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News Release



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Critical Habitat Designated for Wintering Piping Plover

The U.S. Fish and Wildlife Service today released a final rule designating approximately 2,043 acres of critical habitat for the wintering population of the piping plover in four coastal areas of Dare and Hyde counties in North Carolina. The final critical habitat areas include parts of Cape Hatteras National Seashore, Pea Island National Wildlife Refuge, and three state-owned islands.

The critical habitat areas include intertidal beaches and flats and associated dune systems and flats above annual high tide. Intertidal areas offer foraging and roosting sites, while the areas above high tide offer protection from high winds and cold weather.

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 listed as endangered in the Great Lakes watershed, and as threatened elsewhere within its range, including migratory routes outside of the Great Lakes watershed, and in the species' wintering grounds, including North Carolina.

Critical habitat for the wintering population of the piping plover was originally designated in response to a lawsuit filed by Defenders of Wildlife in December 1996, 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 Service cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, it decided to designate critical habitat for all wintering piping plovers. As a result, the Service designated 142 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 original final rule designating critical habitat was published on July 10, 2001.

Critical habitat was redesignated, in part, in response to a 2003 lawsuit filed by two North Carolina counties (Dare and Hyde) and a beach access group (Cape Hatteras Access Preservation Alliance (CHAPA)) challenging the Service's 2001 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 held the descriptions of critical habitat for these four units did not sufficiently exclude certain hard structures and other areas that did not meet specific habitat needs for plovers, and ordered the Service to show the habitat these birds need is found in designated areas. Although the court did not invalidate the habitat descriptions identified, it ordered the Service to clarify that the habitat identified may require special management or protection. It

also determined the Service's designation of critical habitat must comply with the National Environmental Policy Act. Furthermore, the court found that the Service's economic analysis was insufficient because it considered the impact of off-road vehicles and other human use of beaches, without adequately addressing available information about the possibility of beach closures 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 the agency to reconsider them.

In response, the Service began reevaluating the critical habitat designation. During that process, it proposed four amended critical habitat areas along portions of coastal areas of Dare and Hyde counties in North Carolina on June 12, 2006, and later revised the proposal on May 15, 2008, to include additional areas to two of the previously proposed units. The final designation represents the Service's revised evaluation of the court-vacated critical habitat areas.

In a separate action, the Southern Environmental Law Center filed suit in October of 2007 on behalf of Defenders of Wildlife and the National Audubon Society, challenging the failure of the National Park Service to have an adequate off-road vehicle management plan to protect the resources of the Cape Hatteras National Seashore. All of the parties in that action filed a proposed consent decree on April 16, 2008. The consent decree, approved April 30, requires pre-nesting areas for piping plovers, as well as other shorebirds, to be closed to vehicles and pedestrians at historic nesting areas at Bodie Island spit, Cape Point, Hatteras spit, and the north and south ends of Ocracoke Island. It also includes expanded buffers around breeding sites with nests and chicks that vary depending on the sensitivity or vulnerability of the particular species.

Although the locations of the beach closures under the consent decree and designated critical habitat areas do overlap, the proposed critical habitat designation does not have any effect on beach closures in the consent decree. Closures associated with implementation of the Interim Strategy, the consent decree, or other potential court actions, would occur regardless of the designation of critical habitat.

Critical habitat is a tool within the Endangered Species Act which identifies areas with features that are essential to the conservation of the species and that may require special management considerations or protections. Critical habitat does not set up a preserve or refuge, nor does it affect activities on private land unless federal funding or a federal permit is involved. The sole regulatory effect of the designation is that federal agencies must consult with the Service before undertaking actions, issuing permits, or providing funding for activities that might destroy or adversely modify critical habitat. Because piping plovers are federally protected, federal agencies are already required to consult with the Service on any actions that may affect the species and to ensure that the actions do not jeopardize the species' continued existence, regardless of whether critical habitat has been designated

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. For more information, please see <http://www.fws.gov/southeast/> or <http://www.fws.gov/>