DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0070]

[MO92210–0–0009]

RIN 1018–AX10

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat and Taxonomic Revision for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the March 22, 2011, proposed revised designation of critical habitat for the Pacific Coast population of the western snowy plover (Pacific Coast WSP)

(Charadrius alexandrinus nivosus) under the Endangered Species Act of 1973, as amended (Act). We are also recognizing the recent change to the taxonomy of the currently threatened taxon in which the species was split into two distinct species. We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for Pacific Coast WSP and an amended required determinations section of the proposal and reopening of the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. We are also seeking comment on additional proposed revisions to Unit CA 46 in Orange County, California. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically*: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS–R8–ES–2010–0070, which is the docket number for this rulemaking.

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2010–0070; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. 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: Nancy Finley, Field Supervisor or Jim Watkins, Fish and Wildlife Biologist, 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. Persons who use a telecommunications device for the deaf (TDD) may 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 proposed revised designation of critical habitat for the Pacific Coast WSP that was published in the **Federal Register** on March 22, 2011 (76 FR 16046), our DEA of the proposed revised designation, and the amended required determinations provided in this document. 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 revise the designation of "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq*.), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) Areas that provide habitat for the Pacific Coast WSP that we did not discuss in the proposed revised critical habitat rule, and

(b) Areas within the geographical area occupied by the species at the time of listing that contain elements of the physical or biological features essential to the conservation of the species which may require special management considerations or protection and that we should include in the designation, and reason(s) why.

(3) Specific information on our proposed revised designation of back-dune systems and other habitats in an attempt to offset the anticipated effects of sea-level rise associated with climate change.

(4) Specific information on the Pacific Coast WSP, habitat conditions, and the presence of physical or biological features essential to the conservation of the species at any of the critical habitat units proposed in this revised rule (see **Critical Habitat Units**

section and previous rules (64 FR 68508, December 7, 1999; 70 FR 56970, September 29, 2005; 76 FR 16046, March 22, 2011)).

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the areas identified as containing the features essential to the species' conservation or how we mapped the water's edge and whether any alternative methods could be used to better determine the critical habitat boundaries.

(6) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed revised designation that are subject to these impacts.

(7) Any information regarding the areas exempted from the proposed revised rule or whether any specific areas being proposed as revised critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act, including Tribal lands, within the proposed revised designation.

(8) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

(9) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(10) 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.

(11) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(12) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed revised critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 16046) during the initial comment period from March 22, 2011, to May 23, 2011, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not 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 the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described 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 website. We will post all hardcopy comments on *http://www.regulations.gov* as well. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0070, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0070, or by mail from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the taxonomic name change and designation of critical habitat for Pacific Coast WSP in this document. For more background information concerning the Pacific Coast WSP, refer to the proposed revised designation of critical habitat published in the **Federal Register** on March 22, 2011 (76 FR 16046). For more information on the Pacific Coast WSP or its habitat, refer to the final listing rule published in the **Federal Register** on March 5, 1993 (58 FR 12864), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R8–ES–2010–0070) or the Recovery Plan for the Pacific Coast WSP (Service 2007), which is online at *http://ecos.fws.gov* or from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On March 22, 2011, we published a proposed rule to revise the designation of critical habitat for the Pacific Coast WSP (76 FR 16046). We proposed to designate approximately 28,261 acres (ac) (11,436 hectares (ha)) in 68 units located in Washington, Oregon, and California as critical habitat. That proposal opened a 60-day comment period, ending May 23, 2011. In this document we are proposing to revise the boundaries to Unit CA 46 based on new information (see **Changes to Proposed Revised Critical Habitat** below). We will submit for publication in the **Federal Register** a final critical habitat designation for the Pacific Coast WSP on or before June 12, 2012.

Taxonomic and Nomenclatural Changes Affecting Charadrius alexandrinus nivosus

We are making a technical correction to the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect our acceptance of a taxonomic and nomenclatural change of western snowy plover to *Charadrius nivosus nivosus* from *C. alexandrinus nivosus*. We listed the Pacific Coast WSP as threatened under the then-recognized name of *Charadrius alexandrinus nivosus* (58 FR 12864; March 5, 1993), which is a subspecies of the Eurasian Kentish plover *(Charadrius alexandrinus* (Linnaeus 1758)). We accepted this taxonomy and have used this name in all Service documents up to and including our proposed revision to the critical habitat for the Pacific Coast WSP (76 FR 16046; March 22, 2011).

In 2009, Clemens Küpper (Department of Biology and Biochemistry, University of Bath, Bath, UK); Tamás Székely (Department of Biology and Biochemistry, University of Bath, Bath, UK); and Terry Burke (Department of Animal and Plant Sciences, University of Sheffield, Sheffield, UK), submitted a proposal to the American Ornithologist's Union (AOU)—the recognized body on ornithological naming and scientific nomenclature (AOU 2010A, pp. 145–146). The proposal presented information to split the Kentish plover from the snowy plover and adopt Kentish plover for Palaearctic populations (zoogeographical region consisting of Europe, Africa north of the Sahara, and most of Asia north of the Himalayas) and change the scientific name of the snowy plover in Central and North America to *Charadrius nivosus* (Cassin 1858) with three subspecies: *C. nivosus nivosus* (currently *C. alexandrinus nivosus)* (range to include

all of the continental United States and portions of Mexico), *C. nivosus tenuirostris* (currently *C. alexandrinus nivosus)* (range to include Cuba, Puerto Rico, the Caribbean and the Yucatan Peninsula) and *C. nivosus occidentalis* (currently *C. alexandrinus occidentalis)* (range to include South America). The proposal cited genetic, morphological, and behavioral differences between *C. alexandrinus* and *C. nivosus* (Funk *et al*. 2007; Küpper *et al*. 2009). The proposal was adopted by the AOU (AOU 2010B, pp. 1–5; Chesser *et al*. 2011, pp. 603–604). We are within this proposed rule accepting the taxonomic change for the Pacific Coast WSP and recognize the listed entity as *C. nivosus nivosus* and will make changes to the Code of Federal Regulations in the final designation (see **Proposed Regulation Promulgation** section). We also make the necessary changes to the historical range of *C. nivosus nivosus* at 50 CFR 17.11(h) to include the entire continental United States. These technical corrections do not affect the description, distribution, or listing status of the Pacific Coast WSP. However, the complete range of *C. nivosus nivosus* now includes the Florida occurrences of the subspecies.

Critical Habitat

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 by the Secretary that such areas are essential for the conservation of the species. If the proposed revised rule 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 funding, authorizing, permitting, or proposing actions affecting critical habitat must consult with us on the effects of their actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that the Secretary shall designate and revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior may exclude an area from critical habitat if he determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical

habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Pacific Coast WSP, the benefits of critical habitat include public awareness of the presence of the Pacific Coast WSP and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Pacific Coast WSP due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, authorized, or otherwise permitted by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific and commercial data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed revised critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the Pacific Coast

WSP. The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the Pacific Coast WSP (e.g., under the Federal listing and other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when weighing the benefits of inclusion and exclusion of particular areas under section 4(b)(2) of the Act. For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the DEA (Industrial Economics Incorporated (IEc) 2011).

The DEA evaluates the potential economic impacts associated with the proposed revised designation of critical habitat for the Pacific Coast WSP. The analysis focuses on reasonably foreseeable incremental impacts of the critical habitat designation, or those impacts not expected to occur absent critical habitat designation. Forecasted impacts are

based on the planning periods for potentially affected projects and look out over a 20-year time horizon (through 2031). The DEA considers economic impacts of Pacific Coast WSP conservation efforts on the following activities: (1) Recreation; (2) development; (3) gravel mining; (4) military activities; and (5) habitat and species management.

Due to strong existing protections (include symbolic fencing, nest exclosures, signage, driving restrictions, and mechanized beach cleaning restrictions) for the Pacific Coast WSP, the direct incremental impacts quantified in the DEA are limited to the administrative cost of considering adverse modification during section 7 consultation with the Service as well as the additional effort necessary to include analysis of critical habitat in three future Habitat Conservation Plans and one Integrated Natural Resources Management Plan (INRMP) for Vandenberg Air Force Base (VAFB). These incremental impacts of the proposed revised critical habitat designation over the 20-year timeframe (2012 through 2031) are estimated to be $261,000 ($24,700 on an annualized basis), assuming a seven percent discount rate. Impacts to military activities represent the greatest percentage of these overall cost estimates—approximately 72 percent. Impacts to development activities represent approximately 17 percent, habitat and species management 6 percent, and mining 4 percent of the overall impacts (percentages do not sum due to rounding). Incremental impacts to recreational activities are not expected due to lack of a Federal nexus compelling section 7 consultation with the Service and significant protection already provided by existing regulations and programs (IEc 2011, pp. 4-9–4-12).

The analysis also identifies three activities that may experience indirect incremental impacts of the proposed revised critical habitat designation: Recreation at Oceano Dunes State Vehicular Recreation Area (SVRA) (Unit CA 31), development of the Sterling/McDonald site (Unit CA 22), and development of the Security National Guaranty (SNG) site (Unit CA 22). Indirect impacts resulting from future litigation or increased scrutiny from State agencies may include prohibiting off-highway-vehicle use at Oceano Dunes SVRA and denial of development permits for the Sterling/McDonald and SNG sites. Due to uncertainty surrounding the likelihood and extent of such indirect impacts, the data necessary to quantify these impacts are unavailable. Therefore, these indirect incremental impacts are discussed qualitatively in the DEA (IEc 2011, p. 4-2).

Vandenberg Air Force Base INRMP

In the March 22, 2011, proposed revised designation of critical habitat (76 FR 16046), we did not consider Vandenberg Air Force Base for exemption under section 4(a)(3) of the Act because they had not yet completed a Service-approved INRMP. On April 14, 2011, VAFB completed and we approved the INRMP for VAFB as part of the requirements of the Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) (for a full discussion of the Sikes Act, see the **Exemptions** section of the March 22, 2011, proposed revision to critical habitat (76 FR 16046)). The VAFB INRMP provides for the conservation, management, and stewardship of the natural resources found on the base. The INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need

to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Because the INRMP was not finalized and approved prior to the March 22, 2011, proposed revised critical habitat designation for the Pacific Coast WSP (76 FR 16046), we did not exempt these areas prior to their proposal. We will review the INRMP and will determine in our final designation of critical habitat if the plan provides a benefit to the Pacific Coast WSP in those areas covered by the INRMP that we had determined to be essential to and for the conservation of the Pacific Coast WSP. If it does, we will exempt those areas covered by the INRMP from the final designation under the requirements of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and section 4(a)(3)(B)(i) of the Act.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed revised designation, the changes contained in this NOA, and our amended required determinations. We may revise the proposed revised designation or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the

benefits of including the area, provided the exclusion will not result in the extinction of this species.

Changes to Proposed Revised Critical Habitat

In this document, we are making revisions to the proposed revised critical habitat as identified and described in the proposed rule that we published in the **Federal Register** on March 22, 2011 (76 FR 16046) and are seeking comment on the revisions. The changes occur in what was proposed as subunits CA 46A–D (Bolsa Chica Ecological Reserve) and subunit CA 46E (Bolsa Chica State Beach) of Unit CA 46. We are also adding one subunit (subunit CA 46F) to Unit CA 46. During the public comment period for the March 22, 2011, proposed revised critical habitat (76 FR 16046), we received comments from a species expert indicating that we should reevaluate the proposed boundaries at the Bolsa Chica Ecological Reserve because certain areas included in Unit CA 46 are not utilized for nesting or foraging by the Pacific Coast WSP, whereas other areas that were not included in proposed revised critical habitat within Bolsa Chica Ecological Reserve are used for nesting and foraging (P. Knapp, pers. comm. 2011).

We also received comments and new information from California State Parks and a species expert indicating that we should reevaluate the proposed boundaries of subunit CA 46E at Bolsa Chica State Beach because the area no longer contains the physical or biological features essential to the conservation of the species, and is no longer being used for wintering by the Pacific Coast WSP and has not been used in the last 4 years (D.

Prior, California State Parks, pers. comm. 2011; P. Knapp, pers. comm. 2011). The information provided indicated that areas north of the proposal in subunit CA 46E at Bolsa Chica State Beach are being used by the Pacific Coast WSP as a wintering habitat and that we should reevaluate the proposed boundaries of beach areas in Unit CA 46 (Prior, pers. comm. 2011; Knapp, pers. comm. 2011). We have reviewed the new information and have determined it appropriate to adjust our proposed revised designation of Unit CA 46.

The purpose of the revisions described below is to better delineate the areas that meet the definition of critical habitat for the Pacific Coast WSP and to ensure that all areas proposed are consistent with the criteria outlined in the proposed revised rule (see "Criteria Used To Identify Critical Habitat" section in the proposed revised critical habitat designation (76 FR 16046; March 22, 2011)). The areas added to the proposed unit are within the geographical area that was occupied by the species at the time it was listed and contain the physical or biological features essential to the conservation of the species. A revised map is included in the **Proposed Regulation Promulgation** section of this document. Below, we briefly describe the changes made to Unit CA 46. As a result of these revisions, the naming convention for the subunits CA 46A–E will change and an additional subunit (CA 46F) will be added. Also as a result of these revisions, the total area proposed for designation as critical habitat in Unit CA 46 is 568 ac (230 ha), an increase of 50 ac (20 ha). The change increases the total amount of proposed revised critical habitat to 30,497 ac (12,342 ha) (see Table 3 below).

Changes to Critical Habitat Unit Descriptions

Unit CA 46: Bolsa Chica State Beach and Bolsa Chica Ecological Reserve

Through this notice, we propose to exchange the naming conventions between subunits CA 46A and 46E so that the Bolsa Chica State Beach will now be part of subunit CA 46A and the Bolsa Chica Ecological Reserve will include subunits CA 46B–F. As revised here, the subunits in Bolsa Chica State Beach and Bolsa Chica Ecological Reserve are located east of the Pacific Coast Highway, in Orange County, California. As a result of this revision, the total area proposed for designation as critical habitat at Bolsa Chica State Beach (now designated as subunit CA 46A) is 93 ac (38 ha); and the total area for the Bolsa Chica Ecological Reserve subunits (now designated as subunits CA 46B–46F) is 475 ac (192 ha). These subunits are entirely owned by the State of California.

Bolsa Chica Ecological Reserve contains significant nesting and foraging areas. This location supported 47 breeding adult Pacific Coast WSP in 2009 (Knapp and Peterson 2009, p. 8). All subunits at Bolsa Chica Ecological Reserve were occupied at the time of listing and are currently occupied and annually support one of the largest breeding populations of Pacific Coast WSP in the region. The Recovery Plan for Pacific Coast WSP states that this location contributes to the conservation goal for the region by providing a management potential of 70 breeding birds (Service 2007, Appendix B). This location also supported an average wintering flock of 14 Pacific Coast WSP from

2003 through 2010 (Service unpublished data). In the proposed revised rule, we incorrectly stated that this reserve is an abandoned oil field. This reserve is in fact an active oil field that underwent significant reconstruction and restoration between 2004 and 2006, including the addition of three new nest sites and a new ocean inlet that allows the water level to rise and fall resembling the irregular semi-diurnal tidal range of southern California's ocean waters (Knapp and Peterson 2009, p. 1). Including these occupied areas for breeding, foraging, and dispersal is consistent with our criteria used to identify critical habitat, as outlined in the proposed rule (76 FR 16046; March 22, 2011). No changes were made to subunits CA 46B or CA 46D. Please see the proposed revised critical habitat for a description of these subunits (76 FR 16046; March 22, 2011).

Subunit CA 46A: Bolsa Chica State Beach

Through this notice, the proposed revised designation's subunit CA 46E is renamed as subunit CA 46A. After further analysis and review of comments received on the proposed revised designation, we have adjusted the boundary of the 8 ac (3 ha) of beach that was included in the proposed rule because the area no longer contains the physical or biological features essential to the conservation of the species, and has not supported Pacific Coast WSP for the past 4 years (Prior, pers. comm. 2011). The subunit as revised here consists of sandy beach habitat north of the critical habitat unit proposed in March 2011, and extends to just south of the Sunset Beach area near Warner Avenue adjacent to the Bolsa Chica Ecological Reserve. As a result of the revision reflected here, the area proposed for designation as critical habitat in subunit CA 46A is 93 ac (38 ha), an increase of 85 ac (35 ha) from what was proposed for Bolsa Chica State Beach in the

proposed revised designation. This subunit is owned entirely by the State of California. The revised subunit CA 46A was occupied at the time of listing and is currently occupied and contains the physical or biological features that are essential to the conservation of the species, including a wide sandy beach with occasional surf-cast wrack supporting small invertebrates for foraging, and because it supports an average wintering flock of 27 Pacific Coast WSP (Service unpublished data 2003–2010) in a location with high-quality breeding habitat. Subunit CA 46A may require special management considerations or protection to address threats from recreational disturbance and beach raking as discussed for this subunit in the March 2011 proposed revised rule. Additionally, adding occupied areas for wintering, foraging, and dispersal is consistent with our criteria used to identify critical habitat, as outlined in the proposed revised rule (76 FR 16046; March 22, 2011).

Unit CA46: Bolsa Chica Ecological Reserve; Subunits CA 46C, 46E, 46F

Subunit CA 46C

We revised subunit CA 46C to include additional areas containing the physical or biological features essential to the conservation of the species for breeding, foraging, and dispersal that were not captured in the proposed revised rule. This addition is based on information received during the public comment period that indicates that these areas include year-round foraging habitat in extensive mudflats and additional nesting areas for Pacific Coast WSP to expand into. This unit was occupied at the time of listing. This location contains the physical and biological features essential to the conservation of the species, including tidally influenced estuarine mud flats supporting small invertebrates,

and seasonally dry ponds that provide nesting and foraging habitat for Pacific Coast WSP. As a result of this revision, the area proposed for designation as critical habitat in subunit CA 46C is 222 ac (90 ha), an increase of 201 ac (81 ha) from the proposed rule. This location contains tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and foraging areas and predation of chicks and eggs.

Subunit CA 46E

Here, we rename the Bolsa Chica Ecological Reserve areas that were proposed as subunit CA 46A in the proposed revised rule to subunit CA 46E and remove the areas that do not contain the physical or biological features essential to the conservation of the species. This area was occupied at the time of listing. This revised subunit CA 46E is reduced in size to more accurately represent the nesting and foraging areas used by Pacific Coast WSP. We removed almost all of the Muted Tidal Basin area from subunit 46E because this area does not contain the physical or biological features essential to the conservation of Pacific Coast WSP. We have adjusted the boundary in the Future Full Tidal Basin to represent areas used for nesting and foraging. As a result of this revision, the area proposed for designation as critical habitat in subunit CA 46E is 247 ac (100 ha), a decrease of 237 ac (96 ha) from what was proposed as subunit CA 46A in the proposed rule. This revised location contains tidally influenced estuarine mud flats supporting

small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and foraging areas and predation of chicks and eggs.

Subunit 46F

We add one subunit (CA 46F) to represent the single nesting and foraging area utilized by Pacific Coast WSP in the Muted Tidal Basin (Nest Site 2). This area was occupied at the time of listing and contains the physical or biological features essential to the conservation of the species. This location contains tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and foraging areas and predation of chicks and eggs. As a result of this addition, the area proposed for designation as critical habitat in subunit CA 46F is 2 ac (1 ha).

In addition to the unit changes outlined above, we are also correcting land ownership acreage numbers identified in Table 3 of the March 22, 2011, proposed revised rule (76 FR 16046). The corrected Table 3 with changes to Unit CA-46 is below. Also, in the proposed revised rule we incorrectly stated that no Department of Defense

lands were within the proposed revised designation. Approximately 1,084 ac (439 ha) have been identified on VAFB in units CA-32 and CA-33. On April 14, 2011, we approved the INRMP for VAFB and have determined that the plan provides a benefit to the species for which critical habitat is proposed for designation. We have now reviewed and approved the VAFB INRMP and will recommend that the Secretary exempt the areas determined to be essential to and for the conservation of the Pacific Coast WSP from the final designation under the requirements of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and section 4(a)(3)(B)(i) of the Act.

Table 3. Proposed revised critical habitat for the Pacific Coast WSP showing Federal, State, Tribal, and other (private and local government) land ownership.

Unit Number	Unit Name	Total		Federal		Tribal		State		Other	
		ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Washington											
WA 1	Copalis Spit	407	165	0	0	0	0	407	165	0	0
WA 2	Damon Point	673	272	0	0	0	0	648	262	25	10
WA 3A	Midway Beach	697	282	0	0	0	0	697	282	0	0
WA 3B*	Shoalwater/Graveyard	1,121	454	0	0	336	136	505	204	280	113
Unit WA-3 Totals		1,818	736	0	0	336	136	1,202	486	280	113
WA 4A	Leadbetter Spit	2,463	997	2,026	820	0	0	437	177	0	0
WA 4B	Gunpowder Sands Island	904	366	904	366	0	0	0	0	0	0
Unit WA-4 Totals		3,367	1,363	2,930	1,186	0	0	437	177	0	0
WASHINGTON STATE TOTALS		6,265	2,535	2,930	1,186	336	136	2,694	1,090	305	123
Oregon											
OR 1	Columbia River Spit	169	68	169	68	0	0	0	0	0	0
OR 2	Necanicum River Spit	211	85	0	0	0	0	161	65	50	20
OR 3	Nehalem River Spit	299	121	0	0	0	0	299	121	0	0
OR 4	Bayocean Spit	367	149	279	113	0	0	0	0	88	36
OR 5	Netarts Spit	541	219	0	0	0	0	541	219	0	0
OR 6	Sand Lake South	200	81	0	0	0	0	0	0	200	81
OR 7	Sutton/Baker Beaches	372	151	372	151	0	0	0	0	0	0

OR 8A	Siltcoos Breach	15	6	15	6	0	0	0	0	0	0
OR 8B	Siltcoos River Spit	241	98	241	98	0	0	0	0	0	0
OR 8C	Dunes Overlook Tahkenitch Creek Spit	716	290	716	290	0	0	0	0	0	0
OR 8D	North Umpqua River Spit	236	96	151	61	0	0	85	34	0	0
Unit OR-8 Totals		1,208	489	1,123	454	0	0	85	34	0	0
OR 9	Tenmile Creek Spit	244	99	244	99	0	0	0	0	0	0
OR 10	Coos Bay North Spit	308	125	308	125	0	0	0	0	0	0
OR 11	Bandon to New River	1,016	411	459	186	0	0	267	108	290	117
OR 12*	Elk River Spit	167	68	0	0	0	0	0	0	167	68
OR 13	Euchre Creek	116	47	0	0	0	0	0	0	116	47
OREGON STATE TOTALS		5,218	2,112	2,954	1,195	0	0	1,353	548	911	369
California											
CA 1	Lake Earl	74	30	0	0	0	0	22	9	52	21
CA 2	Gold Bluffs Beach	235	95	0	0	0	0	235	95	0	0
CA 3A	Humboldt Lagoons - Stone Lagoon	55	22	0	0	0	0	55	22	0	0
CA 3B	Humboldt Lagoons - Big Lagoon	271	110	0	0	0	0	270	109	<1	<1
Unit CA-3 Totals		326	132	0	0	0	0	325	132	0	0
CA 4A	Clam Beach/Little River	340	138	0	0	0	0	226	91	114	46
CA 4B	Mad River	456	185	0	0	0	0	149	60	307	124
Unit CA-4 Totals		796	322	0	0	0	0	375	152	421	170
CA 5A	Humboldt Bay South Spit	577	234	20	8	0	0	541	219	16	6
CA 5B	Eel River North Spit/Beach	467	189	0	0	0	0	460	186	7	3
CA 5C	Eel River South Spit/Beach	340	138	0	0	0	0	176	71	164	66
Unit CA-5 Totals		1,384	560	20	8	0	0	1,177	476	187	76
CA 6	Eel River Gravel Bars	2,699	1,092	0	0	0	0	591	239	2,108	853
CA 7	MacKerricher Beach	1,176	476	0	0	0	0	1,102	446	74	30
CA 8	Manchester Beach	482	195	68	28	0	0	402	163	12	5
CA 9	Dillon Beach	39	16	0	0	0	0	0	0	39	16
CA 10A	Pt Reyes	460	186	460	186	0	0	0	0	0	0
CA 10B	Limantour	156	63	156	63	0	0	0	0	0	0
Unit CA-10 Totals		616	249	616	249	0	0	0	0	0	0
CA 11	Napa	618	250	0	0	0	0	618	250	0	0
CA 12	Hayward	1	0	0	0	0	0	0	0	1	0
CA 13A	Eden Landing	237	96	0	0	0	0	228	92	8	3

CA 13B	Eden Landing	171	69	0	0	0	0	171	69	0	0
CA 13C	Eden Landing	609	246	0	0	0	0	602	244	7	3
Unit CA-13 Totals		1,017	412	0	0	0	0	1,001	405	15	6
CA 14	Ravenswood	89	36	0	0	0	0	0	0	89	36
CA 15	Warm Springs	169	68	169	68	0	0	0	0	0	0
CA 16	Half Moon Bay	36	15	0	0	0	0	36	15	0	0
CA 17	Waddell Creek Beach	25	10	0	0	0	0	19	8	7	3
CA 18	Scott Creek Beach	23	9	0	0	0	0	15	6	8	3
CA 19	Wilder Creek Beach	15	6	0	0	0	0	15	6	0	0
CA 20	Jetty Road to Aptos	400	162	0	0	0	0	370	150	30	12
CA 21	Elkhorn Slough Mudflats	281	114	0	0	0	0	281	114	0	0
CA 22	Monterey to Moss Landing	971	393	424	172	0	0	286	116	261	106
CA 23	Point Sur Beach	72	29	0	0	0	0	38	15	34	14
CA 24	San Carpoforo Creek	24	10	4	2	0	0	18	7	3	1
CA 25	Arroyo Laguna Creek	28	11	0	0	0	0	18	7	10	4
CA 26	San Simeon State Beach	24	10	0	0	0	0	24	10	0	0
CA 27	Villa Creek Beach	20	8	0	0	0	0	20	8	0	0
CA 28	Toro Creek	34	14	0	0	0	0	11	4	23	9
CA 29	Atascadero Beach/Morro Strand SB	214	87	0	0	0	0	65	26	149	60
CA 30	Morro Bay Beach	1,078	436	0	0	0	0	949	384	129	52
CA 31	Pismo Beach/Nipomo Dunes	1,655	670	242	98	0	0	553	224	860	348
CA 32	Vandenberg North	711	288	711	288	0	0	0	0	0	0
CA 33	Vandenberg South	424	172	374	151	0	0	0	0	50	20
CA 34	Devereaux Beach	52	21	0	0	0	0	43	17	9	4
CA 35	Santa Barbara Beaches	65	26	0	0	0	0	30	12	35	14
CA 36	Santa Rosa Island Beaches	586	237	586	237	0	0	0	0	0	0
CA 37	San Buenaventura Beach	69	28	0	0	0	0	69	28	0	0
CA 38	Mandalay to Santa Clara River	671	272	0	0	0	0	458	185	213	86
CA 39	Ormond Beach	319	129	0	0	0	0	159	64	160	65
CA 43	Zuma Beach	73	30	0	0	0	0	1	0	72	29
CA 44	Malibu Beach	13	5	0	0	0	0	13	5	0	0
CA 45A	Santa Monica Beach	48	19	0	0	0	0	29	12	19	8

CA 45B	Dockweiler North	34	14	0	0	0	0	34	14	0	0
CA 45C	Dockweiler South	65	26	0	0	0	0	54	22	11	4
CA 45D	Hermosa State Beach	27	11	0	0	0	0	8	3	19	8
Unit CA-45 Totals		174	70	0	0	0	0	125	51	49	20
CA 46A	Bolsa Chica State Beach	93	38	0	0	0	0	93	38	0	0
CA 46B	Bolsa Chica Reserve	2	1	0	0	0	0	2	1	0	0
CA 46C	Bolsa Chica Reserve	222	90	0	0	0	0	222	90	0	0
CA 46D	Bolsa Chica Reserve	2	1	0	0	0	0	2	1	0	0
CA 46E	Bolsa Chica Reserve	247	100	0	0	0	0	247	100	0	0
CA 46F	Bolsa Chica Reserve	2	1	0	0	0	0	2	1	0	0
Unit CA-46 Totals		568	230	0	0	0	0	568	230	0	0
CA 47	Santa Ana River Mouth	19	8	0	0	0	0	18	7	1	0
CA 48	Balboa Beach	25	10	0	0	0	0	0	0	25	10
CA 50A	Batiquitos Lagoon	24	10	0	0	0	0	18	7	6	2
CA 50B	Batiquitos Lagoon	23	9	0	0	0	0	15	6	8	3
CA 50C	Batiquitos Lagoon	19	8	0	0	0	0	0	0	19	8
Unit CA-50 Totals		66	27	0	0	0	0	33	13	33	13
CA 51A	San Elijo Lagoon Ecological Reserve	3	1	0	0	0	0	3	1	0	0
CA 51B	San Elijo Lagoon Ecological Reserve	5	2	0	0	0	0	1	0	4	2
CA 51C	San Elijo Lagoon Ecological Reserve	7	3	0	0	0	0	7	3	0	0
Unit CA-51 Totals		15	6	0	0	0	0	11	4	4	2
CA 52A	San Dieguito Lagoon	4	2	0	0	0	0	0	0	4	2
CA 52B	San Dieguito Lagoon	3	1	0	0	0	0	0	0	3	1
CA 52C	San Dieguito Lagoon	4	2	0	0	0	0	4	2	0	0
Unit CA-52 Totals		11	4	0	0	0	0	4	2	7	3
CA 53	Los Penasquitos Lagoon	32	13	0	0	0	0	32	13	1	0
CA 54A	Fiesta Island	2	1	0	0	0	0	1	0	1	0
CA 54B	Mariner's Point	7	3	0	0	0	0	1	0	6	2
CA 54C	South Mission Beach	38	15	0	0	0	0	8	3	30	12
CA 54D	San Diego River Channel	51	21	0	0	0	0	38	15	13	5
Unit CA-54 Totals		98	40	0	0	0	0	48	19	50	20
CA 55B	Coronado Beach	74	30	0	0	0	0	74	30	0	0
CA 55E	Sweetwater Marsh National Wildlife Refuge and D Street	132	53	77	31	0	0	1	0	54	22

	Fill										
CA 55F	Silver Strand State Beach	82	33	74	30	0	0	8	3	0	0
CA 55G	Chula Vista Wildlife Reserve	10	4	0	0	0	0	10	4	0	0
CA 55I	San Diego National Wildlife Refuge, South Bay Unit	5	2	0	0	0	0	0	0	5	2
CA 55J	Tijuana Estuary and Beach	150	61	71	29	0	0	58	23	21	8
Unit CA-55 Totals (does not include exempt sub-units)		453	183	222	90	0	0	151	61	80	32
CALIFORNIA TOTALS		19,014	7,695	3,436	1,390	0	0	10,279	4,160	5,301	2,145
WASHINGTON, OREGON, CALIFORNIA GRAND TOTALS		30,497	12,342	9,320	3,772	336	136	14,326	5,798	6,517	2,637

Note: Area sizes may not sum due to rounding.

Required Determinations—Amended

In our March 22, 2011, proposed rule (76 FR 16046), we indicated 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 revised rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), 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 are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.*)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), 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 (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed revised designation 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, small entities include small organizations, such as independent nonprofit organizations; small governmental

jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; 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 are significant, we considered 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 designation of critical habitat for the Pacific Coast WSP would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as development, recreation, habitat management or restoration activities (IEc 2011, p. A-5). In order to determine whether it is appropriate for our agency to certify that this proposed 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. In areas where the Pacific Coast WSP is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed revised designation of critical habitat for the Pacific Coast WSP. The Service and the action agency are the only entities with direct compliance costs associated with this proposed revised critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is, therefore, possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the Pacific Coast WSP. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to two private developers working through the Sand City Redevelopment Agency at the Sterling-McDonald site (Unit CA 22) and Security National Guaranty (SNG) (Unit CA 22). The indirect incremental impacts resulting from development of the Sterling-McDonald and the Security National Guaranty (SNG) site (Unit CA 22) result from potential denial of development permits for the Sterling-McDonald and SNG sites by the California Coastal Commission (CCC). Both projects have been in planning for numerous years, and previous applications for development permits from the CCC have been denied due to being in noncompliance with the

California Coastal Act of 1976. The projects have been subsequently modified to decrease impacts to coastal resources, and proponents are again seeking CCC approval. Because the project modifications have not yet been reviewed by the CCC, there is still some uncertainty as to whether the projects will be allowed to move forward at this time and thus result in the potential incremental impacts identified in the DEA.

The Sterling-McDonald site plan calls for a 342 unit coastal resort. The project has been in planning since the 1990's and an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) is currently under development on the project's current design. Project proponents expect the EIR to be completed in 2012.

The 39-ac (16-ha) SNG site is also planned for a mixed-use resort and will include up to 341 units. The proposed project has completed an EIR under CEQA and as part of local and State permitting processes, SNG has prepared a detailed habitat protection plan (HPP) for the site. The HPP evaluates and proposes mitigation for potential impacts to biological resources, including the Pacific Coast WSP and its habitat. Two other federally listed species occur at the project site including the endangered Smith's blue butterfly *(Euphilotes enoptes smithi)* (with proposed critical habitat: 42 FR 7972; February 8, 1977) and threatened Monterey spineflower *(Chorizanthe pungens* var. *pungens)* with final critical habitat (73 FR 1525; January 9, 2008). The HPP also includes proposed mitigation for these two species. The HPP has been reviewed by the local jurisdictions and has been subject to public review as part of the CCC hearing process in December 2009. Project proponents anticipate that the CCC will conditionally

approve the final resort design on adoption and implementation of the HPP. Final approval of the HPP by CCC is anticipated prior to the issuance of the final revised critical habitat designation for the Pacific Coast WSP.

The process for the CCC to issue permits for coastal development projects involves the development of Local Coastal Programs (LCPs) by cities and counties. LCPs are basic planning tools used by local governments to guide development in the coastal zone, in partnership with the CCC. After an LCP has been certified by the CCC to be in compliance with the Coastal Act requirements, the coastal permitting authority over most new development is transferred to the local government. As of 2008, approximately 72 percent of the LCPs have been certified by the CCC, representing close to 90 percent of the geographic area of the coastal zone. Unit CA-22 for the Pacific Coast WSP falls within the City of Sand City LCP which includes the coastal areas near the City of Sand City south to Bay Avenue in Monterey County, California. Since 2004, when the City of Sand City LCP was approved by the CCC, the City of Sand City issued a total of 107 permits for development projects or other construction activity affecting coastal resources within the LCP (CCC 2010, pp. Part-3 16–17). The two small businesses represent less than 2 percent of the total number of actions permitted regionally by the City of Sand City and certified by the CCC.

Due to the uncertainty of the status of the two projects, the extent of their indirect impacts, and the unavailability of data necessary to quantify impacts, the DEA does not quantify, but qualitatively discusses, these potential indirect impacts (IEc 2011, p. A-5).

Please refer to the DEA of the proposed revised critical habitat designation for a more detailed discussion of potential economic impacts.

Our analysis constitutes an evaluation of not only potentially directly affected parties, but those also potentially indirectly affected. Under the RFA and following recent case law, we are only required to evaluate the direct effects of a regulation to determine compliance. Because the regulatory effect of critical habitat is through section 7 of the Act which applies only to Federal agencies, we have determined that only Federal agencies are directly affected by this rulemaking. Other entities, such as small businesses, are only indirectly affected. However, to better understand the potential effects of a designation of critical habitat, we frequently evaluate the potential impact to those entities that may be indirectly affected, as was the case for this rulemaking. In doing so, we focus on the specific areas being designated as critical habitat and compare the number of small business entities potentially affected in that area with other small business entities in the regional area, versus comparing the entities in the area of designation with entities nationally—which is more commonly done. This results in an estimation of a higher proportion of small businesses potentially affected. In this rulemaking, we calculate that the proportion of small businesses potentially affected is less than 2 percent of those regionally. If we were to calculate that value based on the proportion nationally, then our estimate would be significantly lower than 1 percent.

Following our evaluation of potential effects to small business entities from this rulemaking, we do not believe that the two small businesses or less than 2 percent of the

small businesses in the affected sector represents a substantial number. However, we recognize that the potential effects to these small businesses may be significant due to not quantifying the potential economic impacts. We will further evaluate the potential effects to these small businesses as we develop our final rulemaking.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified two small entities that may be impacted by the proposed revised critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Arcata Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

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 76 FR 16046, March 22, 2011, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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. In § 17.11(h), revise the entry for "Plover, western snowy" under "BIRDS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * *							
BIRDS							
* * * * * * *							
Plover, western snowy	*Charadrius nivosus nivosus*	U.S.A. (AZ, CA, CO, KS, NM, NV, OK, OR, TX, UT, WA), Mexico.	U.S.A. (CA, OR, WA, Mexico (within 50 miles of Pacific coast).	T	493	17.95(b)	NA
* * * * * * *							

3. Amend § 17.95(b), in the entry for Western Snowy Plover *(Charadrius nivosus nivosus)*—Pacific Coast Population" by redesignating paragraphs (87) through (108) as paragraphs (88) through (109) and revising paragraphs (82) through (86) and adding a new paragraph (87) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Western Snowy Plover *(Charadrius nivosus nivosus)*—Pacific Coast Population.

* * * * *

(82) Subunit CA 46A: Bolsa Chica State Beach, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46A: Bolsa Chica State Beach, Orange County, California]

(ii) Note: Subunit CA 46A: Bolsa Chica Beach, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(83) Subunit CA 46B: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46B: Bolsa Chica Reserve, Orange County, California]

(ii) Note: Subunit CA 46B: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(84) Subunit CA 46C: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46C: Bolsa Chica Reserve, Orange County, California]

(ii) Note: Subunit CA 46C: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(85) Subunit CA 46D: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46D: Bolsa Chica Reserve, Orange County, California]

(ii) Note: Subunit CA 46D: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(86) Subunit CA 46E: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46D: Bolsa Chica Reserve, Orange County, California]

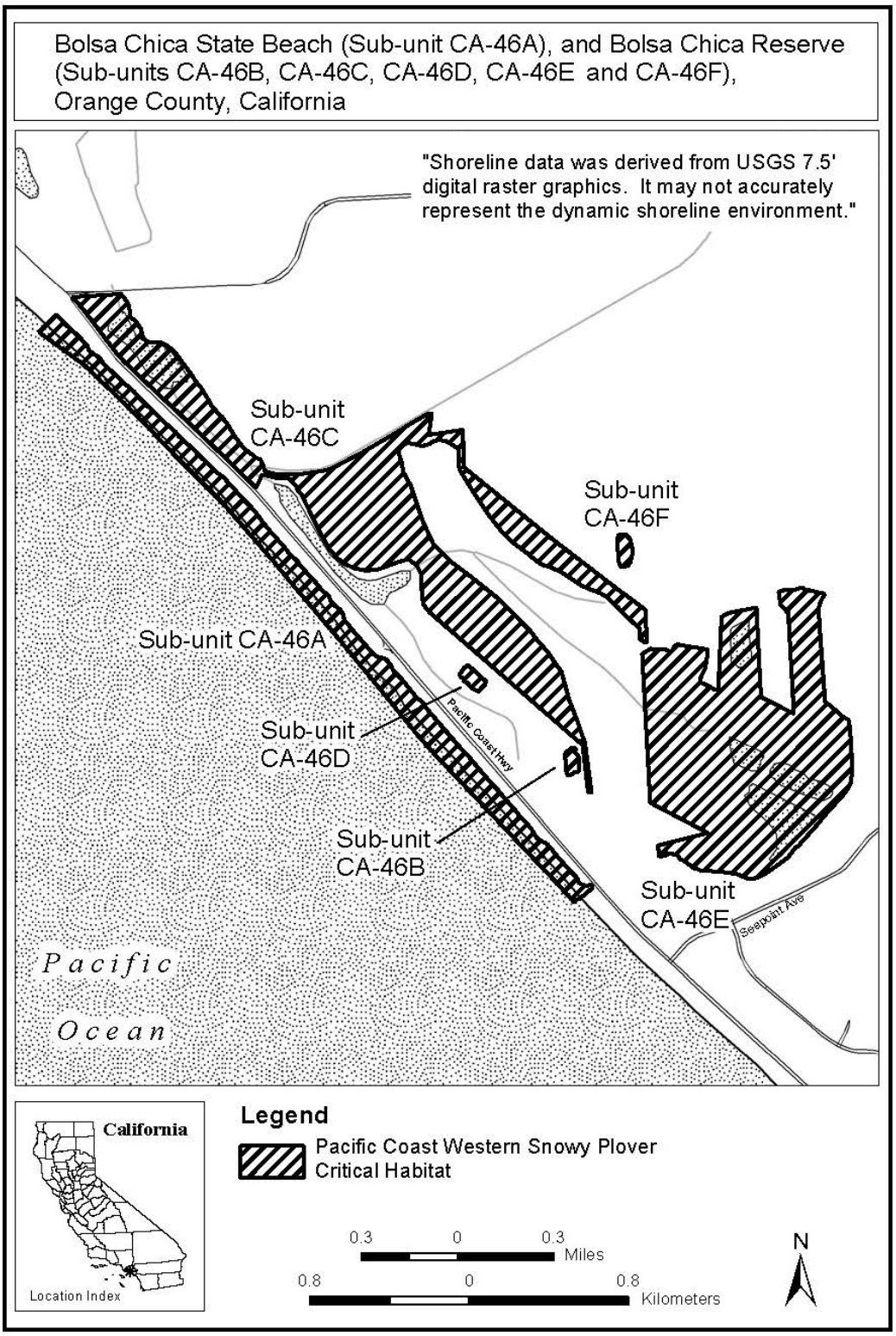
(ii) Note: Subunit CA 46E: Bolsa Chica Reserve, Orange County, California, is

depicted on the map in paragraph (87)(ii) of this entry.

(87) Subunit CA 46F: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46F: Bolsa Chica Reserve, Orange County, California]

(ii) Note: Map of Subunits CA 46A–46F: Bolsa Chica State Beach and Bolsa Chica Reserve, Orange County, California, follows:


Bolsa Chica State Beach (Sub-unit CA-46A), and Bolsa Chica Reserve (Sub-units CA-46B, CA-46C, CA-46D, CA-46E and CA-46F), Orange County, California
"Shoreline data was derived from USGS 7.5' digital raster graphics. It may not accurately represent the dynamic shoreline environment."
Sub-unit CA-46C
Sub-unit CA-46F
Sub-unit CA-46A
Sub-unit CA-46D
Pacific Coast Hwy
Sub-unit CA-46B
Sub-unit CA-46E
Seapoint Ave
Pacific Ocean
California
Location Index
Legend
Pacific Coast Western Snowy Plover Critical Habitat
0.3 0 0.3 Miles
0.8 0 0.8 Kilometers
N

* * * * *

January 4, 2012

/s/ Eileen Sobek

Acting Assistant Secretary for Fish and Wildlife and Parks

[~~Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat; and Taxonomic Revision for the Pacific Coast Population of the Western Snowy Plover~~]

Billing Code 4310-55-P

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