

cases were discovered in the 1970's and one was discovered in 1987. This is a very low contamination frequency considering the thousands of wells estimated to be operating, and it does not suggest a widespread current problem that warrants new Federal regulations.

The Class V Study also included a more detailed examination of four specific types of Class V industrial wells: (1) Wells used to dispose of washwater at carwashes that do not clean undercarriages or engines; (2) wells used to dispose of food preparation-related wastewater and food processing equipment or facility wash down water; (3) wells used to inject fluids from laundromats where no onsite dry cleaning is performed or where no organic solvents are used for laundering; and (4) wells used to inject noncontact cooling water that contains no additives and has not been chemically altered. EPA does not believe the information compiled for these well types, presented in Volumes 4, 6, 8, and 22, respectively, of the Class V Study report, demonstrates a potential to endanger that warrants additional regulation. For example, across all four well types, the Study found only one documented contamination incident (involving a lobster processing/holding facility in Maine) and two possible contamination incidents (involving carwashes in Hawaii). There remains concern about some wells at carwashes being vulnerable to spills or illicit discharges when an attendant is not onsite, but the Study did not find evidence showing that such problems associated with carwash wells are actually occurring and warrant the development of new UIC regulations.

EPA also reevaluated how Class V UIC primacy States in their regions address industrial wells using existing authorities. Class V primacy States have demonstrated the ability to use existing authorities to take some form of action to ensure that Class V industrial wells do not endanger USDWs. Some States have an outright ban of industrial wells while other States require permits for industrial wells. Some States ban the wells under some situations but permit them under others. When a previously unidentified industrial well is discovered, the existing UIC programs investigate the situation and decide on the best way to address it, which may include requiring the well to close or get a permit, depending on site-specific conditions and threats. Such follow up investigation and action is usually taken immediately after a Class V industrial well is discovered, or as soon thereafter as possible given a State's workload

relative to available resources to implement the Class V portion of their UIC program. Limited resources, not regulatory authorities, appears to be the primary factor that would constrain a primacy State from taking immediate action to address the risks posed by Class V industrial waste disposal wells. Therefore, an additional layer of Federal regulation would providing no real safe guards for protecting underground sources of drinking water.

In States where EPA directly implements the Class V portion of the UIC program, the EPA Regional Offices always address endangering Class V wells as soon as they are identified, as a matter of routine policy under the existing UIC regulations and authorities. Although the exact nature and timing of actions required vary from one Regional Office to the next, the DI programs typically require endangering industrial wells to close or get a permit, and require site investigation and remediation in response to any contamination that may have occurred. Such actions have been found to send a strong message to owners or operators of uninventoried industrial wells that they too should close their wells. EPA also communicates this message officially in outreach materials distributed to well owners and operators in DI programs and to staff in primacy States for them to use as part of their programs.

#### 4. Proposed Determination

The 1999 final rule included new stringent regulations targeting the subcategory of Class V industrial wells believed to have the highest potential to endanger USDWs at the time of the 1995 proposal: Motor vehicle waste disposal wells. Further review of the remaining types of Class V industrial wells (1) indicates that they have not been the source of frequent contamination incidents and (2) confirms that existing UIC programs in States where most industrial wells are known to exist are already using existing authorities to adequately address these wells and protect USDWs. As a result, EPA does not believe there is a need to develop additional Federal UIC regulations applicable to Class V industrial wells at this time. Instead, the Agency will continue to prevent endangerment from individual wells using existing authorities. This effort will include enforcing the existing prohibition of Class IV wells to prevent accidental or illicit abuses of Class V industrial wells and continuing to provide technical assistance and support to State UIC programs, where needed, to make sure these wells are being adequately

controlled. EPA also will explore additional opportunities to communicate UIC requirements and obligations to certain industry sectors in association with the effluent guideline program implemented under the Clean Water Act.

#### V. Comment Solicitation

EPA is soliciting public comment on the underlying data and rationale supporting this proposed determination that additional Federal UIC regulations are not needed at this time to prevent Class V wells from endangering underground sources of drinking water. This proposed determination is based on The Class V Underground Injection Control Study (EPA Document Number EPA/816-R-99-014, dated September 1999) and other information that has been placed in the public docket for comment. Also, EPA is soliciting any new data or information relevant to the findings in this proposed determination and the Class V injection well types it addresses.

Dated: April 30, 2001.

**Diane C. Regas,**

*Acting Assistant Administrator for Water.*

[FR Doc. 01-11413 Filed 5-4-01; 8:45 am]

BILLING CODE 6560-50-U

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AG13

#### Endangered and Threatened Wildlife and Plants; Notice of New Schedule for Final Determination of Critical Habitat for Wintering Piping Plovers

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of 60-day delay for final determination of critical habitat.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 60-day delay in making our final determination of critical habitat for wintering piping plovers, subject to further court proceedings. This additional time will allow us to complete the analyses required under section 4(b)(2) of the Endangered Species Act of 1973, as amended (Act), for designation of critical habitat. We will publish our final determination in the **Federal Register**.

**DATES:** We will make our final determination on the designation of

critical habitat for wintering piping plovers by June 29, 2001.

**ADDRESSES:** Questions about this document should be directed to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax, Room 420, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Chris Nolin at the above address or telephone (703) 358-2171.

**SUPPLEMENTARY INFORMATION:**

**Background:**

The piping plover (*Charadrius melodus*) is a small North American shorebird that breeds in the Great Plains, Great Lakes, and upper Atlantic Coast states; its wintering areas include the lower Atlantic and Gulf coasts of the United States. On December 11, 1985, we published a final rule (50 FR 50720), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) and as threatened elsewhere within its range. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

In December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the Great Lakes population of the piping plover. Defenders filed a second similar lawsuit for the Northern Great Plains piping plover population in 1997. These lawsuits were subsequently combined (*Defenders of Wildlife et al. v. Bruce Babbitt et al.*, Consolidated Cases Civil No. 1:96-CV-02695AER and Civil No. 1:97-CV00777AER). In February 2000, the court issued an order directing us to publish a proposed critical habitat designation for the Great Lakes population of the piping plover by June 30, 2000. Publication of a similar proposal for nesting areas of the Northern Great Plains population of piping plover by May 31, 2001, was also ordered. A subsequent order directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, including its wintering habitat, and for the Northern Great Plains population by March 15, 2002.

Since we cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, we felt it was appropriate to propose critical habitat for all wintering piping plovers

collectively. Further, we determined that the appropriate course of action would be to propose critical habitat for all U.S.-wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population. We proposed critical habitat for wintering piping plovers on July 6, 2000 (65 FR 41782), and published extensions of the comment period on August 30, 2000 (65 FR 52691), and October 27, 2000 (65 FR 64414), so that the comment period closed on November 24, 2000. We later reopened the comment period from February 22, 2001, through March 1, 2001 (66 FR 11134), to accept additional information. The proposal includes 146 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. This includes approximately 2,691 kilometers (1,672 miles) of shoreline along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

Section 4(b)(2) of the Endangered Species Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. 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 as critical habitat, provided such exclusion will not result in the extinction of the species. We prepared and made available a draft economic analysis concerning the proposed critical habitat designation (65 FR 52691). We received considerable public comment on our draft analysis of the economic effects of the proposed critical habitat designation; we reopened the comment period the last time (66 FR 11134) primarily to accept additional information into the record on potential economic effects of the designation.

Given the extent and detail of the comments on our draft economic analysis, and especially the significant portion of these comments that arrived after we reopened the comment period in late February, we were only able to develop a draft final economic analysis on April 17, 2001, and a revised draft one week later. We are currently reviewing this revised draft. The final economic analysis is a critically important part of the analysis required under section 4(b)(2) of the Act; without the economic analysis, we are unable to complete an adequate and effective 4(b)(2) analysis.

We, therefore, have delayed by 60 days our final decision on critical habitat for wintering piping plovers. Since the current court order requires this decision to have been made by April 30, 2001, we have requested the court to extend the deadline by 60 days, or until June 29, 2001. We will base our final determination on material and information already in the record for this critical habitat determination and will publish our determination in the **Federal Register**.

Elsewhere in the **Federal Register** today we are publishing a final rule designating critical habitat in the breeding areas of the endangered Great Lakes population of piping plovers. In addition, by May 30, 2001, we will make a proposed determination of critical habitat for the breeding areas of the threatened population of piping plovers in the northern Great Plains.

**Author**

The primary authors of this document are Wendi Weber and Patrick Leonard, Division of Conservation and Classification, Arlington, Virginia.

**Authority**

The authority for this action is the Endangered Species Act (16 U.C.S. 1531 *et seq.*).

Dated: April 30, 2001.

**Marshall P. Jones, Jr.,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 01-11206 Filed 5-2-01; 12:41 pm]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Washington Population of Western Sage Grouse (*Centrocercus urophasianus phaios*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Washington population of western sage grouse (*Centrocercus urophasianus phaios*) under the Endangered Species Act of 1973, as amended (Act). We find that the petitioned action is warranted, but precluded by higher priority listing actions. We will develop a proposed