

Department of the Interior  
U.S. Fish & Wildlife Service  
1875 Century Boulevard  
Suite 410  
Atlanta, Georgia 30345  
Phone: 404/679-7289  
Fax: 404/679-7286  
<http://southeast.fws.gov>

# News Release



FOR IMMEDIATE RELEASE:  
June 11, 2006

Contacts: Patty Matteson, 919-856-4520, ext. 25  
Jeffrey Fleming, 404-679-7287

## **Critical Habitat Re-Proposed for the Wintering Population of Piping Plovers in North Carolina**

- Public invited to comment -

The U.S. Fish and Wildlife Service is proposing to redesignate critical habitat for the wintering population of the piping plover (*Charadrius melodus*) along portions of the coast in Dare and Hyde counties, North Carolina.

Areas proposed for re-designation include intertidal beaches and flats, associated dune systems and flats above annual high tide levels. Intertidal areas offer foraging and roosting sites for plovers while areas above high tide provide refuge from high winds and cold weather. The units proposed for redesignation as critical habitat for the piping plover's wintering population are in or near Oregon Inlet, Cape Hatteras Point, Hatteras Inlet, and Ocracoke Island. These areas total approximately 1,827 acres.

“Re-proposing these four areas as critical habitat informs the public of their value to piping plover conservation,” said Sam D. Hamilton, Southeast Regional Director for the U.S. Fish and Wildlife Service. “We will continue to work closely with our partners to help conserve this species.”

The piping plover is a small, pale-colored North American shorebird named for its melodic mating call. The species breeds in three discrete areas of North America – the Northern Great Plains, the Great Lakes and the Atlantic Coast. Plovers from all three breeding populations winter in coastal areas of the United States from North Carolina to Texas and along the coast of eastern Mexico and on some Caribbean islands.

In 1986, the piping plover was protected under the Endangered Species Act (ESA) as endangered in the Great Lakes watershed. It is threatened elsewhere within its range, including migratory routes outside of the Great Lakes watershed and on its wintering grounds, including North Carolina.

Piping plovers begin arriving on the wintering grounds in early July, with some late-nesting birds arriving in September. While their migration is poorly understood, a recent study suggests that plovers use inland and coastal stopover sites when migrating from breeding areas to wintering grounds. 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.

-more--

North Carolina is uniquely positioned in the species' range, being the only state where the piping plover's breeding and wintering ranges overlap and the birds are present year-round.

"We hope this proposed critical habitat re-designation will help highlight the unique importance of North Carolina to the conservation of the piping plover," said Pete Benjamin, supervisor of the Service's Raleigh Field Office. "We are eager to get the public's input."

The Service will accept written comments from the public until August 11, 2006. Written comments on this proposal should be submitted to Wintering Piping Plover Critical Habitat Comments, U.S. Fish and Wildlife Service, Raleigh Field Office at the above address. Comments may also be sent electronically to: [ncplovercomments@fws.gov](mailto:ncplovercomments@fws.gov) or faxed to 919/856-4556.

A complete description of the proposed critical habitat designation for the wintering population of piping plovers in North Carolina is published in today's *Federal Register*. Copies of the proposal and maps are available at <http://nc-es.fws.gov>, or by contacting the U.S. Fish and Wildlife Service's Raleigh Ecological Services Office, Post Office Box 33726, Raleigh, NC 27636-3726., (919) 856-4520.

The Service is preparing a draft economic analysis and an environmental assessment of the proposed critical habitat that will be released for public review and comment at a later date. Public hearings, if requested, will be scheduled for this proposed rule after the draft analysis and environmental assessment associated with this rule have been announced in the *Federal Register*.

As a listed species under the Endangered Species Act, the piping plover is already protected wherever it occurs and federal agencies are required to consult on any action they take which might affect the species.

Critical habitat is a term in the ESA. It identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and may require special management considerations or protection. 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 private lands. Critical habitat designation does not impose restrictions on private lands unless federal funds, permits or activities are involved. Federal agencies that undertake, fund or permit activities that may affect critical habitat are required to consult with the Service to ensure that such actions do not adversely modify or destroy critical habitat.

In 30 years of implementing the ESA, the Service has found that the designation of critical habitat provides little additional protection for most listed species, while preventing the agency from using scarce conservation resources for activities with greater conservation benefits.

In almost all cases, recovery of listed species will come through voluntary cooperative partnerships, not regulatory measures such as critical habitat. Habitat is also protected through cooperative measures under the Endangered Species Act including Habitat Conservation Plans, Safe Harbor Agreements, Candidate Conservation Agreements, and state programs. In addition, voluntary partnership programs such as the Service's Private Stewardship Grants and Partners for Fish and Wildlife program also restore habitat. Habitat for protected species is provided on many national wildlife refuges managed by the U.S. Fish and Wildlife Service and on state wildlife management areas.

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System comprised of 545 national wildlife refuges, thousands of small wetlands, and other special management areas. It also operates 69 national fish hatcheries, 64 fishery resource offices, and 81 ecological services field stations. The agency enforces Federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

###

## **Critical habitat proposed for the wintering population of piping plovers in North Carolina**

### Background

In December 1996, Defenders of Wildlife filed a lawsuit to require the Service to designate critical habitat for the Great Lakes population of the piping plover. A second, similar lawsuit for the Northern Great Plains population was filed in 1997. These lawsuits were subsequently combined. In February 2000, the court ruled in favor of the plaintiffs and directed the Service to designate critical habitat for the Great Lakes population and the Northern Great Plains population of the piping plover. Since the Great Lakes and Great Plains birds cannot be distinguished on their wintering grounds, a decision was made to propose critical habitat for all wintering piping plovers collectively. As a result, the Service 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. The final rule designating critical habitat was published on July 10, 2001.

In 2003, Dare and Hyde Counties in North Carolina and Cape Hatteras Access Preservation Alliance (CHAPA), a beach access group, filed a lawsuit challenging the Service's designation of four units of critical habitat on the Cape Hatteras National Seashore, North Carolina (NC-1 Oregon Inlet, NC-2 Cape Hatteras Point, NC-4 Hatteras Inlet, and NC-5 Ocracoke Island). In its November 1, 2004 opinion, the court vacated and remanded the designation for these units back to the Service for reconsideration. The court held that the descriptions of critical habitat for the four units did not sufficiently exclude certain man-made structures and other areas that did not contain primary constituent elements necessary for the species' conservation, and ordered the Service to show that these primary constituent elements are found on the designated areas. Although the court did not invalidate the primary constituent elements themselves, it ordered the Service to clarify that these essential elements may require special management or protection.

The court also found that the Service's designation of critical habitat must include compliance with the National Environmental Policy Act. In addition, although the Service's economic analysis considered the impact of off-road vehicles and other human use of beaches, the court felt it did not address information in the record about the possibility of closures of the beaches to such use or how off-road vehicle use might be affected by the designation. Finally, the court also found that the Service may have omitted from the economic analysis the costs of consulting on National Park Service actions, and ordered us to reconsider them.

In response to the court's November 2004 ruling requiring a NEPA analysis, the Service will complete an Environmental Assessment for only the four units under reevaluation. With regard to the economic analysis, the Service will prepare an addendum to the 2001 analysis that will examine National Park Service consultation issues, other federal and state projects that may result in consultation, the impact of the rule on off-road vehicle and other beach use, and the potential for beach closures as they relate to non-breeding piping plovers. The Service will announce the availability of the Environmental Assessment and economic addendum in the Federal Register when they are completed, and reopen the public comment period on the proposal.