

## FINDING OF NO SIGNIFICANT IMPACT

### Designation of Critical Habitat for the Wintering Population of the Piping Plover Dare and Hyde Counties, North Carolina

The U.S. Fish and Wildlife Service is designating critical habitat for the wintering population of the piping plover (Charadrius melodus) pursuant to section 4 of the Endangered Species Act of 1973, as amended (Act). The designation encompasses approximately 2,043 acres (827 hectares) of intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide in four critical habitat units (Unit NC-1, Oregon Inlet; Unit NC-2, Cape Hatteras Point; Unit NC-4, Hatteras Inlet; and, Unit NC-5, Ocracoke Island) in Dare and Hyde counties North Carolina. The designation also complies with the U.S. District Court for the District of Columbia's November 2004 order (Cape Hatteras Access Preservation Alliance v. U.S. Department of Interior (344 F. Supp. 2d 108 (D.D.C. 2004))). The designated critical habitat includes both Federal and non-Federal lands.

We have analyzed two alternatives to the agency action, including: No Action Alternative and the Action Alternative. The Action Alternative is to designate critical habitat as proposed in the June 12, 2006 proposed rule (71 FR 33703) and May 15, 2008 revised proposed rule (73 FR 28084). The revised proposed rule clarified that the areas proposed for designation as critical habitat in the June 12, 2006 proposed rule also included portions of Pea Island National Wildlife Refuge and the three State-owned islands originally proposed for exclusion. Within the Action Alternative is the option to only designate some of the units or some portion of the units identified in the proposed and revised proposed rules. The Service has developed an environmental assessment for the designation of critical habitat for the wintering population of the piping plover which analyzes these alternatives. Additionally, the potential economic impacts of critical habitat designation were evaluated in the Final Economic Analysis of Critical Habitat Designation for the Wintering Piping Plover (dated September 23, 2008).

Implementation of our decision is expected to have only minor, unquantifiable effects of Federal actions beyond the listing of the piping plover in areas designated as critical habitat for the wintering piping plover. Thus, the designation of critical habitat will have no discernable impacts to the environment, access management actions, or to the social infrastructure and economy of the project area. The designation is not expected to have any significant adverse effects on wetlands and floodplains, or to the human environment.

The designation has been thoroughly coordinated with all interested and/or affected parties. We requested written comments from the public on the proposed designation of critical habitat for the wintering population of the piping plover during three comment periods totaling 150 days. The first comment period, associated with the publication of the proposed rule (71 FR 33703), opened on June 12, 2006, and closed on August 11, 2006. We also requested comments on the proposed critical habitat designation, associated draft economic analysis, and draft environmental assessment during a comment period that opened May 31, 2007, and closed on July 30, 2007 (72 FR 30326). During this comment period, we held a public hearing on June 20, 2007. Finally, we requested comments on the revised proposed critical habitat designation, revised associated draft economic analysis, and revised draft environmental assessment during a comment period

that opened May 15, 2008 (73 FR 28084), and closed June 16, 2008. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and/or economic analysis and environmental assessment during these three comment periods. Parties contacted include the National Park Service, North Carolina Wildlife Resources Commission, North Carolina Division of Parks and Recreation, North Carolina Natural Heritage Program, County of Dare, County of Hyde, and other local and private interests. In addition, the proposed rules and associated documents (e.g., draft economic analysis and environmental assessment) were made available in hard copy at the Service's Raleigh Field Office and electronically on the Service's website. All comments received were analyzed and, where appropriate, were incorporated into the Final Rule.

Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the wintering population of the piping plover does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. The environmental assessment in support of this finding is available upon request to the Raleigh Ecological Services Field Office, Raleigh, North Carolina.

  
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Sam Hamilton  
Regional Director, Region 4

9/24/08  
Date