

Critical Habitat for the Pacific Coast Population of the Western Snowy Plover

Questions and Answers June, 2012

Q. What action is being announced by the U.S. Fish and Wildlife Service?

A. The U.S. Fish and Wildlife Service (Service) is designating critical habitat for the Pacific Coast population of the western snowy plover under the Endangered Species Act (ESA). Critical habitat is a term in the ESA that identifies geographic areas containing features essential for the conservation of a threatened or endangered species, and which may require special management considerations or protection.

In total, approximately 24,527 acres of critical habitat for the Pacific Coast distinct population segment of the western snowy plover (*Charadrius nivosus nivosus*, formerly *C. alexandrinus nivosus*) in Washington, Oregon, and California, fall within the boundaries of the critical habitat designation. Designated critical habitat includes unique and increasingly rare coastal beach-dune ecosystem habitat along the Pacific Coast essential to the survival and recovery of the plover. The final designation represents a reduction from the 28,379 acres initially proposed by the Service in 2011, but an increase from the 12,150 acres designated in 2005. A total of 47 units have been designated in California, nine in Oregon, and four in Washington.

Using the best available scientific information, the Service determined that the plover requires additional critical habitat to offset anticipated adverse effects of rising sea level due to climate change, and to reflect increased understanding of the important role that unoccupied habitat can provide for the conservation and recovery of imperiled species. In addition, it reflects the incorporation of newer scientific data about habitat use by the western snowy plover and improved mapping methods that allow the Service to more accurately assess intertidal zone habitat along the water's edge.

Q: What is a Pacific coast western snowy plover and where is it found?

A. The Pacific Coast western snowy plover is a small shorebird with pale brown to gray upper parts, gray to black legs and bill, and dark patches on the forehead, behind the eyes, and on either side of the upper breast. The birds nest on the mainland coast, peninsulas, offshore islands, bays, estuaries, salt ponds, and rivers of the Pacific Coast from southern Washington to southern Baja California, Mexico. They are distinct from western snowy plovers that breed inland.

It is estimated that about 2,500 Pacific Coast western snowy plovers breed along the Pacific Coast from early March to late September. Today, only 28 major nesting areas remain. In addition to loss of nesting habitat due to development, the size of the Pacific Coast western snowy plover population has also declined.

Q. What protection does the Pacific Coast population of the western snowy plover currently receive as a listed species?

A. The ESA prohibits the "take" of an ESA-protected species. Take is defined as the killing, harming, harassing, possessing, or removing of listed animals from the wild. The ESA requires that Federal

agencies not only take action to prevent further loss of a species, but also pursue actions to recover species to the point where they no longer require protection and can be delisted. The Service's priority is to make implementation of the ESA less complex, less contentious and more effective. The agency seeks to accelerate recovery of threatened and endangered species across the nation, while making it easier for people to coexist with these species.

Q. What is the strategy to conserve and recover these species?

A. The Service released a recovery plan for the Pacific Coast population of the western snowy plover in August 2007. The plan establishes recovery criteria and outlines actions that are needed to help conserve and recover the species. Since the plan was released, the Service has been working with other Federal, state and local agencies, landowners and volunteer groups to protect habitat along beaches while permitting human access for recreation and other uses. The recovery plan can be viewed or downloaded as a PDF file at http://ecos.fws.gov/docs/recovery_plans/2001/010501.pdf.

Q. How does the Service determine what areas to propose for critical habitat?

A. Biologists consider physical or biological habitat features needed for life and successful reproduction of the species. These include, but are not limited to:

- Space for individual and population growth and for normal behavior
- Food, water, air, light, minerals, or other nutritional or physiological requirements
- Cover or shelter
- Sites for breeding and rearing offspring
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species

For more information about critical habitat, visit: <http://www.fws.gov/endangered/what-we-do/critical-habitats.html>.

Q. How will the designation of critical habitat affect individual landowners?

A. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to non-federal lands. A critical habitat designation does not impose restrictions on non-federal lands unless federal funds, permits or activities are involved. However, designating critical habitat on federal or non-federal lands informs landowners and the public of the specific areas that are important to the recovery of the species.

Q. What impact will critical habitat designation have on beach use?

A. Outside of National Wildlife Refuges, the Service leaves beach management to other agencies that have direct responsibility for those areas, such as the California Department of Parks and Recreation. With or without critical habitat; however, the Service has consulted for several years with other Federal, state and local agencies on measures to protect this threatened species. Those measures vary from beach to beach and are subject to ongoing review by managers and biologists to ensure they meet the conservation needs of the species while being the least intrusive as possible for recreation and other uses.

Q. What is the purpose of an Economic Analysis that was also announced today?

A. When designating critical habitat, the Service must take into account the economic impact of specifying any particular area as critical habitat. The Service may exclude any area from critical habitat, if it determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of critical habitat unless it determines, based on the best scientific and commercial data available, that the failure to designate the area as critical habitat will result in the extinction of the species.

Q. What are the results of the Economic Analysis that was conducted for the critical habitat designation of Pacific Coast western snowy plovers?

A. Approximately 21 habitat conservation plans and management plans, as well as various Federal and State regulations currently provide protection for the plover within the proposed critical habitat area. A Federal nexus (e.g., section 404 permits under the Clean Water Act), is needed to invoke the section 7 consultation process. Impacts to critical habitat are assessed during the section 7 consultation with the Federal action agency.

- **Short-term activities.** For short-term activities that can be scheduled for periods when plovers do not use the project site, the Service may analyze effects to critical habitat without analyzing effects to members of the species. Thus, all costs associated with consultation are considered incremental impact of the designation.
- **Activities having temporary impacts.** For activities having temporary impacts, measures to address impacts to members of the species and critical habitat will likely be the same. Thus, incremental impacts are likely to be limited to the administrative cost of considering the adverse modification standard during consultation.
- **Long-term activities or activities having permanent impacts.** For long-term activities having permanent impacts, the Service may request additional project modifications to specifically address adverse modification of critical habitat. Costs associated with these project modifications as well as the administrative costs of addressing the adverse modification standard are considered incremental impacts of the designation.

Anticipated impacts of critical habitat designation in areas proposed for designation over the 20-year time frame of the analysis (2012 through 2031) are \$266,000 (\$25,100 on an annualized basis), assuming a 7 percent discount rate. Impacts to military activities represent the greatest percent of these overall cost estimates – approximately 71 percent. Impacts to development activities represent approximately 19 percent, habitat and species management 6 percent, and mining 4 percent of the overall impacts.

No exclusions under section 4(b)(2) were implemented as a result of findings from the economic analysis.

Q. Why did the Service propose critical habitat for the Pacific Coast population of the western snowy plover at this time?

A. The Service designated critical habitat for this species on December 7, 1999, and again on September 29, 2005. The most recent designation was challenged in U.S. District Court for the

Northern District of California on October 2, 2008. The complaint challenged the Service's analysis of economic impacts in its 2005 critical habitat rule, perceived inappropriate interpretation of the Endangered Species Act and its implementing regulations, and alleged political interference. The Service proposed revised critical habitat March 22, 2011. The deadline for submission of a final revised critical habitat designation to the *Federal Register* was June 5, 2012, as per a settlement agreement between the Service and plaintiffs.

Q. Where can more information be found?

A. For more information about the Pacific Coast population of the western snowy plover, visit: <http://www.fws.gov/arcata/>.

Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707-822-7201; facsimile 707-822-8411.