet in the Laguna Madre to the northeastern point of Rincon de San Jose at latitude/longitude coordinate point 26°48′43.9″ N, 97°29′4.7″ W. There it continues south in an irregular line along the edge of the PCEs to the southeastern point of Rincon San Jose. The southeastern portion of the triangle is a patchy mosaic of polygons that are not within the boundaries of the subunit because they do not contain the PCEs. They appear as islands surrounded by the subunit. Most of the land is in private ownership with a small portion that is State-owned and managed by the GLO (Table 3).

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This subunit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (*e.g.*, dredge spoil sites) for feeding (PCE 7).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, the location of the subunit and the lack of roads near it tend to limit access to the PCEs for recreational use, particularly PCEs 1 and 2. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–4: Lower Laguna Madre Mainland

This bayside unit consists of 17,218 ac (6,969 ha) in Cameron and Willacy Counties, Texas and lies along the western shoreline of the Lower Laguna Madre. The southern boundary is an east-west line at the northern tip of Barclay Island, approximately following latitude 26°14′42.2″ N. The northern boundary is an east-west line located near the northern tip of El Sauz Island, approximately 1.2 mi (1.9 km) south of the center of the city of Port Mansfield, Willacy County, Texas, and approximately following latitude 26°32′7.8″ N. The eastern boundary of the unit is the eastern edge of the line of dredge spoils that parallel the western side of the GIWW. The western boundary runs from southeast to northwest and is the western edge of sandy beach and mudflat habitat, approximately following the latitude/longitude coordinate points: latitude/longitude coordinate points: 26°14′42.45″ N, 97°19′32.75″ W; 26°17′15.54″ N, 97°20′47.31″ W; 26°20′10.17″ N, 97°21′10.94″ W; 26°21′31.54″ N, 97°22′48.10″ W; 26°24′26.64″ N, 97°23′53.27″ W; 26°26′8.55″ N, 97°25′13.33″ W; and 26°32′5.44″ N, 97°27′6.91″ W.

Approximately one-third of this unit is within the Service's Laguna Atascosa NWR. Approximately half is State-owned and managed by the GLO. The remainder is in private ownership (Table 3).

This unit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand or mud flats above high tide for roosting (PCE 2). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This unit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (*e.g.*, dredge spoil sites) for feeding (PCE 8).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, recreational access is limited due to a lack of roads, particularly for access to PCEs 1 and 2. The refuge is preparing a CCP that will address piping plover and other listed species. We are considering the possible exclusion of NWR land in unit TX–4 from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being prepared and which will be released shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach

This unit consists of 295 ac (120 ha) in Nueces County, Texas. It is a gulfside beach unit approximately 5.1 mi (8.2 km) long. The southern boundary is the gulfward extension of Saint Bartholomew Avenue, adjacent to the north end of the seawall. The northern boundary is the edge of the south jetty of the Fish Pass Structure at Mustang Island State Park. The eastern boundary is MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dune. Packery Channel cuts the beach approximately 0.3 mi (0.5 km) north of the south boundary. The seawall, jetty, bollards, and open water of Packery Channel are not within the boundaries of the unit. This unit is in State and private ownership (Table 3); the State portion is managed by the Mustang Island State Park.

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains PCEs in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and nourishment efforts. Due to its close proximity to Corpus Christi, this unit receives considerable recreational use and beach cleaning and nourishment. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–8: Mustang Island Beach

This unit consists of 620 ac (251 ha) in Nueces County, Texas. It is a gulfside beach unit approximately 12.5 mi (20.1

km) long. The southern boundary is the edge of the north jetty of the Fish Pass Structure at Mustang Island State Park. The northern boundary is the south side of the Horace Calder Pier in Port Aransas, Texas. The unit is bounded on the east by the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW) and on the west by the dune line where the habitat changes from lightly vegetated sandy beach to densely vegetated. The jetty and pier are not within the boundary of the unit. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The unit is in State and private ownership with a small municipal park owned and managed by the City of Port Aransas (Table 3). The State land is managed by the GLO.

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and nourishment efforts. Due to its close proximity to Corpus Christi, this unit receives considerable recreational use and beach cleaning and nourishment. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–9: Fish Pass Lagoons

This bayside unit consists of 171 ac (69 ha) in Nueces County, Texas. This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is a line of dense vegetation, and the bayside boundary is the northeast edge of the tidal sand flats that are a PCE. This unit includes all areas of habitat that contain PCEs 1, 2, 5, and 6 within the area described by a polygon with the following latitude/longitude coordinate points: 27°42′14.63″ N, 97°10′44.70″ W; 27°41′56.97″ N, 97°10′8.13″ W; 27°41′24.35″ N, 97°10′36.89″ W; 27°41′18.98″ N, 97°11′16.79″ W; 27°41′23.51″ N, 97°11′31.32″ W and 27°42′14.63″ N, 97°10′44.70″ W. Within that polygon, six moderate to large polygons from 5 to 64 ac (2 to 25 ha) each and two small polygons less than 1 ac (0.4 ha) each are PCEs and comprise the unit. Most of the unit is owned by the State and managed by the GLO (Table 3). A few acres are in private ownership.

This unit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and/or mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, recreational access is limited by a lack of road access, particularly to PCEs 1 and 2. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats

Subunit TX–10A: Shamrock Island. This 12 ac (5 ha) island in Nueces County, Texas, was a peninsula extending off of Mustang Island in Corpus Christi Bay until erosion separated the island from the mainland. Five small polygons of sand flats from 1.1 to 6.8 ac (0.4 to 2.7 ha) comprise the subunit. Most of the land is State-owned and managed by the GLO; the remainder is privately owned (Table 3).

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, a lack of road access limits recreational use and vehicle use. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–10B: Mustang Island: Unnamed sand flat. This 3 ac (1 ha) subunit in Nueces County, Texas, is a small, unnamed sand flat near the north edge of the mouth of Wilson's Cut in Corpus Christi Bay. The subunit is the western half of the island that is sand flats landward (easterly) to the western edge of tidal marsh. It is entirely State-owned (Table 3) and managed by the GLO.

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and restoration efforts. However, the location of the subunit and the configuration of the polygons of PCEs that comprise this subunit, limit recreational access, particularly by vehicles, to PCEs 1 and 2. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–10C: Mustang Island: Lagoon Complex. This 329 ac (133 ha) subunit in Nueces County, Texas, is an extensive lagoon complex that consists of 11 polygons within a larger polygon that extends 2.2 miles (3.5 kilometers) south of Wilson's Cut in Corpus Christi Bay. The southern boundary of the larger polygon begins at the western end

at latitude/longitude coordinate point 27°43′2,4″ N, 97°10′ 19.4″ W at the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. It follows the dune line southeast approximately 830 ft (253 m) to a road, then follows the road approximately 945 ft (288 m) to the edge of the tidal sand flat PCE. It follows the southeastern edge of the sand flat northeast to the western edge of a north-south road, where it follows the edge of the sand flat northward to the south edge of a road that runs east-west parallel to the southwestern edge of Wilson's Cut. The northern edge of the boundary is the south edge of the road or the northern extent of the sand flat when it does not reach the road. The western boundary follows the PCEs along their eastern edge at Corpus Christi Bay beginning 409 ft (125 m) southwest of the southwestern edge of Wilson's Cut to the coordinate point at the western edge of the southern boundary. A road transects the larger polygon described above forming two polygons that exclude the road. The PCEs within the two polygons comprise the subunit. The subunit consists of private and State-owned lands (Table 3).

This subunit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and stabilization efforts. Road access to the PCEs is extensive. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–14: East Flats

This bayside unit consists of 590 ac (239 ha) in Nueces County, Texas. It is an irregularly shaped intertidal sand flat south of the Corpus Christi Ship Channel. The north boundary is the northern edge of the sand flat near or adjacent to dredge spoil areas bordering the south side of the Corpus Christi Ship Channel. The northwestern latitude/longitude coordinate is 27°49′54.49″ N, 97°6′14.28″ W, and the northeastern latitude/longitude coordinate is 27°49′55.29″ N, 97°5′12.86″ W. From there, the sand flat curves southward, and the southeastern edge of it forms a highly irregular line that ends in the southwest portion of the polygon at the eastern edge of a navigation channel from the Corpus Christi Ship Channel to Corpus Christi Bay at latitude/longitude coordinate 51.93″ N, 97°5′52.58″ W. The sand flat continues on the western edge of the navigation channel in a northwesterly direction to latitude/longitude coordinate 27°49′22.08″ N, 97°6′37.04″ W. It then curves northeasterly and across the cut to the northern edge at the northwest coordinate. On the east, it abuts the City of Port Aransas. There is a small marshland within the sand flat that bisects the sand flat that is not a PCE and is not included in the unit. The unit is mostly in private ownership with a small portion of State land managed by the GLO (Table 3).

This unit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. However, this unit does not attract heavy recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–15: North Pass

This bayside unit consists of 805 ac (325 ha) in Aransas County, Texas. The unit is bounded on the northeast by a line between latitude/longitude coordinates 27°54′8.70″ N, 97°0′36.97″ W and 27°54′54.53″ N, 97°1′18.17″ W, on the northwest and west by the edge of tidal sand flats in Aransas Bay, on the south by a line running east from coordinate 27°53′16.96″ N, 97°2′22.44″ W to unit TX–16, and on the southeast by the landward boundary of unit 16. The unit is all areas that contain the PCEs for the species within a larger area described by a polygon with the following sets of latitude/longitude coordinate points: 27°54′8.70″ N, 97°0′36.97″ W; 27°53′10.68″ N, 97°1′21.36″ W; 27°53′16.96″ N, 97°2′22.44″ W; 27°53′33.08″ N, 97°2′33.05″ W; 27°54′42.68″ N, 97°2′4.83″ W; 27°54′47.59″ N, 97°1′51.73″ W; 27°54′54.53″ N, 97°1′18.17″ W and 27°54′8.70″ N, 97°0′36.97″ W. This unit is a remnant of a hurricane washover on San Jose Island. Approximately 18 percent is State-owned and managed by the GLO; the remainder is in private ownership (Table 3).

This unit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation by raptors and wild mammals; and pedestrian recreational access. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–16: San Jose Beach

This unit consists of 1,376 ac (557 ha) in Aransas County, Texas. It is a gulfside beach unit approximately 19.8 mi (31.9 km) long. The southern boundary is the edge of the north jetty of Aransas Pass. The jetty is not within the boundary of the unit. The south edge of Cedar Bayou Pass is the northern boundary. The eastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. A small section is in Federal ownership and managed by the Service's Matagorda Island NWR. Approximately half of the unit is State-owned and managed by the GLO, and

nearly as much is in private ownership (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by domestic animals, predation by raptors and wild mammals, and pedestrian recreational access. The refuge is preparing a CCP that will address the wintering population of the piping plover as well as other listed species. We are considering the possible exclusion of NWR land in unit TX–16 from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being draft and will be released shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any management plans that address this species in this area.

Unit TX–18: Cedar Bayou/Vinson Slough

This bayside unit consists of 2467 ac (999 ha) in Aransas County, Texas. It is a remnant of a hurricane washover area and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. Beginning at the confluence of Vinson Slough and Cedar Bayou, the boundary follows the shore of Spalding Cove to Long Reef, then continues along a line extending 2.5 miles southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of unit TX–16. Within that area, the unit consists of numerous polygons of PCEs; non-PCE polygons within the described area are not within the boundaries of the unit. The southern and southeastern boundary is described by a line with the following sets of latitude/longitude coordinate points: 28°1′21.76″ N, 96°57′51.24″ W; 28°1′12.77″ N, 96°57′31.18″ W; 28°2′3.07″ N, 96°56′45.84″ W; 28°2′15.92″ N, 96°56′25.10″ W; 28°2′30.32″ N, 96°56′11.97″ W; 28°3′15.62″ N, 96°54′20.01″ W; 28°3′58.58″ N, 96°53′24.65″ W; 28°4′1.15″ N, 96°52′14.65″ W; 28°3′31.74″ N, 96°51′38.29″ W and 28°3′17.69″ N, 96°51′38.47″ W. The specific northern boundary is described by a line with the following sets of latitude/longitude coordinate points: 28°5′44.24″ N, 96°54′8.16″ W; 28°5′13.23″ N, 96°52′44.85″ W; 28°4′33.99″ N, 96°50′46.55″ W; 28°4′38.92″ N, 96°50′40.79″ W and 28°4′22.98″ N, 96°50′22.94″ W. The eastern boundary at the northeastern end of the unit is units TX–16 and TX–19 on the gulfside. The western boundary is the western edge of tidal sand flats in Aransas Bay.

This area includes a small section of Federally owned land managed by the Service's Matagorda Island NWR and a small section of State-owned land. The remaining area is privately owned (Table 3).

This unit was occupied at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. Vehicle use of the unit may be limited somewhat by accessibility. The refuge is preparing a CCP that will address the wintering population of the piping plover as well as other listed species. We are considering the possible exclusion of NWR land in unit TX–18 from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being draft and will be released shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–19: Matagorda Island Beach

This unit consists of 2,419 ac (979 ha) in Calhoun County, Texas. It is a gulfside beach unit approximately 37.1 mi (59.7 km) long. The southern boundary is the northern edge of Cedar Bayou Pass, and the northern boundary is the southern edge of Pass Cavallo. At Pass Cavallo, the unit curves from the eastern gulfside passing between the south edge of the pass and the north edge of the dunes to a small area on the bayside. The eastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW) and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The Federally owned land in this unit is managed by the Service's Matagorda Island NWR (Table 3). This unit also includes a small section of land in State ownership.

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by domestic animals, predation by raptors and wild mammals, pedestrian recreational access, and access by refuge staff and others for sea turtle monitoring efforts. The refuge is preparing a CCP that will address the wintering population of the piping plover as well as other listed species. We are considering the possible exclusion of NWR land in unit TX–19 from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being prepared and which will be released

shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–22: Decros Point

This unit consists of 545 ac (221 ha) at the Matagorda/Calhoun County line, Texas. It is a gulfside beach unit approximately 4.8 mi (7.7 km) long. This unit was originally the southern tip of the Matagorda Peninsula. It was made into an island by the dredging of the Matagorda Ship Channel, the edge of which is the northern boundary of the unit. The unit is horseshoe in shape with the east side along the Gulf of Mexico and the west side along Matagorda Bay; the two are connected at their southern boundary by habitat from the north edge of Pass Cavallo northward to the dune line. Densely vegetated sand dunes run north to south in the center of the horseshoe and are not within the boundary of the critical habitat because they are not a PCE. The eastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW), and the western boundary is the western edge of tidal sand flats on the east side of Matagorda Bay. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Approximately 60 percent of the unit is in State ownership managed by the GLO. The remainder is privately owned (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach (PCE 4) for roosting and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. Due to a lack of road access, this unit does not receive much recreational vehicle use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–23: West Matagorda Peninsula Beach

This unit consists of 1,808 ac (732 ha) of shoreline in Matagorda County, Texas. It is a gulfside beach unit approximately 23.9 mi (38.5 km) long. The southern boundary is the northern jetty of the Matagorda Ship Channel. The northern boundary is the Old Colorado River channel. The MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW) is the eastern boundary, and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Just under half of the unit is State-owned and managed by the GLO; the remainder is privately owned (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West

This unit consists of 906 ac (367 ha) of shoreline in Matagorda County, Texas. It is a gulfside beach unit approximately 14.1 mi (22.8 km) long. The southwestern boundary is the northeastern edge of the Old Colorado River channel. The unit runs along the beach 14 mi (23 km) to the northeastern boundary opposite Eidelbach Flats described by a line between the latitude/longitude coordinate points: 28°41′2.26″ N, 95°46′29.04″ W and 28°41′6.74″ N, 95°46′32.46″ W. The southeastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW). The northwestern boundary runs along the dune line where the habitat changes from lightly vegetated sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Just over half of the unit is State-owned and managed by the GLO; the remainder is privately owned (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East

This gulfside unit consists of 478 ac (193 ha) in Matagorda County, Texas. It extends along the Gulf beach southwest and northeast of Brown Cedar Cut. The cut is not within the boundary of the unit. This unit abuts with portions of the southeastern edges of units TX–29 and TX–30, which are on the East Matagorda Bay side. The southwestern boundary is approximately 4 mi (6.5 km) southwest of Brown Cedar Cut at a line described by the following sets of latitude/longitude coordinate points: 28°43′11.91″ N, 95°42′25.47″ W and 28°43′17.09″ N, 95°42′28.56″ W. The northeastern boundary is approximately 2.8 mi (4.5 km) northeast of Brown Cedar Cut to the point where Texas

Farm to Market Road 457 intersects the beach. The southeastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW). The northwestern boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat boundaries, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Approximately one-third is in State ownership and managed by the GLO; the remaining two-thirds is privately owned (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–31: San Bernard NWR Beach

This gulfside unit consists of 399 ac (161 ha) in Matagorda and Brazoria counties, Texas. It is a 6.2 mi (10 km) segment of beach on the Gulf of Mexico near the mouth of the San Bernard River. The northeastern boundary is at the southwestern edge of the mouth of the San Bernard River. The southwestern boundary follows a line described by the following sets of latitude/longitude coordinate points: 28°47′54.39″ N, 95°33′26.21″ W, and 28°47′57.69″ N, 95°33′27.75: W. The southeastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW). The northwestern boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. There is a cut through the beach from the Gulf of Mexico to a lake 3.5 mi (5.6 km) southwest of the San Bernard River, which is not within the unit. Bollards also are not within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Approximately 30 percent of this unit is in Federal ownership and managed by the Service's San Bernard NWR. Approximately 48 percent is State-owned and managed by the GLO with the remaining area in private ownership (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. The Federally owned portion has pedestrian recreational access, but no vehicle access. The refuge is preparing a CCP that will address the wintering population of the piping plover as well as other listed species. We are considering the possible exclusion of NWR land in unit TX–31 from the final critical habitat designation based on benefits provided to wintering piping plover habitat under the CCP, a draft of which is being prepared and which will be released shortly for public comment (see the Areas Considered for Exclusion Under Section 4(b)(2) of the Act section for further discussion). At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers

This gulfside unit consists of 555 ac (225 ha) of shoreline in Brazoria County, Texas. This unit is a 6.1 mi (9.8 km) segment of beach on the Gulf of Mexico between the mouths of the San Bernard and Brazos Rivers. The southwestern boundary is the northeastern edge of the mouth of the San Bernard River. The northeastern boundary is the western edge of the mouth of the Brazos River. The southeastern boundary is the MLLW of the Gulf of Mexico (see the Methods section for our derivation of MLLW). The northwestern boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. It is entirely in State ownership and managed by the GLO (Table 3).

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by domestic animals, predation by raptors and wild mammals, and pedestrian recreational access. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–33: Bryan Beach and Adjacent Beach

This unit consists of 212 ac (86 ha) in Brazoria County, Texas. It is gulfside beach approximately 3.5 mi (5.7 km) in length on the Gulf of Mexico near the mouth of the Brazos River. The southwestern boundary is the northeastern edge of the Brazos River. The northeastern boundary is Farm-to-Market Road 1495 (Bryan Beach Rd). The southeastern boundary is the MLLW (see the Methods section for our derivation of MLLW). The northwestern boundary follows along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The unit is entirely in State

ownership (Table 3) and managed by the Texas Department of Parks and Wildlife.

The unit was occupied by piping plovers at the time of listing and is currently occupied (Table 2). Occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting and sheltering and for feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; predation; and modification and loss of habitat due to uncontrolled recreational access. At this time, we are not aware of any management plans that address this species in this area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service et al.*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the wintering population of the piping plover or its designated critical habitat will require consultation under section 7 of the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U. S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, would retain the current ability for the physical and biological features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the wintering piping plover. Generally, the conservation role of wintering piping plover critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the wintering population of the piping plover include, but are not limited to:

(1) Actions that would significantly and detrimentally alter the hydrology of tidal mud and sand flats.

(2) Actions that would significantly and detrimentally alter the input of sediments and nutrients necessary for the maintenance of geomorphic and biologic processes that ensure appropriately configured and productive beach systems.

(3) Actions that would introduce significant amounts of emergent vegetation.

(4) Actions that would significantly and detrimentally alter the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting).

(5) Actions that would reduce the value of a site by significantly disturbing plovers from activities such as foraging and roosting.

(6) Actions that would significantly and detrimentally alter water quality, which may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers.

(7) Actions that would impede natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

These activities could eliminate or reduce the habitat necessary for foraging by eliminating or reducing the piping plovers' prey base; destroying or removing available upland habitats necessary for protection of the birds during storms or other harsh environmental conditions; increasing the amount of vegetation to levels that make foraging or roosting habitats unsuitable; and increasing recreational activities to such an extent that the amount of available undisturbed foraging or rooting habitat is reduced, with direct or cumulative adverse effects to individuals and completion of their life cycles.

We consider all of the units proposed as critical habitat to contain features essential to the conservation of the wintering population of the piping plover. All units are within the geographic range of the species, all were occupied by the species at the time of listing, and are likely to be used by the wintering population of the piping plover. Federal agencies already consult with us on activities in areas currently occupied by the wintering population of the piping plover, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the wintering population of the piping plover.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

Under section 4(b)(2) of the Act, we intend to consider the possible exclusion of Federally owned National Wildlife Refuge lands in units TX–3, TX–4, TX–16, TX–18, TX–19, and TX–31 from the final critical habitat designation, These lands are to be covered under CCPs that are currently being drafted. We will further consider the possible exclusion of the areas covered by the CCPs being drafted once the drafts are released and if they are released within a timeframe that is reasonable for us. We specifically solicit comments on the inclusion or exclusion of these areas.

Editorial Corrections

We revised the entry in 50 CFR 17.95(b) in the following ways: In paragraph 1., we made minor revisions to our descriptions of the PCEs and reformatted the PCEs for clarity. In paragraph 2., we clarified what is not a PCE. In paragraph 3., we revised the methods used to map and designate critical habitat units for certain units in Texas, and we revised the critical habitat unit descriptions and maps for those units.

Economics

We are preparing an analysis of the economic impacts of proposing revised critical habitat (Texas Units 3, 4, 7, 8, 9, 10, 14, 15, 16, 18, 19, 22, 23, 27, 28, 31, 32, and 33) for the wintering population of the piping plover. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Corpus Christi Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT** section). We may exclude areas from the final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are requesting the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any request for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the person named in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

The economic analysis prepared for the July 10, 2001, critical habitat designation (66 FR 36038) identified six activities that may be affected by the designation of wintering critical habitat for the piping plover because they occur within or near critical habitat areas. These activities are: (1) Housing and commercial shoreline development; (2) dredging and disposal of dredged materials; (3) beach nourishment; (4) oil and gas exploration; (5) recreational visitation of shoreline; and (6) waterway operations. At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This proposed amended rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or [T]ribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the proposed units do not occur within the jurisdiction of small governments. The government-owned lands being proposed for critical habitat designation are owned by the County of Cameron, the State of Texas, and the U.S. Fish and Wildlife Service. None of these government entities fit the definition of a ''small governmental'' jurisdiction. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the wintering population of the piping plover in Texas in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the wintering population of the piping plover in Texas does not pose significant takings implications for lands within or affected by the proposed revised designation. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not

required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. Some critical habitat is still designated in Texas for the piping plover. The designation of critical habitat on lands currently occupied by the wintering population of the piping plover imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the wintering population of the piping plover.

Paperwork Reduction Act of 1995

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An 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.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, the court ruling in *Cape Hatteras Access Preservation Alliance* v. *U.S. Department of Interior* (344 F. Supp. 2d 108 (D.D.C. 2004)) ordered us to revise the critical habitat designation for wintering piping plovers in North Carolina and to prepare an environmental analysis. To comply with that court's order, we prepared an environmental assessment for that action pursuant to NEPA, and, as an exercise of our discretion, have chosen to prepare an environmental assessment for critical habitat designation for the wintering population of the piping plover in Texas. We will notify the public when it is drafted and available for comment.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands occupied at the time of listing with features essential for the conservation, and no Tribal lands that are essential for the conservation, of the wintering population of the piping plover in Texas. Therefore, we have not proposed designation of critical habitat for the wintering population of the piping plover on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate revised critical habitat for the wintering population of the piping plover in areas of Texas is not a significant regulatory action under Executive Order 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. This action, however, may impact seismic studies for oil and gas drilling; we will further evaluate energy-related issues as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Corpus Christi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author of this package is the staff of the Corpus Christi Ecological Services Office.

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; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(b), amend the entry for ''Piping Plover (*Charadrius melodus*) Wintering Habitat'' as follows:

a. In paragraph 1., revise the text as set forth below;

b. In paragraph 2., revise the text as set forth below;

c. Under paragraph 3., *Texas*, remove the words ''*Texas* (Maps were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)'' and add in their place a new header, parenthetical text, and introductory text as set forth below;

d. Remove the critical habitat description for Unit TX–3 and add in its place a new critical habitat description for Unit TX–3 as set forth below;

e. Remove the critical habitat description for Unit TX–4 and add in its place a new critical habitat description for Unit TX–4 as set forth below;

f. Remove the critical habitat description for Unit TX–7 and add in its place a new critical habitat description for Unit TX–7 as set forth below;

g. Remove the critical habitat description for Unit TX–8 and add in its place a new critical habitat description for Unit TX–8 as set forth below;

h. Remove the critical habitat description for Unit TX–9 and add in its place a new critical habitat description for Unit TX–9 as set forth below;

i. Remove the critical habitat description for Unit TX–10 and add in its place a new critical habitat description for Unit TX–10 as set forth below;

j. Remove the critical habitat description for Unit TX–14 and add in its place a new critical habitat description for Unit TX–14 as set forth below;

k. Remove the critical habitat description for Unit TX–15 and add in its place a new critical habitat description for Unit TX–15 as set forth below;

l. Remove the critical habitat description for Unit TX–16 and add in its place a new critical habitat description for Unit TX–16 as set forth below;

m. Remove the critical habitat description for Unit TX–17;

n. Remove the critical habitat description for Unit TX–18 and add in its place a new critical habitat description for Unit TX–18 as set forth below;

o. Remove the critical habitat description for Unit TX–19 and add in its place a new critical habitat description for Unit TX–19 as set forth below;

p. Remove the critical habitat description for Unit TX–22 and add in its place a new critical habitat description for Unit TX–22 as set forth below;

q. Remove the critical habitat description for Unit TX–23 and add in its place a new critical habitat description for Unit TX–23 as set forth below;

r. Remove the critical habitat description for Unit TX–27 and add in its place a new critical habitat description for Unit TX–27 as set forth below;

s. Remove the critical habitat description for Unit TX–28 and add in its place a new critical habitat description for Unit TX–28 as set forth below;

t. Remove the critical habitat description for Unit TX–31 and add in its place a new critical habitat description for Unit TX–31 as set forth below;

u. Remove the critical habitat description for Unit TX–32 and add in its place a new critical habitat description for Unit TX–32 as set forth below;

v. Remove the critical habitat description for Unit TX–33 and add in its place a new critical habitat description for Unit TX–33 as set forth below;

w. Remove the map for ''Texas Units: 1, 2, 4 and southern 3'' and the map for ''Texas Units: 5 and northern 3'' and add in their place a new map ''Texas Units 1 to 5'' as set forth below;

x. Remove the map for ''Texas Units: 6 to 14'' and add in its place two new maps ''Texas Units 6 to 10 and 14'' and ''Texas Units 11 to 13'' as set forth below;

y. Remove the map for ''Texas Units: 15 to 21'' and add in its place a new map ''Texas Units 15, 16 and 18 to 21'' as set forth below;

z. Remove the map for ''Texas Units: 22, 23, 24, 25 and 26'' and add in its place a new map ''Texas Units 22 to 27'' as set forth below; and

aa. Remove the map for ''Texas Units: 26, 27, 28, 29 and 30'' and the seventh map for ''Texas Units 31, 32, 33, and 34'' and add in their place a new map ''Texas Units 28 to 34'' as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (Charadrius melodus) Wintering Habitat

1. The primary constituent elements essential for the conservation of the wintering population of the piping plover are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are:

(i) Intertidal sand beaches (including sand flats) or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

(ii) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.

(iii) Surf-cast algae for feeding.

(iv) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.

(v) Spits, especially sand, running into water for foraging and roosting.

(vi) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.

(vii) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.

(viii) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (*e.g.*, dredge spoil sites).

2. Critical habitat does not include manmade structures (such as bridges, jetties, buildings, roads, and other paved areas) or their ancillary facilities (such as lawns or other maintained landscaped areas) and the land on which they are located existing on the effective date of this rule.

3. * * *

* * * * *

Texas (Maps for units 1, 2, 5, 6, 11, 12, 13, 20, 21, 24, 25, 26, 29, 30, 34, 35, 36, and 37 were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline. Data layers defining map units 3, 4, 7, 8, 9, 10, 14, 15, 16, 18, 19, 22, 23, 27, 28, 31, 32, and 33 were created for bayside areas using data on known piping plover wintering locations, 1992 National Wetlands Inventory (NWI) data (except for Unit TX–22 which had 2001 data available) fitted to 2005 National Agriculture Imagery Program (NAIP) aerial photographs, and regional shoreline-defining electronic files.) The primary constituent elements for the piping plover are closely associated with the following NWI classifications: M2USN (marine (gulfside) sandy coastline (beach), regularly inundated by tides), M2USP (marine (gulfside) sandy coastline (beach), irregularly inundated by tides), E2AB1N (estuarine (bayside) algal mud or sand flats, regularly inundated by tides), E2AB1P (estuarine (bayside) algal mud or sand flats, irregularly inundated by tides), E2AB3M (estuarine (bayside) grass flats of mud or sand, irregularly inundated by tides), E2USM (estuarine (bayside) sandy shore (beach/sandbar), rarely exposed by tidal fluctuation), E2USN (estuarine (bayside) sandy shore (beach/sandbar), regularly inundated by tides), E2USP (estuarine (bayside) sandy shore (beach/sandbar), irregularly inundated by tides), L1UBKhs (impounded, artificially flooded open water dredge spoil pit, greater than 20 ac (8 ha), L2USKhs (impounded, artificially flooded sandy bottom dredge spoil pit, greater than 20 ac (8 ha)). To map the gulfside, 2005 NAIP imagery was used as a base and heads up digitizing of vegetation and water lines at a scale of 1:5,000 was used to produce polygons of critical habitat. Mean lower low waterline (MLLW) vector data from the National Oceanic and Atmospheric Administration (NOAA) was averaged with 2005 NAIP aerial photographs to correct misalignments. Measurements were taken every 100 meters along Unit TX–3 to determine an average distance between the 2005 NAIP waterline and the NOAA MLLW line. This 184 ft (56 m) average distance was then used to get an estimated MLLW line that was applied in all coastal areas.

* * * * *

Unit TX–3: Padre Island. This unit consists of five subunits:

(1) Subunit TX–3A: South Padre Island—Gulf of Mexico Shoreline.

(2) Subunit TX–3B: South Padre Island—Laguna Madre side.

(3) Subunit TX–3C: North Padre Island—Laguna Madre side.

(4) Subunit TX–3D: North Padre Island—Gulf of Mexico.

(5) Subunit TX–3E: North Padre Island—Mesquite Rincon.

Unit TX–4: Lower Laguna Madre Mainland.

* * * * *

Unit TX–7: Newport Pass/Corpus Christi Pass Beach.

Unit TX–8: Mustang Island Beach.

Unit TX–9: Fish Pass Lagoons.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. This unit consists of three subunits:

(1) Subunit TX–10A: Shamrock Island.

(2) Subunit TX–10B: Mustang Island: Unnamed sand flat.

(3) Subunit TX–10C: Mustang Island: Lagoon Complex.

* * * * *

Unit TX–14: East Flats.

Unit TX–15: North Pass.

Unit TX–16: San Jose Beach.

Unit TX–18: Cedar Bayou/Vinson Slough.

Unit TX–19: Matagorda Island Beach.

* * * * *

Unit TX–22: Decros Point.

Unit TX–23: West Matagorda Peninsula Beach.

* * * * *

Unit TX–27: East Matagorda Bay/Matagorda Peninsula Beach West.

Unit TX–28: East Matagorda Bay/Matagorda Peninsula Beach East.

* * * * *

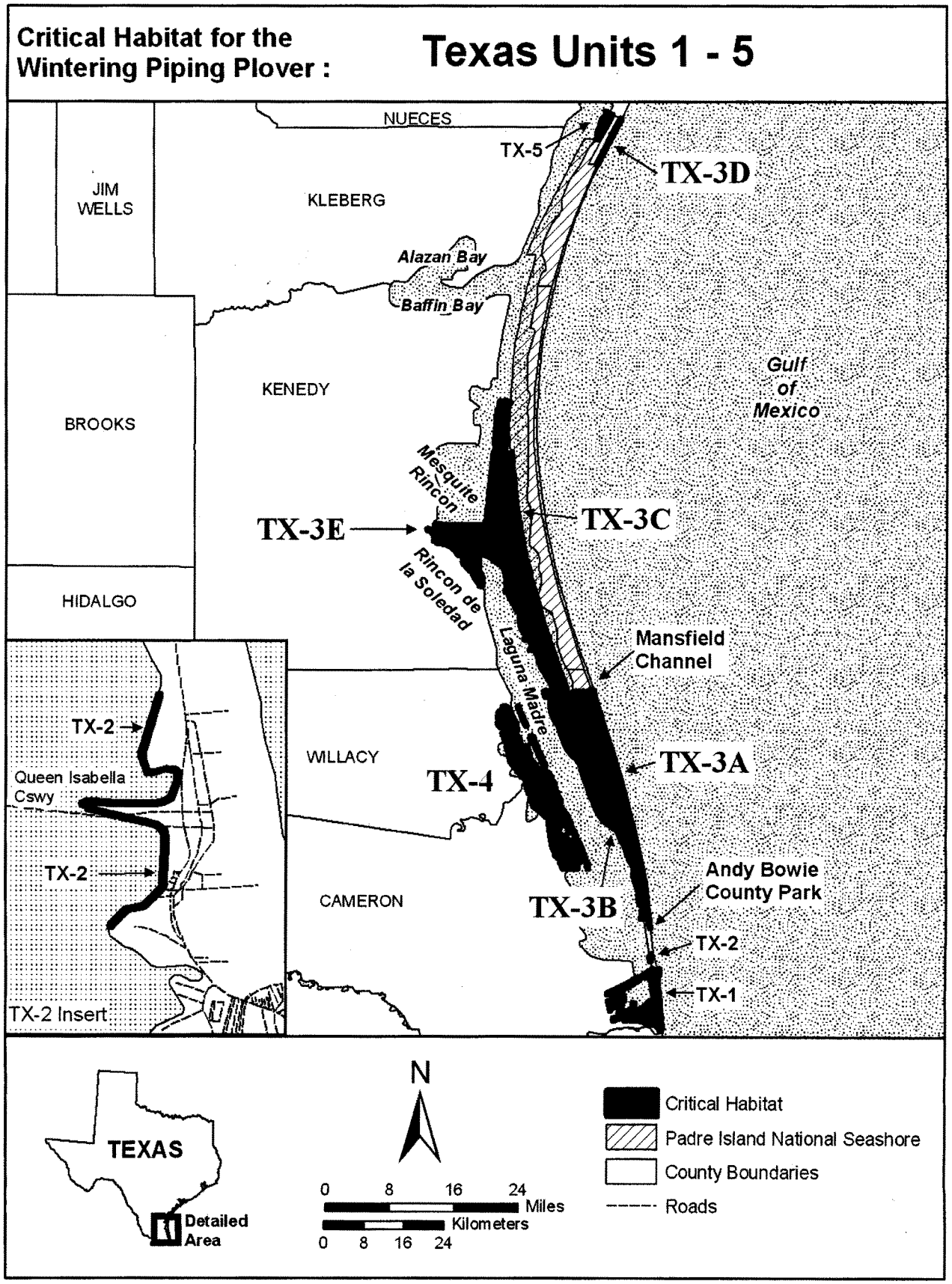
Unit TX–31: San Bernard NWR Beach.

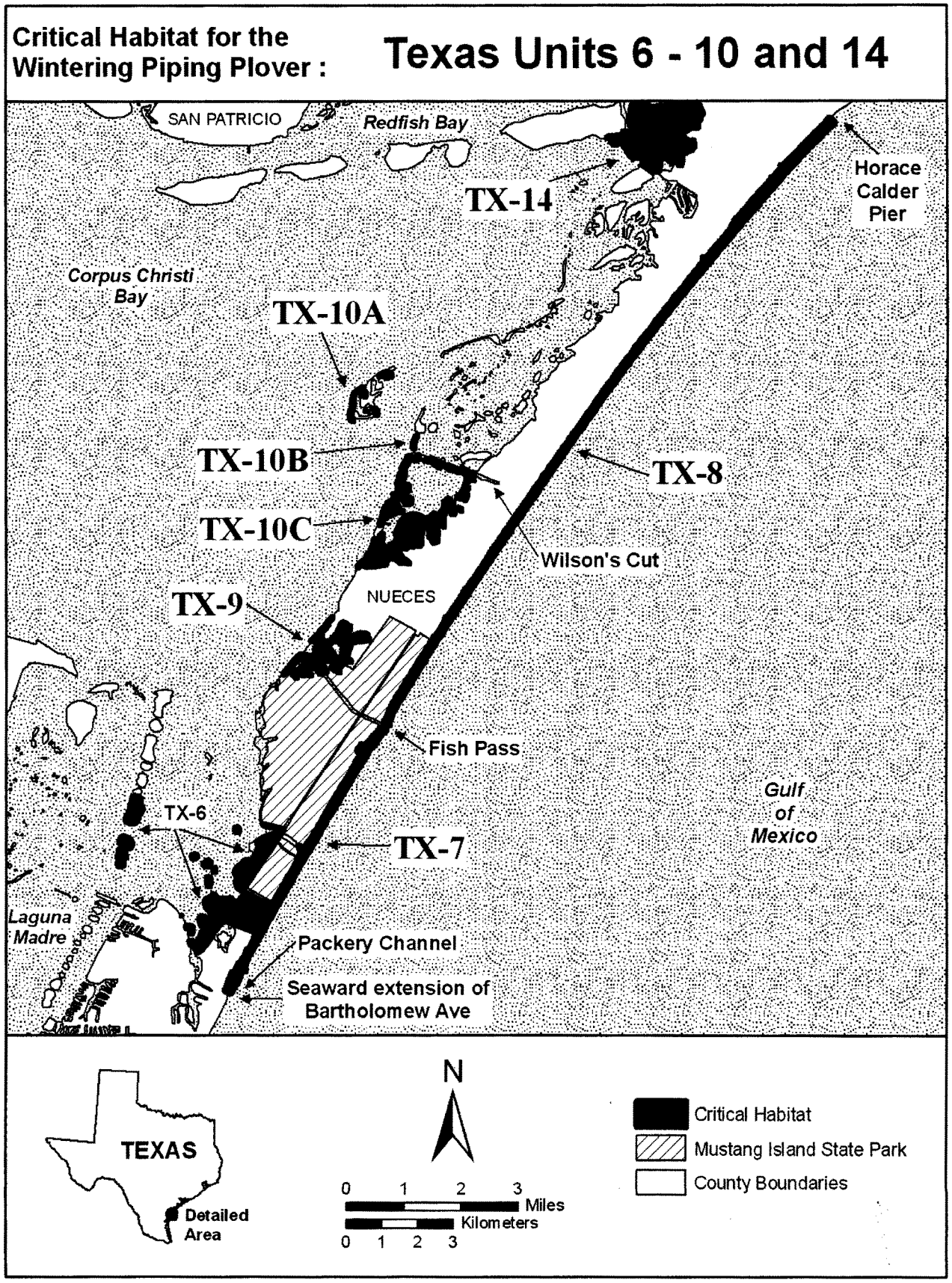
Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers.

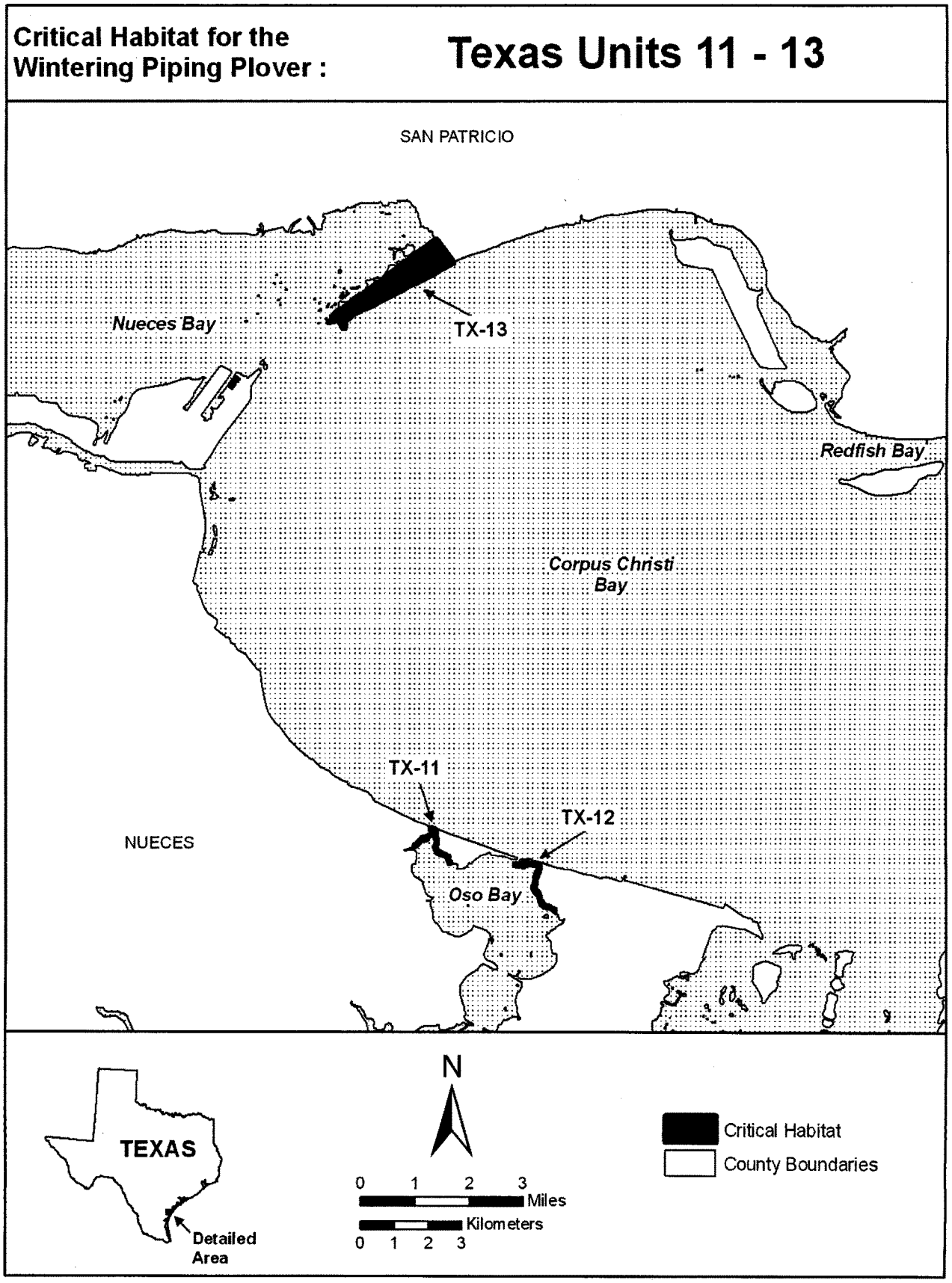
Unit TX–33: Bryan Beach and Adjacent Beach.

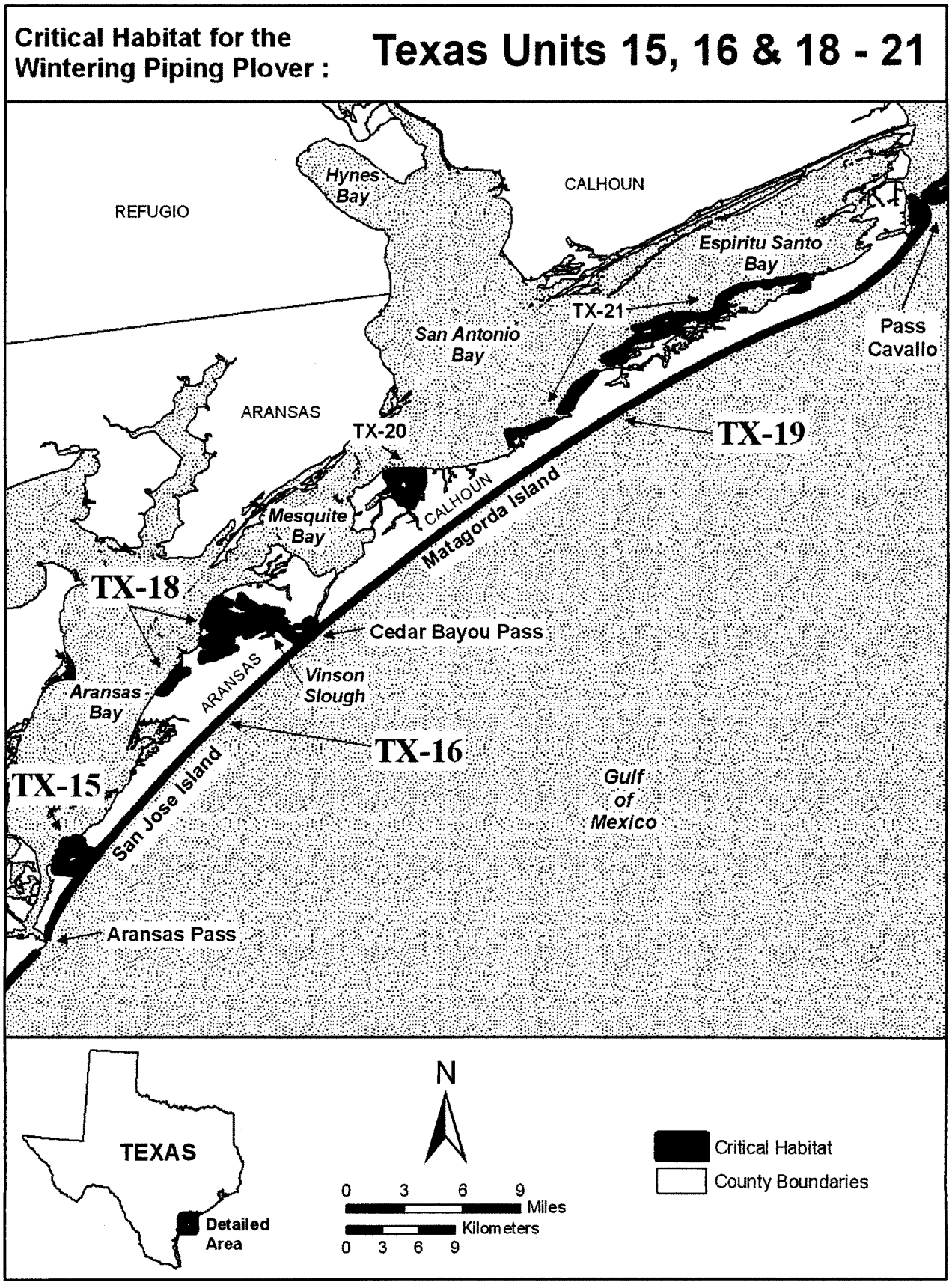
* * * * *

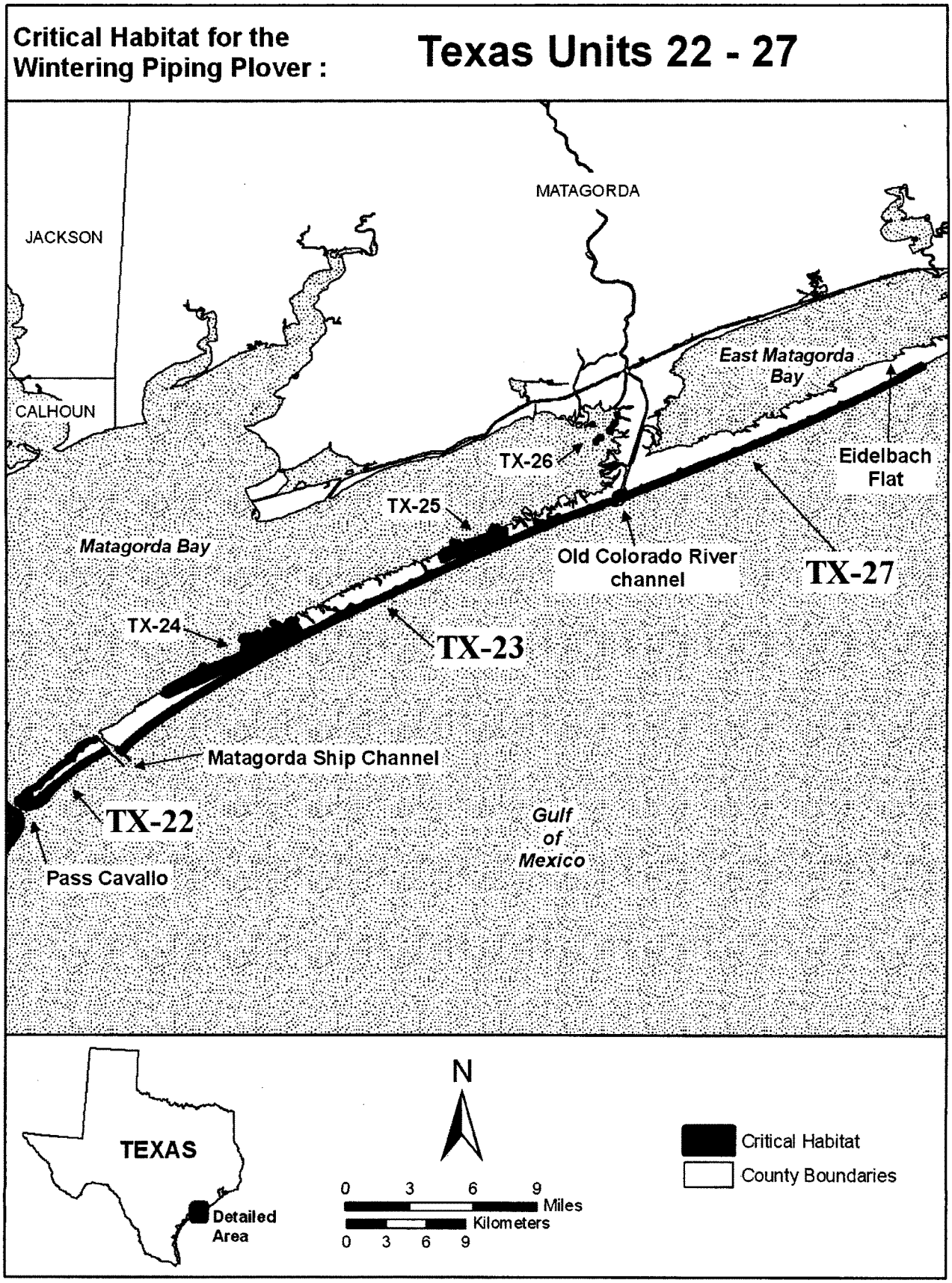
BILLING CODE 4310–55–P

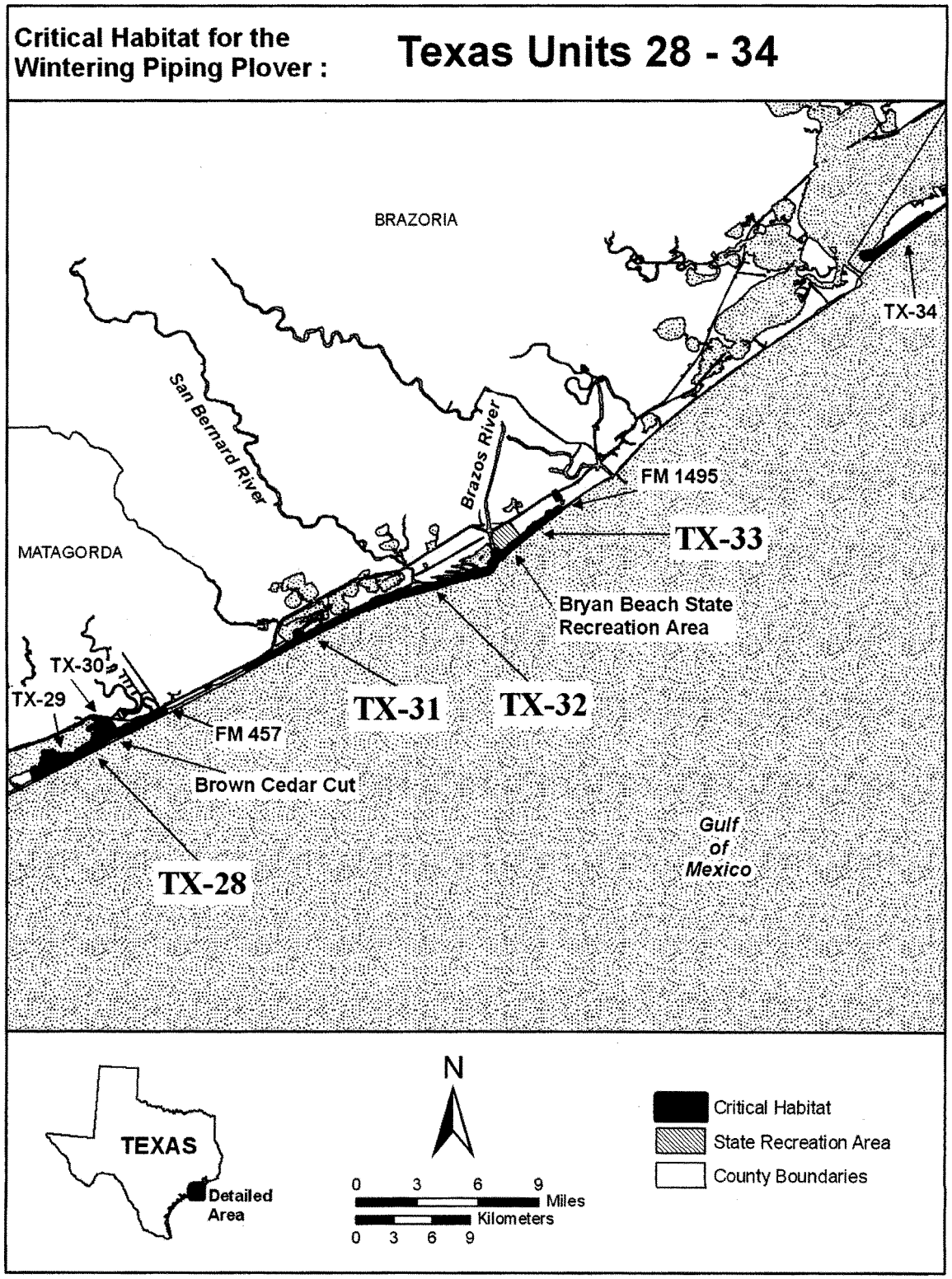

Critical Habitat for the Wintering Piping Plover :
Texas Units 1 - 5
NUECES
JIM WELLS
KLEBERG
KENEDY
BROOKS
HIDALGO
WILLACY
CAMERON
Alazan Bay
Baffin Bay
Gulf of Mexico
Mesquite
Rincon
Rincon de la Soledad
Laguna Madre
TX-5
TX-3D
TX-3C
TX-3E
TX-3A
TX-4
TX-3B
TX-2
TX-1
Mansfield Channel
Andy Bowie County Park
Queen Isabella Cswy
TX-2 Insert
TEXAS
Detailed Area
N
0 8 16 24 Miles
0 8 16 24 Kilometers
Critical Habitat
Padre Island National Seashore
County Boundaries
Roads


Critical Habitat for the Wintering Piping Plover :
Texas Units 6 - 10 and 14
SAN PATRICIO
Redfish Bay
TX-14
Horace Calder Pier
Corpus Christi Bay
TX-10A
TX-10B
TX-8
TX-10C
Wilson's Cut
NUECES
TX-9
Fish Pass
Gulf of Mexico
TX-6
TX-7
Laguna Madre
Packery Channel
Seaward extension of Bartholomew Ave
TEXAS
Detailed Area
N
0 1 2 3 Miles
0 1 2 3 Kilometers
Critical Habitat
Mustang Island State Park
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 11 - 13
SAN PATRICIO
Nueces Bay
TX-13
Redfish Bay
Corpus Christi Bay
TX-11
TX-12
NUECES
Oso Bay
TEXAS
Detailed Area
N
0 1 2 3
Miles
Kilometers
0 1 2 3
Critical Habitat
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 15, 16 & 18 - 21
REFUGIO
Hynes Bay
CALHOUN
Espiritu Santo Bay
TX-21
Pass Cavallo
San Antonio Bay
ARANSAS
TX-20
TX-19
CALHOUN
Matagorda Island
Mesquite Bay
TX-18
Cedar Bayou Pass
ARANSAS
Vinson Slough
Aransas Bay
TX-16
TX-15
San Jose Island
Gulf of Mexico
Aransas Pass
TEXAS
Detailed Area
N
0 3 6 9
Miles
Kilometers
0 3 6 9
Critical Habitat
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 22 - 27
MATAGORDA
JACKSON
CALHOUN
East Matagorda Bay
Eidelbach Flat
TX-26
TX-25
Matagorda Bay
Old Colorado River channel
TX-27
TX-24
TX-23
Matagorda Ship Channel
TX-22
Gulf of Mexico
Pass Cavallo
TEXAS
Detailed Area
N
0 3 6 9
Miles
Kilometers
0 3 6 9
Critical Habitat
County Boundaries



* * * * *

Dated: May 8, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–10742 Filed 5–19–08; 8:45 am]

BILLING CODE 4310–55–C