

From: [Sandra Hamilton](#)
To: [Mike Murray](#)
Cc: [Wetmore, Doug](#); [Waanders, Jason](#); [Fox, Lori](#); [Stevens, Mike](#); [Pinion, Timothy](#)
Subject: RE: critical habitat determination CAHA orv mgmt DEIS
Date: 02/03/2010 06:32 AM
Attachments: [PIPL Critical Habitat 2-2-2010_rev1.docx](#)

Hi Mike,

According to the NPS IMR T/E coordinator "may affect/is likely to adversely affect" is the correct language to use. I think the "adversely modify/destroy" language got CH is analogous to the "jeopardize" language for the species that FWS uses in the BO that they send us.

Sandy

Sandy Hamilton
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▼ [Mike Murray/CAHA/NPS](#)

**Mike
Murray/CAHA/NPS**

02/02/2010 03:27 PM

To "Wetmore, Doug" <dwetmore@louisberger.com>
cc "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>, "Fox, Lori" <lfox@louisberger.com>, "Stevens, Mike" <Mike.Stevens@sol.doi.gov>, "Hamilton, Sandra" <Sandra_Hamilton@nps.gov>, "Pinion, Timothy" <Timothy_Pinion@nps.gov>
Subject RE: critical habitat determination CAHA orv mgmt DEIS

The revised document seems okay to me.

Question about ESA terminology: Is "may affect/is likely to adversely affect" the correct terminology for critical habitat? Do we need to say that the action "is not likely to destroy or adversely modify designated critical habitat" (which is what FWS said in the BO for the interim strategy)?

Mike Murray
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▼ "Wetmore, Doug" <dwetmore@louisberger.com>

"Wetmore, Doug"
<dwetmore@louisberger.com>

02/02/2010 05:00 PM

To <Mike_Murray@nps.gov>, "Stevens, Mike"
<Mike.Stevens@sol.doi.gov>

cc "Waanders, Jason"
<JASON.WAANDERS@sol.doi.gov>, "Fox,
Lori" <lfox@louisberger.com>, "Hamilton,
Sandra" <Sandra_Hamilton@nps.gov>,
"Pinion, Timothy"
<Timothy_Pinion@nps.gov>

Subject RE: critical habitat determination CAHA orv
mgmt DEIS

Here's the most up-to-date version with Mike S. and Sandy's comments incorporated.

Doug Wetmore
Environmental Planner

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-----Original Message-----

From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Tuesday, February 02, 2010 2:39 PM
To: Stevens, Mike
Cc: Wetmore, Doug; Waanders, Jason; Fox, Lori; Hamilton, Sandra; Pinion, Timothy
Subject: RE: critical habitat determination CAHA orv mgmt DEIS

Revised draft (with Mike's edits below) looks okay to me.

Mike Murray
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"Stevens, Mike"
<Mike.Stevens@sol
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To
"Murray,
02/02/2010 04:08
PM
"Hamilton, Sandra"
<Sandra_Hamilton@nps.gov>,
Mike" <Mike_Murray@nps.gov>,
"Pinion, Timothy"
<Timothy_Pinion@nps.gov>,
"Waanders, Jason"
<JASON.WAANDERS@sol.doi.gov>
cc
"dwetmore@louisberger.com"
<dwetmore@louisberger.com>,
"lfox@louisberger.com"
<lfox@louisberger.com>
Subject
determination
RE: critical habitat
CAHA orv mgmt DEIS

Sandy:

A few edits, mainly to the paraphrasing of the ESA.

I will be available for a call for the most part tomorrow and Thursday.

Michael Stevens
Attorney-Adviser
Office of the Regional Solicitor
Southeast Region
phone 404-331-4447, x238

0025308

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-----Original Message-----

From: Hamilton, Sandra
Sent: Tuesday, February 02, 2010 3:47 PM
To: Murray, Mike; Pinion, Timothy; Stevens, Mike; Waanders, Jason
Cc: dwetmore@louisberger.com; lfox@louisberger.com
Subject: critical habitat determination CAHA orv mgmt DEIS

Hello All,

Thanks to Doug for producing this quickly. There are a couple minor edits that are being made yet this afternoon and then Doug will forward a corrected copy to everyone later today. Please take a look especially at the determinations especially to see if the analysis supports the determination adequately.

If at all possible, it'd be good to have a short call on this tomorrow while Tim is still in the office. I can be available anytime (but 1:00 ET will require shuffling). Please let me know when/if you are available.
Thanks.

Sandy

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(See attached file: PIPL Critical Habitat 2-2-2010.docx) (See attached file: PIPL Critical Habitat 2-2-2010 (2)SOEdit.docx)



PIPL Critical Habitat 2-2-2010_rev1.docx

Critical Habitat for Wintering Piping Plover

Chapter 3 material

Critical habitat identifies specific areas that are essential to the conservation of a listed species, or that contain physical and biological features that are essential to the species and that may require special management considerations or protection. Approximately 2,043 acres in Dare and Hyde counties are designated as critical habitat for the wintering population of the piping plover (73 FR 62816).

Section 7 of the ESA requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (PCE) to an extent that the value of critical habitat for both the survival and recovery of the species is appreciably reduced (65 FR 41793).

The PCEs for the wintering population of the piping plover are the habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. Specifically, the PCEs are:

- (1) Intertidal sand beaches (including sand flats) or mud flats (between the mean lower low water line and annual high tide) with no or very sparse emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.
- (2) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.
- (3) Surf-cast algae for feeding.
- (4) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.
- (5) Spits, especially sand, running into water for foraging and roosting.
- (6) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.
- (7) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.
- (8) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites).

Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries as of November 20, 2008 (50 CR 17.95 b (1)(2)).

Of the 2,043 acres of designated critical habitat in Dare and Hyde counties, approximately 1,827 acres are located within the boundaries of the Seashore and are located at Bodie Island Spit, Cape Point, Hatteras Inlet Spit, Ocracoke Inlet Spit, and South Point (73 FR 62816).

The four units of designated critical habitat that include acreage within the Seashore are described below:

NC-1: This unit extends from the southern portion of Bodie Island through Oregon Inlet to the northern portion of Pea Island. It begins at Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends approximately 4.7 mi (7.6 km) south to the intersection of NC Highway 12 and Salt Flats Wildlife Trail on Pea Island. The unit is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the MLLW (mean lower low water) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. Any emergent sandbars south and west of Oregon Inlet, including Green Island and lands owned by the State of North Carolina are included.

NC-2: This unit is entirely within the Seashore and encompasses Cape Point. The unit extends south approximately 4.5 km (2.8 miles) from the ocean groin near the old location of the Cape Hatteras Lighthouse to the point of Cape Hatteras, and then extends west 7.6 km (4.7 miles) along South Beach to the edge of Ramp 49 near the Frisco Campground. The unit includes lands from the MLLW on the Atlantic Ocean to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur).

NC-4: This unit extends from the western end of Hatteras Island to the eastern end of Ocracoke Island. The unit extends approximately 7.6 km (4.7 mi) southwest from the first beach access point at the edge of Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island to the edge of the beach access at the ocean-side parking lot (approximately 0.1 mi south of Ramp 59) on NC Highway 12, approximately 1.25 km (0.78 mi) southwest of the ferry terminal on the northeastern end of Ocracoke Island. The unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island, including lands owned by the State of North Carolina are included.

NC-5: This unit is entirely within the Seashore and includes the western portion of Ocracoke Island beginning at the beach access point at the edge of Ramp 72, extending west approximately 3.4 km (2.1 mi) to South Point and then back east on the Pamlico Sound side to a point where stable, densely-vegetated dune habitat meets the water. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely-vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Ocracoke Inlet are also included.

Chapter 4 material

Alternative A

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative A may affect / are likely to adversely affect designated critical habitat for wintering piping plover due to the level of recreational access provided within these critical habitat areas and the impact of that access on the value of the habitat. There would be long-term, minor beneficial effects from closing suitable interior habitats at spits and at Cape Point to all recreational users, as these interior habitats are considered one of the primary constituent elements (PCE) that comprise the designated critical habitat for wintering piping plover. However, year-round recreational use would continue to occur on the majority of the intertidal sand beaches, spits, and backshore, which are also PCEs of designated critical habitat. The level of recreational use (through the designation of the majority of the Seashore an ORV route or area year-round) could result in vehicular and pedestrian disturbance to foraging plovers and a reduction of invertebrate prey due to disturbance or destruction of the wrack from vehicles driving in and around the wrack line. Although this alternative would not result in a direct loss of critical habitat, the impacts of recreational use would result in a reduction in the value of the designated critical habitat for wintering plovers.

Implementation of alternative A would result in a finding of may affect / is likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in direct or indirect impacts to the critical habitat for the species that are not discountable, insignificant, or beneficial. And while there would be beneficial impacts from the protection of suitable interior habitat, there would be adverse effects on the value of the primary constituent elements of critical habitat, due to the majority of spits, intertidal sand beaches, and ocean backshore being open to recreational use during wintering.

Alternative B

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative B may affect / are likely to adversely affect designated critical habitat for wintering piping plover due to the level of recreational access provided within these critical habitat areas and the impact of that access on the value of the habitat. There would be long-term, minor beneficial effects from closing suitable interior habitats at spits and at Cape Point to all recreational users, as these interior habitats are considered one of the primary constituent elements (PCE) that comprise the designated critical habitat for wintering piping plover. However, year-round recreational use would continue to occur on the majority of the intertidal sand beaches and spits, which are also PCEs of designated critical habitat. The level of recreational use (through the designation of the majority of the Seashore an ORV route or area year-round) could result in vehicular and pedestrian disturbance to foraging plovers and a reduction of invertebrate prey due to disturbance or destruction of the wrack from vehicles driving in and around the wrack line. There would be some benefit to the critical habitat from the implementation of seasonal night driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore. Similarly, the protection of ocean backshore (also a PCE) under alternative B would not be required during the peak wintering period for piping plover and would not be implemented in areas of narrow beach width. Although this alternative would not result in a direct loss of critical habitat, the impacts of recreational use would result in a reduction in the value of the designated critical habitat for wintering plovers.

Implementation of alternative B would result in a finding of may affect / is likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in direct or indirect impacts to the critical habitat for the species that are not discountable, insignificant, or beneficial. And while there would be beneficial impacts from the protection of suitable interior habitat, there would be adverse effects on the value of the primary constituent elements of critical habitat, due to the majority of spits, intertidal sand beaches, and ocean backshore being open to recreational use during wintering.

Alternative C

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative C may affect / are not likely to adversely affect designated critical habitat for wintering piping plover due to the establishment of Species Management Areas (SMAs) which would result in the closure of approximately 12 miles of shoreline to ORV use year round, which would provide relatively less-disturbed foraging, resting, and roosting areas for migrating and wintering shorebirds. These closures would protect the primary constituent elements of intertidal sand beaches and backshores in these areas. Year-round non-ORV areas along the ocean shoreline would be managed as nonbreeding shorebird SMAs with recreational activity restrictions, such that if staff determines that any single recreational activity or collection of activities is negatively impacting nonbreeding piping plover use of a specific location, NPS may implement additional restrictions on activities. Nonbreeding shorebird SMAs would also be established at the points and spits based on an annual habitat assessment, which would provide protection for interior wintering plover habitat. There would be some benefit to the critical habitat from the implementation of seasonal night driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore.

Although there would be construction of ORV access ramps, parking areas, and interdunal roads, none of these improvements would impact any of the primary constituent elements of designated critical habitat for wintering piping plover.

Implementation of alternative C would result in a finding of may affect / is not likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in impacts to the critical habitat for the species that are discountable, insignificant, or beneficial. Actions under alternative C would result in greater protection of the primary constituent elements of suitable interior habitat, spits, intertidal sand beaches, and ocean backshore, primarily as a result of the establishment of nonbreeding SMAs and approximately 12 miles of year-round non-ORV areas.

Alternative D

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative D may affect / are not likely to adversely affect designated critical habitat for wintering piping plover due to the establishment of Species Management Areas (SMAs) which would result in the closure of approximately 41 miles of shoreline to ORV use year round, including ocean beaches along all of the points and spits. These closures would provide less-disturbed foraging, resting, and roosting areas for migrating and wintering shorebirds and would protect the primary constituent elements of intertidal sand beaches, backshores, and spits. These year-round non-ORV areas along the ocean shoreline would be managed as nonbreeding shorebird SMAs with recreational activity restrictions, such that if staff determines that any single recreational activity or collection of activities is negatively impacting nonbreeding piping plover use of a specific location, NPS may implement additional restrictions on activities. Nonbreeding shorebird SMAs would also be established at the points and spits based on an

annual habitat assessment, which would provide protection for interior wintering plover habitat. There would be some benefit to the critical habitat from the implementation of seasonal night driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore.

Although there would be construction of ORV access ramps, parking areas, and interdunal roads, none of these improvements would impact any of the primary constituent elements of designated critical habitat for wintering piping plover.

Implementation of alternative D would result in a finding of may affect / is not likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in impacts to the critical habitat for the species that are discountable, insignificant, or beneficial. Actions under alternative D would result in greater protection of the primary constituent elements of suitable interior habitat, spits, intertidal sand beaches, and ocean backshore, primarily as a result of the establishment of nonbreeding SMAs and 41 miles of year-round non-ORV areas.

Alternative E

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative E may affect / are not likely to adversely affect designated critical habitat for wintering piping plover due to the establishment of Species Management Areas (SMAs) which would result in the closure of approximately 15 miles of shoreline to ORV use year round. These closures would provide less-disturbed foraging, resting, and roosting areas for migrating and wintering shorebirds and would protect the primary constituent elements of intertidal sand beaches and ocean backshores. These year-round non-ORV areas along the ocean shoreline would be managed as nonbreeding shorebird SMAs with recreational activity restrictions, such that if staff determines that any single recreational activity or collection of activities is negatively impacting nonbreeding piping plover use of a specific location, NPS may implement additional restrictions on activities. Nonbreeding shorebird SMAs would also be established at the points and spits based on an annual habitat assessment, which would provide protection for interior wintering plover habitat. There would be some benefit to the critical habitat from the implementation of seasonal night driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore.

Although there would be construction of ORV access ramps, parking areas, and interdunal roads, none of these improvements would impact any of the primary constituent elements of designated critical habitat for wintering piping plover.

Implementation of alternative E would result in a finding of may affect / is not likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in impacts to the critical habitat for the species that are discountable, insignificant, or beneficial. Actions under alternative E would result in greater protection of the primary constituent elements of suitable interior habitat, spits, intertidal sand beaches, and ocean backshore, primarily as a result of the establishment of nonbreeding SMAs and approximately 15 miles of year-round non-ORV areas.

Alternative F

Determination of Effect for Designated Critical Habitat. Under the ESA, the actions taken under alternative F may affect / are not likely to adversely affect designated critical habitat for wintering piping

plover due to the establishment of Species Management Areas (SMAs) which would result in the closure of approximately 16 miles of shoreline to ORV use year round. These closures would provide less-disturbed foraging, resting, and roosting areas for migrating and wintering shorebirds and would protect the primary constituent elements of intertidal sand beaches and ocean backshores. These year-round non-ORV areas along the ocean shoreline would be managed as nonbreeding shorebird SMAs with recreational activity restrictions, such that if staff determines that any single recreational activity or collection of activities is negatively impacting nonbreeding piping plover use of a specific location, NPS may implement additional restrictions on activities. Nonbreeding shorebird SMAs would also be established at the points and spits based on an annual habitat assessment, which would provide protection for interior wintering plover habitat. Alternative F would also involve the implementation of four miles of additional “floating” non-ORV areas which would protect the ocean shoreline habitat along three stretches of beach during the non-breeding season. There would be some benefit to the critical habitat from the implementation of seasonal night driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore.

Although there would be construction of ORV access ramps, parking areas, and interdunal roads, none of these improvements would impact any of the primary constituent elements of designated critical habitat for wintering piping plover.

Implementation of alternative F would result in a finding of may affect / is not likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in impacts to the critical habitat for the species that are discountable, insignificant, or beneficial. Actions under alternative F would result in greater protection of the primary constituent elements of suitable interior habitat, spits, intertidal sand beaches, and ocean backshore, primarily as a result of the establishment of nonbreeding SMAs, four additional miles protected shoreline during the nonbreeding season, and approximately 16 miles of year-round non-ORV areas.