

Therefore, we are initiating a status review to determine if listing the species under the Act is warranted.

The petitioner also requested that critical habitat be designated for the ashy storm-petrel. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the ashy storm-petrel is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

#### References Cited

A complete list of all references cited in this document is available, upon request, from our Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

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

Dated: May 6, 2008.

#### Kenneth Stansell,

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

[FR Doc. E8-10790 Filed 5-14-08; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R4-ES-2008-0041; 92210-1117-0000-B4]

RIN 1018-AU48

#### Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover in North Carolina

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period, revisions to proposed critical habitat boundaries, notice of availability of revised draft economic analysis and environmental assessment, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the

proposed revised designation of critical habitat for the wintering population of the piping plover (*Charadrius melodus*) in Dare and Hyde Counties, North Carolina (71 FR 33703, June 12, 2006). In this document, we are proposing to add 87 hectares (ha) (215 acres (ac)) of critical habitat to two previously proposed units. As a result, our proposed revised critical habitat designation for the species now includes 4 revised critical habitat units totaling approximately 827 ha (2,043 ac). We also announce the availability of the revised draft economic analysis (DEA) and environmental assessment of the proposed revised designation of critical habitat. We are reopening the comment period on the June 12, 2006, proposed rule to allow all interested parties an opportunity to comment simultaneously on that proposal, the proposed revised critical habitat units described in this document, our amended required determinations, and the associated revised DEA and environmental assessment. Please do not resend comments you have already submitted. We will incorporate comments previously submitted into the public record as part of this comment period, and we will fully consider them when preparing our final determination.

**DATES:** We will consider comments received or postmarked on or before June 16, 2008.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018-AU48; 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:** Field Supervisor, Raleigh Fish and Wildlife Office, P.O. Box 33726, Raleigh, NC 27636-3726, (telephone 919-856-4520; facsimile 919-856-4556). 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 will accept written comments and information during this reopened

comment period on our June 12, 2006, proposed rule to revise critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703), the additional areas of critical habitat proposed in this document, the amended required determinations provided in this document, and our revised DEA and environmental assessment of the proposed revised designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species due to designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of wintering piping plover habitat in North Carolina,
- What areas occupied at the time of listing that contain features essential for the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing 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 revised critical habitat.

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

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed revised designation of critical habitat.

(6) Information regarding our identification, in our June 12, 2006, proposed rule, of specific areas as not being in need of special management.

(7) Information to assist the Secretary of the Interior in evaluating habitat with physical and biological features essential to the conservation of the piping plover on Cape Hatteras National Seashore, administered by the National Park Service, based on any benefit provided by the Interim Protected Species Management Strategy/Environmental Assessment (Interim Strategy; NPS 2006) to the conservation of the wintering piping plover.

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding or to assist us in accommodating public concerns and comments.

(9) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed revised critical habitat designation, and information on any costs or benefits that we have overlooked.

(10) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate revised critical habitat.

(11) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the revised critical habitat designation.

(12) Information on whether the DEA identifies all costs that could result from the revised designation and whether you agree with the analysis.

(13) Whether there is any information to suggest that beach recreation might increase as a result of this designation, and whether the effects of any such increased visitation can be quantified.

If you submitted comments or information during the initial comment period from June 12, 2006, to August 11, 2006 (71 FR 33703), or during the reopened comment period from May 31, 2007, to July 30, 2007 (72 FR 30326), or at the public hearing held on June 20, 2007, on the proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not contain the features essential to the conservation of the species or are not themselves essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

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 Web site. 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 notice, 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, Raleigh Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA at <http://www.regulations.gov>, by mail from the Raleigh Field Office (see **FOR FURTHER INFORMATION CONTACT**), or by visiting our Web site at <http://www.fws.gov/nc-es>.

### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the biology and ecology of the wintering population of the piping plover, refer to the final rule to designate critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038), and the proposed rule to designate revised critical habitat for the wintering population of the piping plover in North Carolina published in the **Federal Register** on June 12, 2006 (71 FR 33703).

The piping plover is a small, pale-colored shorebird that breeds in three discrete areas of North America—the Northern Great Plains, the Great Lakes, and the Atlantic Coast—and winters in coastal areas of the United States from North Carolina to Texas, along the coast of eastern Mexico, and on the Caribbean islands from Barbados to Cuba and the Bahamas. We published a rule to list the piping plover 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 (which includes the State of North Carolina) are considered threatened.

We first designated critical habitat for the wintering population of the piping plover in 137 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas on July 10, 2001 (66 FR 36038). This designation

included approximately 2,891.7 kilometers (km) (1,798.3 miles (mi)) of mapped shoreline and approximately 66,881 ha (165,211 ac) of mapped areas along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

In February 2003, two North Carolina counties (Dare and Hyde) and a beach access group (Cape Hatteras Access Preservation Alliance) filed a lawsuit challenging our designation of four units of critical habitat on the Cape Hatteras National Seashore, North Carolina (Units NC-1, NC-2, NC-4, and NC-5). In 2004, the U.S. District Court for the District of Columbia remanded to us the 2001 designation of the four units (*Cape Hatteras Access Preservation Alliance v. U.S. Department of the Interior*, 344 F. Supp 2d 108). In response to the court's order, we published, on June 12, 2006, a proposed rule to revise designated critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703). That proposed rule described four coastal areas (named Units NC-1, NC-2, NC-4, and NC-5), totaling approximately 739.4 ha (1,827.2 ac) entirely within Cape Hatteras National Seashore, as critical habitat for the wintering population of the piping plover. On May 31, 2007, we announced in the **Federal Register** the availability of a draft economic analysis and environmental assessment on the proposed revised critical habitat for the wintering population of the piping plover (72 FR 30326).

We are now modifying the June 12, 2006, proposed rule (71 FR 33703) to add previously excluded areas to two of the proposed units, as described below in the "Additional Proposed Critical Habitat Areas" section. As a result of these additions and revisions, the proposed critical habitat now encompasses 827 ha (2,043 ac), an increase of 87 ha (215 ac) from the June 12, 2006 proposed rule (71 FR 33703).

Section 3 of the Act defines critical habitat as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule (with the changes proposed in this document) is made final, section 7 of the Act will prohibit destruction or adverse modification of

critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat taking into consideration economic impacts, national security, or any other relevant impact.

**Additional Proposed Critical Habitat Areas**

By this document, we are advising the public of new proposed revisions to two of the four units described in the June 12, 2006, proposed rule (71 FR 33703). In that rule, we determined that the islands DR-005-05 and DR-005-06 (Dare County) and DR-009-03/04 (Dare

and Hyde Counties), owned by the State of North Carolina, and about 96 ha (137 ac) of Pea Island National Wildlife Refuge (Dare County) did not meet the definition of critical habitat under section 3(5)(A) of the Act. However, we have reconsidered our preliminary analysis of the special management or protection needs of the physical and biological features essential to the conservation of the species on these lands and have now determined that these areas should be proposed as critical habitat. This determination is based on *Center for Biological Diversity v. Norton*, 240 F. Supp 2d 1090, 1099 (D. Ariz. 2003), which held that if a habitat is already under some sort of management for its conservation, that particular habitat required special management considerations or protection and, therefore, meets the definition of critical habitat. As such, we are now including these areas in this proposed revised critical habitat, and we are considering whether the areas should be excluded from the final designation under section 4(b)(2) of the Act, based on economic or other relevant impacts, and taking into

account the existing protections in our benefit analysis.

The two proposed revised units that are expanded by the newly proposed areas are Unit NC-1 (Oregon Inlet) and NC-4 (Hatteras Inlet); we propose to incorporate the areas previously omitted from the June 12, 2006, proposal (i.e., several State-owned islands and portions of Pea Island National Wildlife Refuge) into Unit NC-1 and Unit NC-4. These additional areas of the proposed revised units are located within the range of the population, were occupied at the time of listing and are considered currently occupied, and contain habitat features essential for the conservation of the wintering population of piping plover, as described in the "Primary Constituent Elements" of our June 12, 2006, proposed rule (71 FR 33703). The additional areas total 87 ha (215 ac). As a result of these additions, together with the revisions to area estimates proposed in the June 12, 2006, proposed rule (71 FR 33703), the proposed revised critical habitat now encompasses 827 ha (2,043 ac) in four units. The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—REVISED CRITICAL HABITAT UNITS PROPOSED FOR THE WINTERING POPULATION OF THE PIPING PLOVER IN NORTH CAROLINA

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat units	Land ownership	Proposed hectares (acres) (from June 12, 2006, proposed rule)	Additional proposed hectares (acres) (proposed in this document)	Total proposed hectares (acres)
Unit NC-1, Oregon Inlet .....	Federal, State .....	115.0 (284.0)	81 (201)	196 (485)
Unit NC-2, Cape Hatteras Point .....	Federal .....	261.0 (646.0)	0	262 (646)
Unit NC-4, Hatteras Inlet .....	Federal, State .....	160.0 (396.0)	6 (14)	166 (410)
Unit NC-5, Ocracoke Island .....	Federal .....	203.0 (502.0)	0	203.0 (502.0)
Total .....	.....	739.0 (1,827.0)	87 (215)	827 (2,043)

Below, we present brief descriptions of the two revised units (NC-1 and NC-4) and reasons why they meet the definition of critical habitat for the piping plover. As stated in the June 12, 2006, proposed rule (71 FR 33703), the textual unit descriptions of the units in the regulation constitute the definitive determination as to whether an area is within the critical habitat boundary.

*Unit NC-1: Oregon Inlet*

Unit NC-1 is approximately 8.0 km (5.0 mi) long, and consists of about 196 ha (485 ac) of sandy beach and inlet spit habitat on Bodie Island and Pea Island in Dare County, North Carolina. This is the northernmost critical habitat unit proposed within the wintering range of the piping plover. Oregon Inlet is the

northernmost inlet in coastal North Carolina, approximately 19.0 km (12.0 mi) southeast of the Town of Manteo, the county seat of Dare County. The proposed unit at Oregon Inlet is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the mean lower low water (MLLW) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where the physical and biological features essential to the conservation of the species do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic

Ocean shoreline to the MLLW on the Pamlico Sound side. The unit begins at Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends approximately 8.0 km (5.0 mi) south to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 5.0 km (3.0 mi) from the groin, on Pea Island, and includes Green Island and any emergent sandbars south and west of Oregon Inlet, and the lands owned by the State of North Carolina, specifically Islands DR-005-05 and DR-005-06. However, this unit does not include the Oregon Inlet Fishing Center, NC Highway 12, the Bonner Bridge and its associated structures, the terminal groin, the historic Pea Island Life-Saving Station, or any of their ancillary

facilities (e.g., parking lots, out buildings). This unit contains the physical and biological features essential to the conservation of the species. Areas of the unit contain a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide.

Oregon Inlet has reported consistent use by wintering piping plovers dating from the mid-1960s. As many as 100 piping plovers have been reported from a single day survey during the fall migration (NCWRC unpublished data). Christmas bird counts regularly recorded 20 to 30 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (J. Stucker, University of Minnesota, unpublished data). The overall number of piping plovers reported using the area has declined since the species was listed in 1986 (NCWRC unpublished data), which corresponds to increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Oregon Inlet is one of the first beach access points for off-road vehicles within Cape Hatteras National Seashore when traveling from the developed coastal communities of Nags Head, Kill Devil Hills, Kitty Hawk, and Manteo. As such, the inlet spit is a popular area for off-road vehicle users to congregate. The majority of the Cape Hatteras National Seashore users in this area are off-road vehicle owners and recreational fishermen. In fact, a recent visitor use study of Cape Hatteras National Seashore reported that Oregon Inlet is the second most popular off-road vehicle use area in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by boat, which can be launched from the nearby Oregon Inlet Fishing Center. Pea Island National Wildlife Refuge does not allow off-road vehicle use; however, Pea Island regularly receives dredged sediments from the maintenance dredging of Oregon Inlet by the U.S. Army Corps of Engineers. The disposal of dredged sediments on Pea Island National Wildlife Refuge has the potential to disturb foraging and roosting plovers and their habitats. As a result, the sandy beach and mud and sand flat habitat being proposed as critical habitat in this unit may require special management considerations or protection.

#### *Unit NC-4: Hatteras Inlet*

Unit NC-4 is approximately 8.0 km (5.0 mi) long, and consists of 166 ha (410 ac) of sandy beach and inlet spit habitat on the western end of Hatteras Island and the eastern end of Ocracoke Island in Dare and Hyde Counties, North Carolina. The unit begins at the first beach access point at Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island and continues southwest to the beach access at the ocean-side parking lot near Ramp 59 on the northeastern end of Ocracoke Island. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which itself is not used by the piping plover and where PBFs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The proposed unit at Hatteras Inlet includes all emergent sandbars within Hatteras Inlet including lands owned by the State of North Carolina, specifically Island DR-009-03/04. The unit is adjacent to, but does not include the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (e.g., parking lots, out buildings). This unit contains the features essential to the conservation of the species. Areas of the unit contain a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide.

Hatteras Inlet has reported consistent use by wintering piping plovers since the early 1980s, but the specific area of use was not consistently recorded in earlier reports. Often piping plovers found at Cape Hatteras Point, Cape Hatteras Cove, and Hatteras Inlet were reported as a collective group. However, more recent surveys report plover use at Hatteras Inlet independently from Cape Hatteras Point. These single-day surveys have recorded as many as 40 piping plovers a day during migration (NCWRC unpublished data). Christmas bird counts regularly recorded 2 to 11 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (J.

Stucker, University of Minnesota, unpublished data). The overall numbers of piping plovers reported using the area has declined in the last 10 years (NCWRC unpublished data), corresponding with increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Hatteras Inlet is located near the Village of Hatteras, Dare County, and is the southernmost point of Cape Hatteras National Seashore that can be reached without having to take a ferry. As such, the inlet is a popular off-road vehicle and recreational fishing area. In fact, a recent visitor use study of the park found Hatteras Inlet the fourth most used area by off-road vehicles in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by boat, which can be launched from the nearby marinas of Hatteras Village. As a result, the sandy beach and mud and sand flat habitat being proposed as critical habitat in this unit may require special management considerations or protection.

#### **Draft Economic Analysis**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. On June 21, 2007, we published a document in the **Federal Register** (72 FR 34215) announcing the availability of the draft economic analysis for the proposed revised designation of critical habitat for the wintering population of the piping plover. Because we are now proposing additional areas of critical habitat in Units NC-1 and NC-4, we have prepared a revised DEA of the proposed revised critical habitat designation. The revised DEA is described below.

The intent of the DEA is to quantify the economic impacts of all potential conservation efforts for the wintering population of the piping plover; some of these costs will likely be incurred regardless of whether we designate critical habitat. The DEA estimates the foreseeable economic impacts of conservation measures for the wintering population of the piping plover within the proposed revised critical habitat designation on government agencies, private businesses, and individuals. Specifically, the analysis measures how management activities undertaken by the National Park Service (NPS), the Service, and the State of North Carolina to protect wintering piping plover habitat against the threat of off-road

vehicle (ORV) use or other recreational use of the beach may affect the value of the beaches to ORV and other recreational users and the region. In this analysis, it is assumed that the primary management tool employed for wintering piping plover conservation could be the implementation of closures of certain portions of the beach. If implemented, these closures would reduce the opportunity for recreational activities, such as ORV use. The Service believes, however, that additional beach closures due to the designation of critical habitat for wintering piping plovers are unlikely. On October 18, 2007, an action was filed against the National Park Service (NPS) in the United States District Court for the Eastern District of North Carolina, alleging that the management of off-road vehicles at Cape Hatteras National Seashore, which would include the areas proposed for critical habitat (*Defenders of Wildlife et. al. v. National Park Service et al.*, No. 2:07-CV-45-BO (E.D.N.C.)). On April 16, 2008, the parties filed with the court a proposed consent decree that would require NPS to close to ORV use areas where piping plovers (and other shorebird species) engage in prenesting and other breeding behavior. If approved by the court, these closures would occur regardless of whether critical habitat is designated. At this time, the NPS, the Service, and the State of North Carolina are not undertaking any new activities on which the Service expects to be required to consult in the future.

However, the Service plans to continue to consult with the U.S. Army Corps of Engineers on future sand disposal operations on Pea Island National Wildlife Refuge. In addition, it plans to consult with the Federal Highway Administration on the replacement of Bonner Bridge. At this time, it is unclear if these projects will affect the proposed revised critical habitat; therefore, this analysis does not include administrative costs associated with these projects. The analysis focuses instead on the effect of public closures of beaches on ORV use and the potential administrative costs to the NPS resulting from additional section 7 consultations and other administrative duties caused by designation of critical habitat. Our analysis determines that recreation may be affected under one of two possible scenarios: the high-end scenario, which estimates that a percentage of ORV trips to proposed revised designated critical habitat areas would be lost; and the low-end scenario, which assumes that no trips would be lost.

The DEA forecasts that costs associated with conservation activities for the wintering population of the piping plover in North Carolina would range from \$0 to \$23.0 million in lost consumer surplus and \$0 to \$40.0 million in lost trip expenditures in undiscounted dollars over the next 20 years, with an additional \$190,000 to \$476,000 in administrative costs. These costs are not related to, or the result of, the recently announced beach closures designed to protect breeding piping plovers and other seabirds resulting from the above-referenced settlement agreement. Discounted forecast impacts are estimated to range from \$0 to \$11.9 million in lost consumer surplus and \$0 to \$20.2 million in lost trip expenditures over 20 years using a real rate of seven percent, with an additional \$101,000 to \$252,000 in administrative costs. This amounts to \$0 to \$985,000 in lost consumer surplus and \$0 to \$1.6 million in lost trip expenditures, annually. Using a real rate of three percent, discounted forecast impacts are estimated at \$0 to \$16.8 million in lost consumer surplus and \$0 to \$29.1 million in lost trip expenditures over the next 20 years, with an additional \$141,000 to \$354,000 in administrative costs. This amounts to \$0 to \$1.1 million in lost consumer surplus and \$0 to \$2.0 million in lost trip expenditures, annually. Of the four units proposed as revised critical habitat, unit NC-2 is calculated to experience the highest estimated costs (about 40 percent) in both lost consumer surplus (\$0 to \$9.2 million, undiscounted) and lost trip expenditures (\$0 to \$16.0 million, undiscounted). Units NC-4, NC-5, and NC-1 account for about 26, 20, and 14 percent, respectively, of the total potential impacts.

The DEA considers the potential economic effects of all actions relating to the conservation of the wintering population of the piping plover, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of revised critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the wintering population of the piping plover in areas containing features essential to the conservation of the species. The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost

economic opportunities associated with restrictions on land use).

The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the DEA looks retrospectively at costs that have been incurred since 1985 (year of the species' final listing) (50 FR 50726), and considers those costs that may occur in the 19 years following the designation of critical habitat. Because the DEA considers the potential economic effects of all actions relating to the conservation of the wintering population of the piping plover, including costs associated with sections 4, 7, and 10 of the Act and those attributable to designation of critical habitat, the DEA may have overestimated the potential economic impacts of the revised critical habitat designation.

The methodology used in the DEA assumes that in the baseline (without critical habitat designation) the entire 24,470 ac (9,903 ha) of the Cape Hatteras National Seashore will be open to ORV access except for areas closed for human safety and sensitive species' protection, and that baseline ORV use is evenly distributed over this area. On the basis of this assumption, the economists calculated an estimate of baseline ORVs per acre and evaluated potential ORV trip reductions using the number of acres potentially closed due to critical habitat designation as a percentage of total acres of Cape Hatteras National Seashore (4.8% in April through July, and 5.8% in August through March; see Exhibit 2-6 in draft DEA). We are specifically seeking comments regarding whether the methodology used in the evaluation is accurate and whether more specific information is available concerning: (1) The area of Cape Hatteras National Seashore open to ORV use; (2) the number of ORV trips within Cape Hatteras National Seashore; (3) how ORV trips to Cape Hatteras National Seashore are distributed across areas; and (4) potential impacts that

could result from additional beach closures.

As stated earlier, we are soliciting data and comments from the public on this revised DEA, as well as on our June 12, 2006, proposed rule to revise critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703), the additional areas of critical habitat proposed in this document, the amended required determinations provided in this document, and our revised environmental assessment of the proposed revised designation. We may revise the proposed rule, or its supporting documents, to incorporate or address new information we receive. In particular, we may exclude an area from critical habitat designation if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

#### **National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)**

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. 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 Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996)). However, the court decision remanding the critical habitat designation also ordered us to prepare an environmental analysis of the proposed designation under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). To comply with the court's order, we prepared a draft environmental assessment pursuant to the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508) and according to the Department of the Interior's NEPA procedures. We published a notice of availability for the draft environmental assessment in the **Federal Register** on May 31, 2007 (72 FR 30326). That draft environmental assessment was based on the June 12, 2006, proposed rule (71 FR 33703). We have completed a revised draft environmental assessment to incorporate the proposed additions to units NC–1 and NC–4 discussed in this document, and the revised draft environmental assessment is now

available at <http://www.regulations.gov>. As stated earlier, we solicit data and comments from the public on the revised draft environmental assessment.

#### **Required Determinations—Amended**

In our June 12, 2006, proposed rule (71 FR 33703), we said that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

#### **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 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to 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 effect of the rule on small entities (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. Based on our revised DEA of the proposed revised designation and the revised proposal of critical habitat units in this document, we provide our analysis for whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city, town, and county governments that serve fewer than 50,000 residents (for example, Dare and Hyde Counties); and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities, including Dare County and Hyde County governmental entities, are significant, we considered in our economic analysis the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised critical habitat designation for the wintering population of the piping plover would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat

designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize the proposed revised critical habitat designation (including the additions to revised critical habitat proposed in this document), Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our revised DEA, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the wintering population of the piping plover and proposed revised designation of the species' critical habitat. This analysis estimated prospective economic impacts due to the implementation of wintering piping plover conservation efforts in two categories: Recreation (particularly ORV use), and section 7 consultation undertaken by the NPS, the Service, and the State of North Carolina. We anticipate that impacts of conservation activities will not have a significant economic impact on small entities because the costs of consultation are borne entirely by the NPS, the Service, and the State of North Carolina. The only impacts we expect small entities to bear are the costs associated with lost consumer surplus and lost trip expenditures. Lost trips would impact generated visitor expenditures on such items as food, lodging, shopping, transportation, entertainment, and recreation. See "Draft Economic Analysis" section above and the revised DEA for a more detailed discussion of estimated discounted impacts.

Approximately 93 percent of businesses in affected industry sectors in both counties are small. Assuming that all expenditures are lost only by small businesses and that these expenditures are distributed equally across all small businesses in both counties, each small business may experience a reduction in annual sales of between \$661 and \$6,494, depending on a business' industry. Specifically, the entertainment industry may expect a loss of \$661 if no trips are lost and \$992 if trips are lost. The food industry may expect a loss of \$808 and \$1,213 for no trips lost and trips lost, respectively. The shopping industry may expect a loss of \$1,383 and \$2,077, and lodging may expect a loss of \$3,660 to \$5,495, for no trips lost and trips lost,

respectively. The transportation industry may expect a loss of \$4,325 if no trips are lost and \$6,494 if trips are lost. If the small business is generating annual sales just under the SBA small business threshold for its industry, this loss represents between 0.01 and 0.08 percent of its annual sales (0.01 to 0.03 percent for food, shopping, and entertainment; 0.05 to 0.08 percent for transportation and lodging). The Service concludes that this is not a significant economic impact.

Assuming that each small business has annual sales just under its SBA industry small business threshold may underestimate lost expenditures as a percentage of annual sales. It is likely that most small businesses have annual sales well below the threshold. However, even if a business has annual sales below the small business threshold for its particular industry, it is probable that lost expenditures still are relatively small compared to annual sales. For example, if a small business has annual sales that are one-tenth of that industry's SBA small business threshold, potential losses still only represent between 0.10 and 0.85 percent of its annual sales.

In summary, we have considered whether the proposed rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

#### **Executive Order 13211—Energy Supply, Distribution, or Use**

On May 18, 2001, the President issued Executive Order (E.O.) 13211 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. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The revised DEA finds none of these criteria relevant to this analysis. Thus, based on information in the revised DEA, we do not expect designation of the proposed revised critical habitat to lead to energy-related impacts. As such, we do not expect the proposed revised designation of critical habitat to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

#### **Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)**

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

(a) This 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 tribal 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 tribal 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 tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation 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. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, 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 on to State governments.

(b) As discussed in the revised draft economic analysis of the proposed revised designation of critical habitat for the wintering population of the piping plover, we do not believe that this rule would significantly or uniquely affect small governments because only Federal and State lands are proposed for designation. The SBA does not consider the Federal or State Government to be a small governmental jurisdiction or entity. As such, it is unlikely that small governments will be involved with projects involving section 7 consultations for the wintering population of the piping plover within their jurisdictional areas. Consequently, we do not believe that the designation of critical habitat for this species would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

**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 proposing revised critical habitat for the wintering population of the piping plover. Our takings implications assessment concludes that this proposed revised designation of critical habitat for the wintering population of the piping plover in North Carolina does not pose significant taking implications.

**Author**

The primary author of this notice is the Raleigh Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

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

**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 further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 71 FR 33703, June 12, 2006, as follows:

**PART 17—[AMENDED]**

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

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

2. The critical habitat entry for “Piping Plover (*Charadrius melodus*) Wintering Habitat” in § 17.95(b), which was proposed to be revised on June 12, 2006, at 71 FR 33703, is proposed to be amended by:

a. Revising the critical habitat description for Unit NC–1 to read as set forth below;

b. Revising the critical habitat description for Unit NC–4 to read as set forth below;

c. Revising the first map for “North Carolina Unit: 1” as set forth below; and

d. Revising the second map for “North Carolina Units: 2, 3, 4, 5, & 6” as set forth below.

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(b) *Birds.*

\* \* \* \* \*

Piping Plover (*Charadrius melodus*)  
Wintering Habitat

\* \* \* \* \*

3. \* \* \*

\* \* \* \* \*

**Unit NC–1: Oregon Inlet, 196 ha (485 ac) in Dare County, North Carolina**

This unit extends from the southern portion of Bodie Island through Oregon Inlet to the northern portion of Pea Island. It begins at the edge of Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends south approximately 7.6 km (4.7 mi) to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 4.8 km (2.9 mi) from the groin, on Pea Island. The unit is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the mean lower low water (MLLW) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where primary constituent elements do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic

Ocean shoreline to the MLLW on the Pamlico Sound side. Any emergent sandbars south and west of Oregon Inlet, including Green Island and lands owned by the State of North Carolina such as Islands DR–005–05 and DR–005–06, are included (but are not shown on map). This unit does not include the Oregon Inlet Fishing Center, NC Highway 12 and the Bonner Bridge or its associated structures, the terminal groin, the historic Pea Island Life-Saving Station, or any of their ancillary facilities (e.g., parking lots, out buildings).

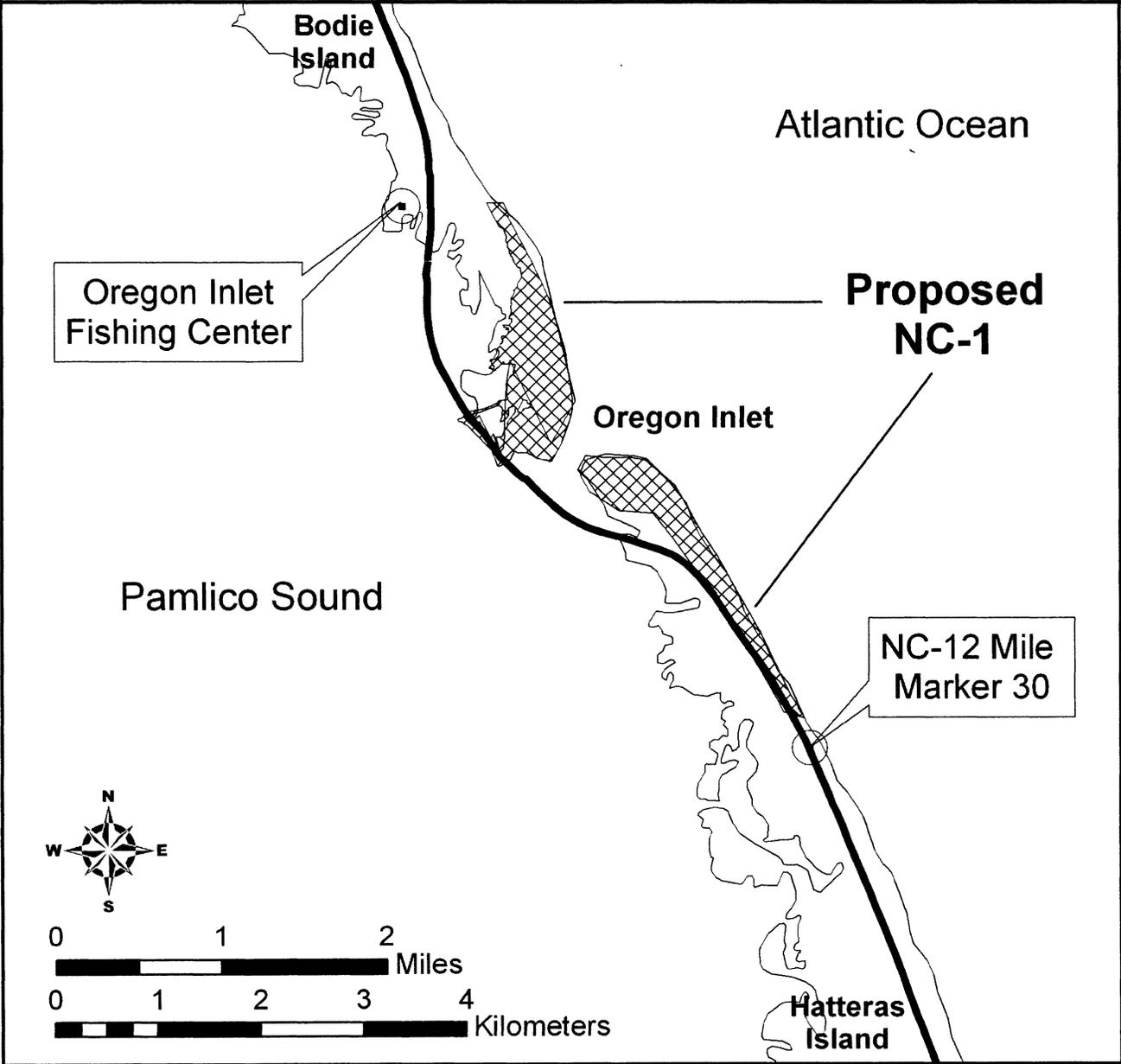
\* \* \* \* \*

**Unit NC–4: Hatteras Inlet, 166 ha (410 ac) in Dare and Hyde Counties, North Carolina**

This unit extends from the western end of Hatteras Island to the eastern end of Ocracoke Island. The unit extends approximately 7.6 km (4.7 mi) southwest from the first beach access point at the edge of Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island to the edge of the beach access at the ocean-side parking lot (approximately 0.1 mi south of Ramp 59) on NC Highway 12, approximately 1.25 km (0.78 mi) southwest (straight-line distance) of the ferry terminal on the northeastern end of Ocracoke Island. The unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where primary constituent elements do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island, including lands owned by the State of North Carolina such as Island DR–009–03/04 (not shown on map), are included. The unit is adjacent to but does not include the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (e.g., parking lots, out buildings).

\* \* \* \* \*

# Critical Habitat for the Wintering Population of the Piping Plover.

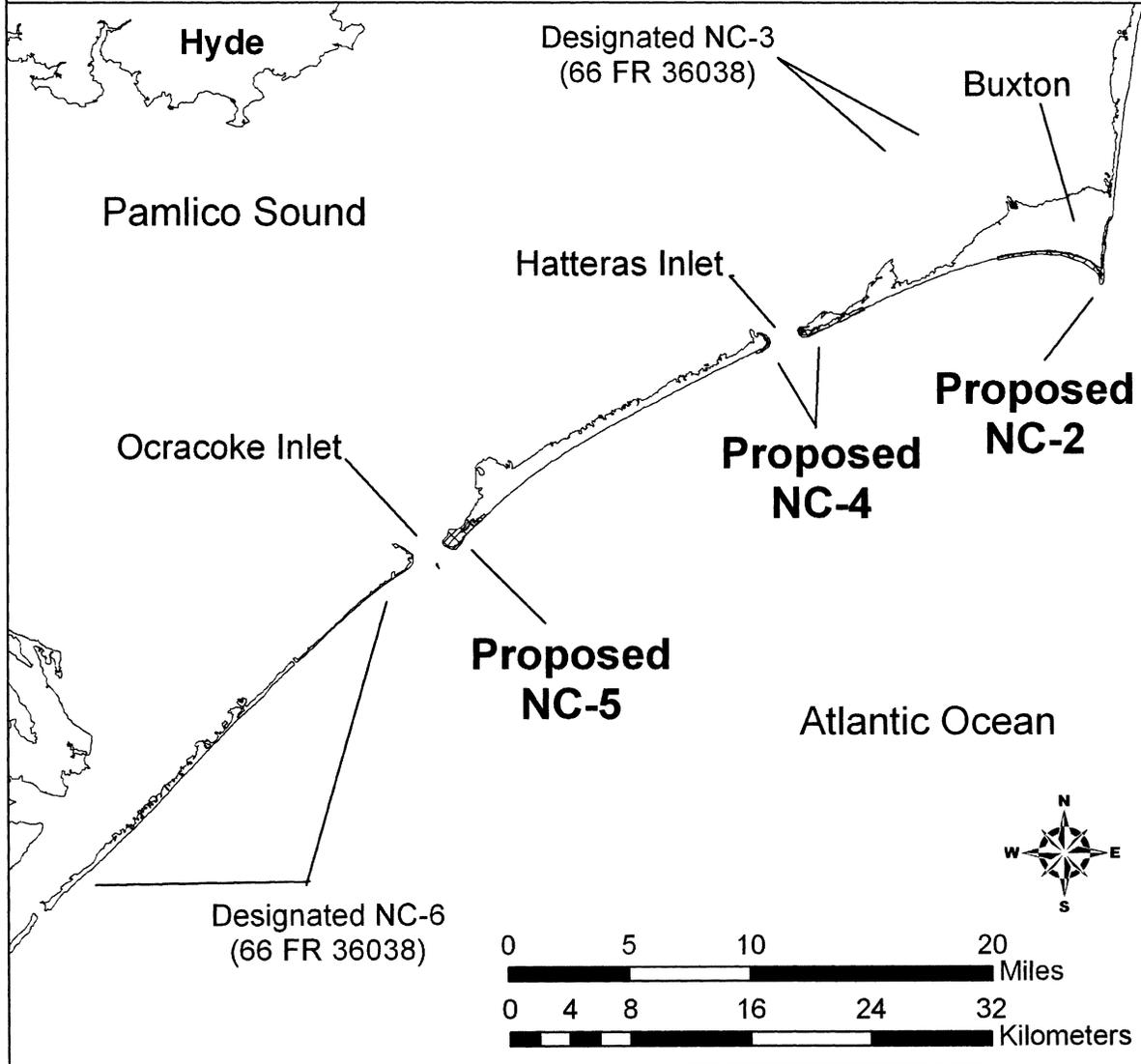


### Legend

-  Wintering Piping Plover Critical Habitat Unit
-  State Highway NC-12

## North Carolina Unit: 1

# Critical Habitat for the Wintering Population of the Piping Plover.



North Carolina



## Legend

 Wintering Piping Plover Critical Habitat Units

### North Carolina Units: 2, 3, 4, 5, & 6

\* \* \* \* \*

Dated: May 7, 2008.

**Lyle Laverly,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8-10887 Filed 5-14-08; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS-R2-ES-2008-0037; 92220-1113-0000-C5]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Delist the Hualapai Mexican Vole (*Microtus mexicanus hualpaiensis*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), make a 90-day finding on a petition to remove the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act (Act). We find that the petition presents substantial information indicating that delisting this mammal may be warranted. We are initiating a status review to determine if delisting this subspecies is warranted. We are requesting submission of any information on the Hualapai Mexican vole relevant to its listing status under the Act. Following this review, we will issue a 12-month finding on the petition.

**DATES:** This finding was made on May 15, 2008. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by July 14, 2008.

**ADDRESSES:** You may submit written comments and materials to us by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket FWS-R2-ES-2008-0037, 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 Solicited section below for more information).

You may obtain copies of the petition, reports, and reviews of reports upon which this 90-day finding is based by visiting the Federal eRulemaking Portal at <http://www.regulations.gov> or our Web site at <http://www.fws.gov/southwest/es/arizona/>, or by contacting the Arizona Ecological Services Field Office at the address or contact numbers under **ADDRESSES**.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office; by telephone at 602/242-0210; or by facsimile at 602/242-2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we must make this finding within 90 days of receipt of the petition, and publish the finding promptly in the **Federal Register**.

Our review of a 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in section 424.14(b) of our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

We have to satisfy the Act's requirement that we use the best available science to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we

accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case on its face that delisting may be warranted. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should no longer be classified as a threatened species. We make no determinations as to the value, accuracy, completeness, or veracity of the petition. The contents of this finding summarize that information that was available to us at the time of the petition review.

In making this finding, we relied on information provided by the petitioner and information available in our files at the time we reviewed the petition, and we evaluated that information in accordance with 50 CFR 424.14(b). Our process for making a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the "substantial information" threshold.

On August 23, 2004, we received a petition dated August 18, 2004, from the Arizona Game and Fish Department (AGFD 2004) to delist the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*). The petition (AGFD 2004, pp. 4-6) states that: (1) The subspecies occurs over a much greater area and in higher numbers than previously thought; (2) it is likely that all populations referred to as *M. m. hualpaiensis*, along with other populations of the species in Arizona, should be referred to as *M. m. mogollonensis*; and (3) the threats faced by this more widespread taxon do not indicate that listing under the Act is warranted.

**Species Information**

The Mexican vole is a cinnamon-brown, mouse-sized rodent approximately 5.5 inches (14 cm) long with a short tail and small ears that are obscured by its fur (Hoffmeister 1986, p. 441; 52 FR 36776, October 1, 1987).

Goldman (1938, pp. 493-494) described and named the Hualapai Mexican vole (also known as the Hualapai vole) as *Microtus mexicanus hualpaiensis* in 1938. This was based on only four specimens, but Cockrum (1960, p. 210), Hall (1981, p. 481), and Hoffmeister (1986, pp. 444-445) all recognized the subspecies. *M. m.*