

1. The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent non- or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers, and are primary constituent elements of piping plover wintering habitat. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated backbeach (beach area above mean high tide seaward of the permanent dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road), spits, and washover areas. Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action.

2. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures.

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Dated: June 28, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AG14

### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Great Lakes Breeding Population of the Piping Plover

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to designate 37 units along the Great Lakes shoreline of Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania,

and New York as critical habitat under the Endangered Species Act of 1973, as amended, for the Great Lakes breeding population of the piping plover (*Charadrius melodus*). We propose to designate critical habitat on fewer than 305 km (189 mi) in 27 counties within these States. Within these areas, only the specific locations that have or could develop the physical and biological features required by piping plovers (primary constituent elements) would be considered critical habitat.

The primary constituent elements for the piping plover are those habitat components that are essential for foraging, sheltering, reproduction, rearing of young, intra-specific communication, roosting, nesting, and dispersal.

This proposed rule, if made final, would result in additional review requirements under section 7 of the Act. Federal agencies may not fund, authorize, or carry out an action that would destroy or adversely modify critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including potential economic and other impacts of the designation.

**DATES:** *Comments:* We will consider comments received by September 5, 2000.

*Public Hearings:* We have scheduled seven public hearings for this proposal. See Hearings section for hearing dates and addresses.

We will hold public informational open houses at the same locations prior to each public hearing. The informational open houses will start at 6 pm. The public hearings will start at 7 pm and end at 9 pm.

**ADDRESSES:** Send written comments and other materials concerning this proposal to: Piping Plover Comments, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 or by e-mail to [PIPINGPOVERCOMMENT@FWS.GOV](mailto:PIPINGPOVERCOMMENT@FWS.GOV) or by facsimile to 612-713-5292.

The complete file for this proposed rule, including comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address and at the U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Ragan; (612) 713-5350.

#### SUPPLEMENTARY INFORMATION:

##### Background

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43-63 grams (1.5-2.5 ounces) and is 17-18 centimeters (cm) (6-7 inches (in.)) long (Haig 1992). Its light, sand-colored plumage blends in well with its primary sandy beach habitat. Plumage and leg color help distinguish this bird from other plover species. During the breeding season, the legs are bright orange, and the short, stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. The female's neck band is often incomplete and is usually thinner than the male's (Haig 1992). In winter, the bill turns black, the legs fade to pale orange, and the black plumage band on the head and neck is lost. Chicks have speckled gray, buff, and brown down, black beaks, pale orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (Service 1994).

The breeding range of the piping plover extends throughout the northern Great Plains, the Great Lakes, and the Atlantic Coast in the United States and Canada. Based on this distribution, three breeding populations of piping plovers have been described: the Northern Great Plains population, the Great Lakes population, and the Atlantic Coast population.

The northern Great Plains breeding range includes southern Alberta, northern Saskatchewan, and southern Manitoba; south to eastern Montana, the Dakotas, southeastern Colorado, Iowa, Minnesota, and Nebraska; and east to Lake of the Woods in north-central Minnesota. The majority of the United States pairs are in the Dakotas, Nebraska, and Montana (Service 1994). Occasionally, Great Plains birds nest in Oklahoma and Kansas. On the Atlantic coast, piping plovers breed from Newfoundland, southeastern Quebec, and New Brunswick to North Carolina, with 68 percent of all the nesting pairs breeding in Massachusetts, New York, New Jersey, and Virginia (Service 1999).

In the Great Lakes watershed, piping plovers formerly nested throughout much of the region in the north-central United States and south-central Canada, but are currently limited to northern Michigan and one site in northern Wisconsin. Piping plovers nest on shoreline and island sandy beaches with

sparse vegetation and the presence of small stones (greater than 1 cm (0.4 in.)) called cobble. Their nests are concealed by the cobble and are, therefore, very difficult to see. Piping plovers spend approximately 3–4 months a year on the breeding grounds. Nesting in the Great Lakes region begins in early to mid-May. Plovers lay 3–4 eggs in a small depression they scrape in the sand among the cobblestones, and both sexes incubate the eggs for about 28 days. Young plovers can walk almost as soon as they hatch, but remain vulnerable to predation and disturbance for another 21–30 days until they are able to fly.

Nesting piping plovers are highly susceptible to disturbance by people and pets on the beach. Human disturbance disrupts adult birds' care of their nests and young and may inhibit incubation of eggs. Furthermore, adults may leave the nest to lure away an intruder, leaving the eggs or chicks vulnerable to predators and exposure to weather. Also, disturbance may lead to the abandonment of nests. As a result of this disturbance and other natural and human-caused factors such as high water levels, flooding, eroding beaches, and beach-front commercial and recreational development, reproduction of Great Lakes piping plovers has been severely affected, resulting in perilously low numbers of nesting plovers (Service 1994).

Piping plovers are migratory birds. They leave the breeding grounds between late July and early September and head for their wintering grounds, where they spend more than 8 months of the year. Although the breeding ranges of the three piping plover populations are separate, their wintering ranges overlap and extend along the Atlantic and Gulf Coasts from southern North Carolina to Mexico and into the West Indies and Bahamas. Resightings of color-banded birds from the Great Lakes breeding population have occurred along the coastlines of North and South Carolina, Georgia, Florida, Louisiana, and Texas.

Historically, the Great Lakes breeding population of the piping plover nested on beaches in Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin, and in Ontario, Canada. Although piping plovers were never abundant, prior to European settlement, populations in the Great Lakes were estimated at 492–682 breeding pairs (Russell 1983).

In recent decades, piping plover populations have declined drastically, especially in the Great Lakes. In the early 1900s, uncontrolled hunting throughout their range drove them

nearly to extinction. Protective legislation helped them to recover by 1925, and populations reached a 20th Century high in the 1930s (Service 1994). These numbers soon plummeted, though, as recreational and commercial use of beaches increased. Piping plover numbers continued to decline in the 1940s and 1950s as shoreline development expanded, resulting in the loss of their breeding habitat.

In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, piping plovers had been extirpated from shoreline beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, and Ontario, and only a few birds were continuing to nest in Wisconsin (Russell, 1983). By 1979, the Great Lakes breeding population had decreased to 38 pairs. At the time the species was listed under the Endangered Species Act in 1985, the Great Lakes breeding population numbered only 17 breeding pairs, and the breeding areas had been reduced from sites in eight States to northern Michigan.

In recent years, the Great Lakes breeding population has gradually increased and expanded south and west within the Great Lakes watershed. In 1999, 32 pairs of piping plovers nested on the Great Lakes shoreline within the United States, but only one of these pairs was outside of northern Michigan (Stucker and Cuthbert, unpublished data). This population increase is being aided by intense State, tribal, Federal, and private conservation actions directed at the protection of the piping plover. Activities such as habitat surveys, beach restoration, public education, habitat protection and enhancement, and the protection of nests from predators and disturbance through the use of predator exclosure fencing have all contributed to the improving status of the Great Lakes piping plover. This proposal applies only to the breeding range of the Great Lakes population in the United States.

#### Previous Federal Actions

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. The notice included the piping plover as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a proposal to list at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November,

1984, we published a proposal in the **Federal Register** (49 FR 44712) to list the piping plover as endangered in the Great Lakes watershed and as threatened along the Atlantic Coast, the Northern Great Plains, and elsewhere in their range. The proposed listing was based on the decline of the species and the existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants. On December 11, 1985, we published the final rule (50 FR 50726), 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 along the Atlantic coast (Quebec, Newfoundland, Maritime Provinces, and States from Maine to Florida), in the Northern Great Plains region (Iowa, northwestern Minnesota, Montana, Nebraska, North Dakota, South Dakota, Alberta, Manitoba, and Saskatchewan), and on migratory routes and on their wintering grounds. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. The Service did not designate critical habitat for the species at that time.

In 1986, we appointed two recovery teams to develop recovery plans for the Atlantic Coast and Great Lakes/Northern Great Plains breeding populations. The recovery plans that resulted from their efforts were published in 1988 (Service 1988a, Service 1988b). In 1994, we began to revise the plan for the Great Lakes/Northern Great Plains populations by developing and distributing for public comment a draft that included updated information on the species. More recently, we decided that the recovery of these two inland populations would benefit from separate recovery plans that would direct separate recovery programs. Separate recovery plans for the Great Lakes and Northern Great Plains populations are presently under development.

The final listing rule for the piping plover indicated that designation of critical habitat was not determinable. Thus, designation was deferred. No further action was subsequently taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (Defenders of Wildlife and *Piping Plover v. Babbitt*, Case No. 96CV02965) against the Department of the Interior and the Service over the lack of designation of critical habitat for the Great Lakes breeding population of the piping plover. Defenders filed a similar suit (Defenders of Wildlife and Piping

Plover v. *Babbitt*, Case No. 97CV000777) for the Northern Great Plains piping plover population in 1997. During November and December 1999 and January 2000, we began negotiating a schedule for piping plover critical habitat decisions with Defenders. On February 7, 2000, before the settlement negotiations were concluded, the United States District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes breeding population of the piping plover by June 30, 2000, and for nesting and wintering areas of the Northern Great Plains piping plover by May 31, 2001. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002. For biological and practical reasons, we chose to propose critical habitat for the Great Lakes breeding birds and for all wintering birds in two separate rules to be published concurrently.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. Thus, critical habitat areas should provide sufficient habitat to support the species at the population level and geographic distribution that is necessary for recovery. Proposed critical habitat for the Great Lakes breeding population of the piping plover includes areas that currently support the species, and also areas that are not currently used by the species but that contain habitat essential for the recovery of the species.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other

relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when we determine that benefits of excluding those areas outweigh the benefits of including them, providing the exclusion would not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public, as well as land-managing agencies, to the importance of these areas.

Section 7 of the Act requires Federal agencies to ensure, in consultation with us, that any actions they authorize, fund, or carry out do not adversely modify or destroy critical habitat. Section 7 also requires Federal agencies to confer with us on actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Designation of critical habitat affects actions on private lands only when the actions are authorized, funded, or carried out by a Federal agency.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not establish a preserve area where human activities are prohibited, create a management plan, establish numerical population goals, or prescribe specific management practices (inside or outside of critical habitat). Specific management recommendations for areas designated as critical habitat are most appropriately addressed in the Recovery Plan, site-specific management plans, through section 7 consultation on Federal activities, and section 10 incidental take permits.

All of the proposed critical habitat areas are considered essential to the conservation of the Great Lakes breeding population of the piping plover as described in the approved 1988 Recovery Plan for the Great Lakes and Northern Great Plains Piping Plover (Plan) and the 1994 Recovery Plan for the Great Lakes Piping Plover. The proposed designation encompasses those areas considered necessary to achieve the recovery goals for this population, and includes Great Lakes shoreline and island beaches that currently support piping plovers, that historically supported and are still capable of supporting piping plovers, and areas that have the potential to support piping plovers in the future. Not all of the primary constituent elements may be present in all of the areas proposed for designation, but

given the dynamic character of shoreline processes, areas currently lacking some of the constituent elements could develop them in the future. Over a period of a few years, these sites may be affected by changes in local water levels, weather, and other external forces, which may in turn change the suitability of such sites for piping plovers.

We considered, and are proposing, a portion of the Bad River Indian Reservation because we believe some shoreline areas on Tribal lands may be essential to the conservation of Great Lakes piping plover. However, the short amount of time provided under the schedule dictated by the court to propose critical habitat prevented us from doing more than initiating coordination with the Bad River Band of the Lake Superior Tribe of the Chippewa Indians. Subsequent to this proposal, we will continue coordinating with the Bad River Band before making a final determination as to whether any Tribal lands should be included as critical habitat for the Great Lakes piping plover. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweigh the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of the Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

### Methods

In determining areas that are essential to conserve the Great Lakes breeding population of the piping plover, we used the best scientific and commercial data available. We solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. In an effort to map areas essential to the conservation of the species, we used data of known piping plover breeding locations, records of historical nesting sites, International Census data, and those areas that were identified in the 1988 recovery plan and 1999 draft recovery plan as essential for the recovery of the species. We have chosen the 37 critical habitat units in order to protect adequate habitat to meet the recovery criteria, contained in the Plan and draft Plan, of 100 breeding pairs in Michigan and 50 breeding pairs

in the other Great Lakes States combined.

We did not map critical habitat in sufficient detail to exclude all currently developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation, and are not critical habitat even though they are within the mapped boundaries. Designating specific locations for critical habitat for the piping plovers is difficult because the beach areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Areas lakeward of the beach and covered by water (e.g., lakes) will not contain one or more of the primary constituent elements, and are not critical habitat. Because of the dynamics of beach areas, however, areas now covered by water may in the future become land, and will then under this designation become critical habitat if they fall within the mapped boundaries.

The critical habitat units are larger complexes of habitat that contain areas that currently have the primary constituent elements necessary for piping plovers and other areas that may develop these primary constituent elements. During section 7 consultation, we will determine whether an action may affect the primary constituent elements or the ability of the areas to develop them.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The areas we are proposing for designation as critical habitat provide

some or all of those habitat components essential for the biological needs of the piping plover or have the capacity to develop these habitat components. These components are also called primary constituent elements.

The primary constituent elements for the Great Lakes breeding population of the piping plover are those habitat components that are essential for the biological needs of foraging, sheltering, reproduction, rearing of young, intra-specific communication, roosting, nesting, and dispersal. Proposed critical habitat for the Great Lakes breeding population of piping plovers includes sites that: (1) Are currently or recently (at least once during the past 5 years) used for breeding, (2) were documented to have been occupied historically and still have most or all of the primary constituent elements, or (3) are not documented to have been occupied historically but are deemed potential breeding habitat because their characteristics are suitable for breeding by piping plovers.

The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support, or have the potential to support, open, sparsely vegetated sandy habitats—sand spits or sand beaches associated with wide, unforested systems of dunes and inter-dune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 km (0.12 mi) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (ha) (5 acres (ac)) and a low level of disturbance from human activities and from domestic animals. These appropriately sized sites must also have areas of at least 50–100 meters (m) (165–330 feet (ft)) in length where (1) the beach width is more than 7 m (23 ft), (2) there is protective cover for nests and chicks, and (3) the distance to the treeline (from the normal high water line to where the forest begins) is more than 50 m (165 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge, or to the sand/vegetation boundary in areas where the foredune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas at

least 7 m (23 ft) exist between the dune and the treeline. Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.39 inches (in)) diameter), gravel (stones smaller than 1 cm (0.39 in) diameter), or debris such as driftwood, wrack, root masses, or dead shrubs.

Dominant plants within these areas include marram grass (*Ammophila brevifolula*), beach wormwood (*Artemisia campestris*), silverweed (*Potentilla anserina*), Lake Huron tansy (*Tanacetum huronense*), pitcher's thistle (*Cirsium pitcheri*), beach pea (*Lathyrus maritimus* var. *glaber*), sea rocket (*Cakile edentula*), sedges (*Carex* spp.), goldenrods (*Solidago* spp.), sand cherry (*Prunus pumila*), bearberry (*Actostaphylos uva-ursi*), creeping juniper (*Juniper horizontalis*), cottonwood (*Populus deltoides*), and willow (*Salix* spp.).

#### Proposed Critical Habitat Designation

At this time, the proposed critical habitat areas contained within the critical habitat units discussed below constitute our best evaluation of areas needed for the conservation of the Great Lakes breeding population of the piping plover. Very little suitable piping plover habitat remains in the Great Lakes region. Therefore, areas that were historically occupied by piping plover and that still contain suitable habitat or potentially could contain suitable habitat, as well as areas that are not known to have been historically occupied but have potential piping plover habitat, are necessary for the recovery of the species. Proposed critical habitat may be revised should new information become available prior to the final rule. Critical habitat subsequently may be revised if new information becomes available after the final rule. Any subsequent areas of critical habitat will be designated only after a formal proposal and opportunity for public comment.

The approximate length of proposed critical habitat shoreline by land ownership is shown in Table 1. Lands proposed as critical habitat are under private, Federal, State, municipal, and tribal ownership. Estimates reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed for designation by this proposal is therefore less than that indicated in Table 1.

TABLE 1.—KILOMETERS OF GREAT LAKES SHORELINE PROPOSED AS CRITICAL HABITAT UNITS FOR THE PIPING PLOVER IN EACH GREAT LAKES STATE SUMMARIZED BY FEDERAL, STATE, MUNICIPAL, PRIVATE AND OTHER OWNERSHIP

	Ownership					
	km shoreline (percentage within each State)					
	Federal	State	Municipal	Private	Other	Total
Michigan .....	36.6 (16.9)	103.6 (47.9)	6.1 (2.8)	64 (29.6)	6 TNC (2.8)	216.3
Minnesota .....	0	1.4 (50.0)	1.0 (35.7)	0.4 (14.3)	0	2.8
Wisconsin .....	11.0 (33.8)	11.0 (33.8)	5.5 (16.9)	0	5 tribal (15.4)	32.5
Illinois .....	0	4.7 (46.3)	1.25 (12.3)	4.2 (41.3)	0	10.15
Indiana .....	5.5 (52.4)	5.0 (47.6)	0	0	0	10.5
Ohio .....	0	2.0 (50)	0	2.0 (50)	0	4.0
Pennsylvania .....	0.4 (26.7)	1.1 (73.3)	0	0	0	1.5
New York .....	0	12.4 (45.3)	0	14.6 (53.3)	0.4 TNC (1.5)	27.4
Total (percentage of) .....	53.5 (17.5)	141.2 (46.3)	13.85 (4.5)	85.2 (27.9)	11.4 (3.7)	305.1

There is no numerical estimate of the extent of the piping plover's historical range in the Great Lakes, but Russell (1983) indicates that several areas where piping plovers once nested are no longer suitable. Much historically occupied habitat has been destroyed by activities such as marina development, construction of seawalls, and the increased use of recreation areas. Additionally, lake level fluctuations and winter storms periodically alter the quantity and quality of available breeding habitat, making some areas no longer suitable for nesting while potentially creating new areas of

suitable habitat. Because of the loss of historical habitat and the dynamic nature of the Great Lakes shoreline, some areas for which there are no historical records of piping plovers but which are potential nesting habitat are being proposed for designation. Without these potential habitat areas, there would not be enough nesting habitat to meet the recovery criteria outlined in the Revised Recovery Plan for Piping Plovers (1994).

Lands proposed as critical habitat have been divided into 37 critical habitat units that contain, or have the potential to develop, areas with the

primary constituent elements for the piping plover in the Great Lakes region. All critical habitat unit boundaries extend 1 km (0.62 miles) inland from the normal high water line, although the area that contains the primary constituent elements may vary depending on the extent of the open dune system. This area is needed to provide foraging habitat as well as cobble pans between the dunes where piping plovers occasionally nest. A brief description of each critical habitat unit for the piping plover is given below and in Table 2.

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION

Habitat unit	Location name	County	USGS 7.5' quad map(s) 1:24,000 scale	Land ownership <sup>1</sup>	Plover use <sup>2</sup>	Est. length (km)
MI-1	<b>Whitefish Point to Grand Marais</b>					
	Whitefish Point .....	Chippewa .....	Whitefish Point (1951) ....	Federal (Service), private	Recent past, transient.	2.5
	Vermilion/Weatherhogs Beach.	Luce .....	Vermilion (1951) .....	Private .....	Current .....	2.3
	Crisp Point .....	Luce .....	Betsy Lake North (1968)	Municipal, private .....	Recent past .....	1.0
	Little Lake Harbor .....	Luce .....	Betsy Lake North (1968)	Private .....	Recent past .....	1.6
	Deer Park .....	Luce .....	Muskallonge Lake East (1968). Muskallonge Lake West (1968).	State, private .....	Recent past .....	2.8
	Grand Marais Inner Harbor and Lonesome Point.	Alger .....	Grand Marais 1968 .....	Multiple private, municipal.	Current .....	2.9
	Grand Marais Superior Beach.	Alger .....	Grand Marais 1968 .....	Multiple private, Federal (NPS).	Current .....	1.2
MI-2 .....	Point Aux Chenes .....	Mackinac	Pointe Aux Chenes (1964, photorevised 1975).	Federal (USFS), private	Current .....	1.7
MI-3 .....	Port Inland .....	Schoolcraft .....	Hughes Point (1972) .....	Private/State .....	Current .....	3.0
MI-4	<b>Waugoshance Point to beach west of McCort Hill—</b>					
	Waugoshance Point, Temperance and Crane Islands.	Emmet .....	Big Stone Bay (1964, photoinspected 1975). Waugoshance Island (provisional 1982).	State .....	Current .....	5.0
	Sturgeon Bay .....	Emmet .....	Bliss (1982) .....	State .....	Current .....	3.9
	Bliss Township Park .....	Emmet .....	Bliss (1982) .....	Municipal .....	Current .....	1.1

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habitat unit	Location name	County	USGS 7.5' quad map(s) 1:24,000 scale	Land ownership <sup>1</sup>	Plover use <sup>2</sup>	Est. length (km)
MI-5	Sturgeon Bay Point .....	Emmet .....	Bliss (1982) .....	Multiple private .....	Current .....	2.4
	Cross Village Beach .....	Emmet .....	Cross Village (1982) .....	Municipal, multiple private.	Current .....	1.3
	beach west McCort Hill ..	Emmet .....	Cross Village (1982) .....	Multiple private .....	Current .....	1.4
	<b>Sevenmile Point to Thorneswift Nature Preserve—</b>					
	Sevenmile Point .....	Emmet .....	Forest Beach (1983 provisional).	Multiple private .....	Potential .....	0.5
MI-6	Thorneswift Nature Preserve.	Emmet .....	Forest Beach (1983 provisional).	Multiple private .....	Current .....	0.4
	Petoskey State Park .....	Emmet .....	Harbor Springs (1983 provisional).	State, private .....	Historical .....	2.0
MI-7	North Point .....	Charlevoix .....	Ironston (1983) .....	Municipal .....	Potential .....	1.1
MI-8	Fisherman's Island State Park.	Charlevoix .....	Charlevoix (1983) .....	State .....	Current .....	1.3
MI-9	<b>Indian Point to McCauley's Point, Beaver Island—</b>					
MI-10	Donegal Bay-Beaver Island.	Charlevoix .....	Garden Island West (1980). Beaver Island North (1986).	Multiple private .....	Current .....	2.0
	McCauley's Point-Beaver Island.	Charlevoix .....	Beaver Island North (1986).	State .....	Recent past .....	0.6
MI-11	Greenes Bay-Beaver Island.	Charlevoix .....	Beaver Island North (1986).	State/private .....	Recent past .....	0.8
MI-12	High Island .....	Charlevoix .....	High Island (1986) .....	State .....	Current .....	1.8
MI-13	<b>Cathead Bay to Christmas Cove—</b>					
	Cathead Bay .....	Leelanau .....	Northport (provisional 1983).	State .....	Current .....	3.4
	Cathead Point to Christmas Cove.	Leelanau .....	Northport/Northport NW (provisional 1983).	Private .....	Potential .....	2.5
	South Fox Island .....	Leelanau .....	South Fox Island (provisional 1986).	State .....	Historical .....	1.0
	North Manitou .....	Leelanau .....	North Manitou Island (provisional 1983).	Federal (NPS) .....	Current .....	3.3
MI-15	Crystal Run to Empire Beach.	Leelanau .....	Glen Arbor (1983) .....	Municipal, Federal .....	Potential .....	14.3
MI-16	<b>Esch Road to Sutter Road and Point Betsie—</b>					
MI-17	Platte Bay .....	Benzie .....	Empire (1983) Beulah (provisional 1983).	Federal (NPS) .....	Potential .....	7.0
	Platte River Point and beach.	Benzie .....	Beulah (provisional 1983)	Federal (NPS) .....	Current .....	5.5
	Point Betsie .....	Benzie .....	Frankfort (1983) .....	Federal (USCG) TNC managed.	Historical .....	1.0
MI-18	Nordhouse Dunes to Ludington.	Mason .....	Manistee NW (provisional 1982). Hamlin Lake (1982) .....	Federal (USFS), State ...	Transient, historical.	13.4
MI-19	Muskegon State Park .....	Muskegon .....	Muskegon West (1972 photoinspected 1980).	State .....	Historical .....	2.5
MI-20	Lake Superior State Forest-St. Vital Point.	Chippewa .....	Albany Island (1964 photoinspected 1976) DeTour Village (1964).	State .....	Historical .....	3.0
MI-21	<b>Lighthouse Point to Cordwood Point—</b>					
MI-22	Lighthouse Point .....	Cheboygan .....	Cheboygan (1982) .....	State .....	Recent past .....	1.4
	Grass Bay .....	Cheboygan .....	Cordwood Point (1982) ..	TNC preserve .....	Historical, transient.	1.6
MI-23	PH Hoeft State Park .....	Presque Isle .....	Roger's City (1971) .....	State .....	Potential .....	3.7
MN-1	Thompson's Harbor .....	Presque Isle .....	Moltke (1971) .....	State forest .....	Potential .....	2.8
MN-1	Tawas Point State Park	Iosco .....	Thompson's Harbor (1971). East Tawas (1989) .....	State .....	Transient .....	2.0
	Duluth Harbor .....	St. Louis .....	West Duluth (1953, photorevised 1969).	Municipal, State, and private.	Recent past .....	2.8

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habitat unit	Location name	County	USGS 7.5' quad map(s) 1:24,000 scale	Land ownership <sup>1</sup>	Plover use <sup>2</sup>	Est. length (km)	
WI-1	Wisconsin Point .....	Douglas .....	Parkland (1954, photorevised 1975). Superior (1954, photorevised 1983).	Municipal .....	Historical .....	4.0	
WI-2	Long Island-Chequamegon Pt.  .....	Ashland .....	Cedar (1964, photorevised 1975). Chequamegon Point .....  (1964, photorevised 1975). Long Island (1964).	Federal (NPS), tribal (Bad River).	Current .....	5.0	
WI-3	Western Michigan Island	Ashland .....	Michigan Island (1963) ..	Federal (NPS) .....	Potential .....	6.5	
WI-4	Seagull Bar .....	Marinette .....	Marinette East (1963, photorevised 1969).	Municipal .....	Potential .....	1.5	
WI-5	Peshtigo Point .....	Marinette .....	Peshtigo Harbor (1974) ..	State .....	Potential .....	2.8	
WI-6	Pensaukee .....	Oconto .....	Pensaukee (1974) .....	Federal (ACOE) .....	Historical .....	0.5	
WI-7	Point Beach State Forest	Manitowoc .....	Two Rivers (1978) .....	State .....	Potential .....	8.0	
IL-1	Illinois Beach State Park to Waukegan Beach.	Lake .....	Zion, Ill. (1993) .....	Municipal, State, private	Historical .....	10.2	
IN-1	Indiana Dunes National Lakeshore/Indiana Dunes State Park.	Porter .....	Waukegan (1993) .....	Ogden Dunes (1991) ..... Dune Acres (1991) .....	Federal (NPS), State .....	Historical, transient.	10.5
OH-1	Sheldon Marsh .....	Erie .....	Huron (1969) .....	State .....	Transient .....	1.2	
OH-2	Headlands Dunes .....	Lake .....	Sandusky (1969, photorevised 1975). Mentor (1963, revised 1992).	State .....	Potential .....	0.8	
PA-1	Presque Isle State Park	Erie .....	Erie North (1957, revised 1969 and 1975, photoinspccted 1977).	State, Federal (USCG) ...	Historical, transient.	1.5	
NY-1	Salmon River to Stony Point.	Oswego .....	Pulaski (1956) .....	State, multiple private .....	Historical .....	27.4	
		Jefferson .....	Ellisburg (1958) .....				
			Henderson (1959) .....				

<sup>1</sup>USACE = U.S. Army Corp of Engineers.

NPS = National Park Service.

TNC = The Nature Conservancy.

USFS = U.S. Forest Service.

USFWS = U.S. Fish and Wildlife Service.

USCG = U.S. Coast Guard.

<sup>2</sup>Current = used for nesting since 1995 (49 km).

Recent past = used for nesting since 1985 (11.8 km).

Historical = used for nesting prior to 1985 (65 km).

Transient = Recent (since 1990) sightings of piping plovers (18 km).

Potential = no known record of use but habitat appears suitable for nesting (52 km).

*Michigan*

## Unit MI-1: Whitefish Point to Grand Marais

This unit encompasses approximately 83.5 km (50 mi) of Lake Superior shoreline in Chippewa, Luce, and Alger Counties on the Upper Peninsula of Michigan. It includes long stretches of habitat that have been recently used by piping plovers in addition to areas currently used by plovers.

Approximately 47 km (29.2 mi) are part of Muskallonge State Park and Lake Superior State Forest, approximately 36 km (22.4 mi) are privately owned, and approximately 0.5 km (0.3 mi) are part of Whitefish Point National Wildlife Refuge. This unit also includes a small area of municipal property at Crisp Point. This unit extends from the

junction of the southern boundary of T50N R5W section 6 to the Pictured Rocks National Lakeshore property boundary.

## Unit MI-2: Pointe Aux Chenes

This unit encompasses approximately 2 km (1.2 mi) of Lake Michigan shoreline in Mackinac County on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. The majority of the unit (1.1 km (0.7 mi)) is within the Hiawatha National Forest and is being considered for a Research and Natural Area. The rest of the unit (approximately 0.6 km (0.4 mi)) is privately owned land. This unit extends from the mouth of the Pointe Aux Chenes river to the Hiawatha National Forest property boundary.

## Unit MI-3: Port Inland to Hughes Point

This unit encompasses approximately 3 km (1.8 mi) of Lake Michigan shoreline in western Mackinac and eastern Schoolcraft Counties on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. Approximately 0.8 km (0.5 mi) of the proposed shoreline is owned by Port Inland Stone and Dolomite Quarry and the remaining 2.2 km (1.4 mi) are part of the Lake Superior State Forest. This unit extends from the westernmost breakwall at the Port Inland Gaging Station to the mouth of Swan Creek.

Unit MI-4: Waugoshance Point to McCort Hill Beach

This unit encompasses approximately 32 km (19.2 mi) of Lake Michigan shoreline in Emmet County, Michigan, and includes Temperance and Waugoshance islands. It includes areas that are currently occupied by piping plovers and supports about half of the current Great Lakes piping plover population. Approximately 8.5 km (5.3 mi) are privately owned and 1 km (0.6 mi) is municipal land (Bliss Township beach and Cross Village beach). The remaining 22.5 km (14 mi) are part of Wilderness State Park. This unit extends from the junction of the northeast corner of T39N R5W section 28 and the Lake Michigan shoreline to the southwest boundary of T37N R6W section 5.

Unit MI-5: Sevenmile Point to Thornswift Nature Preserve

This unit encompasses approximately 7 km (4.3 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of potential piping plover nesting habitat and areas that are currently occupied by piping plovers. The entire proposed area is under private ownership. It extends from the junction of the Lake Michigan shoreline and the northwest boundary of T36N R5W section 30 to the junction of the shoreline and the southwest corner of T35N R5W section 9.

Unit MI-6: Petoskey State Park

This unit encompasses approximately 2 km (1.2 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of historical piping plover habitat. Approximately 0.7 km (0.4 mi) is privately owned land and 1.3 km (0.8 mi) are part of Petoskey State Park. This unit extends from the mouth of Tannery Creek to Mononaqua Beach.

Unit MI-7: North Point

This unit encompasses approximately 1.1 km (0.7 mi) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas of potential piping plover nesting habitat. The entire proposed area is a city park owned by the city of Charlevoix. It includes all Lake Michigan shoreline within T34N R8W section 14.

Unit MI-8: Fisherman's Island State Park

This unit encompasses approximately 1.3 km (0.8 miles) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is within Fisherman's Island State Park. This unit extends from the junction of the line

separating T34N R8W section 31 and T33N R8W section 6 from the Lake Michigan shore to the Fisherman's Island State Park property boundary at the end of Lakeshore Drive.

Unit MI-9: Indian Point to McCauley's Point, Beaver Island

This unit encompasses approximately 5 km (3.1 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that are currently occupied, as well as areas that have been recently used by piping plovers. Approximately 4.4 km (2.7 mi) are privately owned and 0.6 km (0.4 mi) is part of Beaver Islands State Wildlife Research Area. This unit extends from Indian Point to the junction of the dividing line of T39 N R10W and T38N R10W and the Lake Michigan shoreline.

Unit MI-10: Greenes Bay, Beaver Island

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that have been recently used by piping plovers. Approximately 0.3 km (0.2 mi) is part of the Beaver Islands State Wildlife Research Area and the remaining 0.5 km (0.3 mi) is privately owned land. This unit extends from the junction of Lake Michigan and the northwest corner of T38N R11W section 25 to the junction of the Lake Michigan shoreline and the dividing line between T39N and T38N R10W.

Unit MI-11: High Island

This unit encompasses approximately 1.8 km (1.1 mi) of Lake Michigan shoreline on High Island in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is part of the Beaver Islands State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T39N R11W sections 5, 27, and 32.

Unit MI-12: Cathead Bay to Christmas Cove

This unit encompasses approximately 5.9 km (3.7 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers and areas of potential piping plover nesting habitat. Approximately 1.9 km (1.2 mi) are part of Leelanau State Park, and the remaining 4.0 km are privately owned land. This unit extends from the intersection of the Lake Michigan shoreline and the line between T32N R11W section 12 and T32N R10W section 7 to the intersection of the shoreline with the southern boundary of

T32N R11W section 16 north of Christmas Cove (Northport NW quad).

Unit MI-13: South Fox Island

This unit encompasses approximately 1 km (0.6 mi) of Lake Michigan shoreline on South Fox Island in Leelanau County, Michigan. It includes areas that were historically occupied by piping plovers. The entire proposed area is part of the Beaver Island State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T34N R13W sections 15, 16, and 21 and T35R13W section 30.

Unit MI-14: North Manitou Island

This unit encompasses approximately 3.3 km (2 mi) of Lake Michigan shoreline on North Manitou Island in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers. The entire proposed area is part of Sleeping Bear Dunes National Lakeshore. This unit includes all Lake Michigan shoreline within T31N R14W sections 22, 23, 27, and 28.

Unit MI-15: Crystal Run to Empire Beach

This unit encompasses approximately 14.3 km (8.9 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas of potential piping plover nesting habitat. Approximately 4.0 km (2.5 mi) are municipal beach, and the remaining 10.3 km (6.4 mi) are part of Sleeping Bear Dunes National Lakeshore. This unit extends from Crystal Run to the southern Sleeping Bear Dunes National Lakeshore property boundary.

Unit MI-16: Esch Road to Sutter Road and Point Betsie

This unit encompasses approximately 13.5 km (8.4 mi) of Lake Michigan shoreline in Benzie County, Michigan. It includes areas that are currently occupied by piping plovers, areas that were historically occupied, and areas of potential piping plover nesting habitat. The majority of the unit (12.5 km (7.8 mi)) is part of Sleeping Bear Dunes National Lakeshore, and the remaining 1.0 km (0.6 mi) is U.S. Coast Guard land that is managed by The Nature Conservancy, a private conservation organization. This unit extends from Esch Road to T26N R16W section 4.

Unit MI-17: Nordhouse Dunes and Ludington State Park

This unit encompasses approximately 13.4 km (8.3 mi) of Lake Michigan shoreline in Mason County, Michigan. It includes areas that were historically occupied by piping plovers. At least one pair of piping plovers were sighted in

the area in 1999, but no nests were found. Approximately 7.4 km (4.6 mi) are part of the Manistee National Forest/ Nordhouse Dunes Wilderness Area, and the remaining 6.0 km (3.7 mi) are part of Ludington State Park. This unit extends from the mouth of Cooper Creek to the mouth of the Big Sable River.

#### Unit MI-18: Muskegon State Park

This unit encompasses approximately 2.5 km (1.6 mi) of Lake Michigan shoreline in Muskegon County, Michigan. It includes areas that were historically occupied by piping plovers. In the early 1950s, several pairs of piping plovers were reported nesting in this unit, but the last known nesting was in 1953. The entire proposed area is part of Muskegon State Park. This unit extends from the north breakwall of the canal joining Muskegon Lake and Lake Michigan to the northern Muskegon State Park property boundary at the shoreline.

#### Unit MI-19: Lake Superior State Forest-St. Vital Point

This unit encompasses approximately 3.0 km (1.9 mi) of Lake Huron shoreline in Chippewa County, Michigan. It includes areas that were historically occupied by piping plovers. The entire proposed area is within Lake Superior State Forest. This unit extends from the Lake Superior State Forest boundary to the mouth of Joe Straw Creek.

#### Unit MI-20: Lighthouse Point to Cordwood Point

This unit encompasses approximately 8.3 km (5.2 mi) of Lake Huron shoreline in Cheboygan County, Michigan. It includes areas that were historically occupied by piping plovers and currently serve as foraging areas. Approximately 3 km (1.9 mi) are part of Cheboygan State Park, and approximately 1.6 km (1 mi) are Nature Conservancy property. The remaining 0.6 km (0.4 mi) is privately owned land. This unit extends from the junction of the Lake Huron shoreline and the western boundary of T38N R1W section 22 to just west of Cordwood Point (Cordwood Point quad).

#### Unit MI-21: P.H. Hoeft State Park

This unit encompasses approximately 3.7 km (2.3 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of P.H. Hoeft State Park. This unit includes Lake Huron shoreline from T35N R5E section 6 to the junction of Nagel Road and Forty Mile Road.

#### Unit MI-22: Thompson's Harbor State Park

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of potential piping plover nesting habitat. Most of this proposed area is within Thompson's Harbor State Park with a small portion of privately owned land. This unit extends along the Lake Huron shoreline from Black Point to Grand Lake Outlet.

#### Unit MI-23: Tawas Point State Park

This unit encompasses approximately 2.0 km (1.2 mi) of Lake Huron shoreline in Iosco County, Michigan. It includes areas used for foraging by transient piping plovers and potential nesting habitat. The entire proposed area is part of Tawas Point State Park. This unit extends from the Tawas State Park boundary on the east side of Tawas Point to T22N R8E section 34.

#### Minnesota

#### Unit MN-1: Duluth Harbor

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Superior mainland and island shoreline in St. Louis County, Minnesota, including Erie Pier, Hearing Island, and Interstate Island. It includes areas that have been recently occupied by piping plovers. The approximate 1 km (0.6 mi) of shoreline at Erie Pier is owned by the city of Duluth. The approximate 1.2 km (0.7 mi) of island shoreline on Hearing Island is a State Wildlife Management Area and bird sanctuary. A portion of the 0.6 km (0.4 mi) of island shoreline on Interstate Island is in Minnesota, and a portion is in Wisconsin.

Approximately 0.2 km (0.1 mi) of Interstate Island shoreline is owned by the State of Minnesota and is a State Wildlife Management Area and bird sanctuary. The remaining 0.4 km (0.2 mi) of Interstate Island shoreline is in Wisconsin and is private land owned by C. Rice Coal and Burlington Northern Railroad. This unit includes the dredge spoil flats bounded by the seawall northeast of the railroad tracks in Duluth as well as Interstate and Hearing Islands.

#### Wisconsin

#### Unit WI-1: Wisconsin Point

This unit encompasses approximately 4.0 km (2.5 mi) of Lake Superior shoreline in Douglas County, Wisconsin. It includes areas that were historically occupied by piping plovers. The entire proposed area is municipal land belonging to the city of Superior. This unit extends from the mouth of

Dutchman Creek to the Douglas and St. Louis County line.

#### Unit WI-2: Long Island/Chequamegon Point

This unit encompasses approximately 18 km (11.2 mi) of Lake Superior shoreline in Ashland County, Wisconsin. It includes areas currently occupied by piping plovers. Nesting occurred in this unit in 1998 and 1999. Approximately 13 km (8.1 mi) are part of the Apostle Islands National Lakeshore, and the remaining 5 km (3.1 mi) are Tribal lands belonging to the Bad River Band of Lake Superior Tribe of Chippewa Indians. This unit extends from the mouth of the Newago Creek to Chequamegon Point Light.

#### Unit WI-3: Western Michigan Island Beach and Dunes

This unit encompasses approximately 6.5 km (4 mi) of Lake Superior shoreline on Michigan Island in Ashland County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Apostle Island National Lakeshore. This unit includes all Lake Superior shoreline on Michigan Island within T51N R1W sections 28, 20, and 21.

#### Unit WI-4: Seagull Bar

This unit encompasses approximately 1.5 km (0.9 mi) of Lake Michigan shoreline in Marinette County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is municipal land. This unit extends from the end of Leonard Street at Red Arrow Park to the south end of Seagull Bar including nearshore sand bars.

#### Unit WI-5: Peshtigo Point

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Michigan shoreline in Marinette County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Peshtigo Harbor State Wildlife Area. This unit extends from Peshtigo Point to the mouth of the Peshtigo River.

#### Unit WI-6: Pensaukee Dredge Spoil Island

This unit encompasses less than 0.5 km (0.3 mi) of Lake Michigan island shoreline in Oconto County, Wisconsin. It includes areas that were historically occupied by piping plovers. The island is a U.S. Army Corp of Engineers dredge spoil island. This unit includes the island just south of the mouth of the Pensaukee River in T27N, R21E section 14.

**Unit WI-7: Point Beach State Forest**

This unit encompasses approximately 8 km (5 mi) of Lake Michigan shoreline in Manitowoc County, Wisconsin. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of the Point Beach State Forest. This unit extends from the southwest property boundary of Point Beach State Forest to Rawley Point.

**Illinois****Unit IL-1: Illinois Beach State Park / Nature Preserve to Waukegan Beach**

This unit encompasses approximately 10.2 km (6.3 mi) of Lake Michigan shoreline in Lake County, Illinois. It includes areas that were historically occupied by piping plovers. Approximately 4.7 km (2.9 mi) are part of the Illinois Beach State Park and Nature Preserve, approximately 1.3 km (0.8 mi) are municipal property (Zion municipal park and Waukegan municipal beach), and the remaining 4.2 km (2.6 mi) are privately owned. This unit extends from 17th Street and the Lake Michigan shoreline in Illinois Beach State Park to the Waukegan Beach breakwall at North Beach Park.

**Indiana****Unit IN-1: Indiana Dunes National Lakeshore and Indiana Dunes State Park Beaches**

This unit encompasses approximately 10.5 km (6.5 mi) of Lake Michigan shoreline in Porter County, Indiana. It includes areas that were historically occupied by piping plovers. Approximately 5 km (3.1 mi) are part of Indiana Dunes State Park and the remaining 5.5 km (3.4 mi) are part of Indiana Dunes National Lakeshore. This unit extends from the Burns Harbor eastern breakwall along the Indiana Dunes State Park to Kemil Road at Beverly Shores.

**Ohio****Unit OH-1: Sheldon Marsh**

This unit encompasses approximately 3.2 km (2.0 mi) of Lake Erie shoreline in Erie County, Ohio. It includes areas that are used by transient piping plovers and potential nesting habitat. Approximately 1.2 km (0.7 mi) are part of Sheldon Marsh State Nature Preserve, and the remaining 2.0 km (1.2 mi) are privately owned land. This unit extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area.

**Unit OH-2: Headland Dunes**

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Erie shoreline

in Lake County, Ohio. It includes areas of potential piping plover nesting habitat. The entire proposed area is part of Headland Dunes State Nature Preserve. This unit extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park.

**Pennsylvania****Unit PA-1: Gull Point Natural Area, Presque Isle State Park**

This unit encompasses approximately 1.5 km (0.9 mi) of Lake Erie shoreline in Erie County, Pennsylvania. It includes foraging areas for transient piping plovers and areas that were historically occupied. Approximately 1.1 km (0.7 mi) are part of the Presque Isle State Park, and the remaining 0.4 km (0.2 mi) is U.S. Coast Guard property. This unit extends from the lighthouse north of Peninsula Drive on the north side of Presque Isle to the breakwall south of the Coast Guard Station on Thompson Bay. It includes any new beach habitat that may accrete along the present shoreline portion of the unit.

**New York****Unit NY-1: Salmon River to Stony Point**

This unit encompasses approximately 27.4 km (17 mi) of Lake Ontario shoreline in Jefferson and Oswego Counties, New York. It includes areas that were historically occupied by piping plovers. Approximately 12.4 km (7.7 mi) are State land (New York State Department of Environmental Conservation (DEC) Wildlife Management Area/ New York DEC Unique Area and New York State Park), approximately 14.6 km (9.1 mi) are privately owned, and the remaining 0.4 km (0.2 mi) belong to The Nature Conservancy. This unit extends from the mouth of the Salmon River to the Eldorado Road.

**Effects of Critical Habitat Designation****Section 7 Consultation**

Section 7(a) of the Act requires all Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Individuals, organizations, States, tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires all Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must consult with us.

When we issue a biological opinion concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report on proposed critical habitat if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if the proposed critical habitat were already designated. Conference reports, required for species proposed for listing as threatened or endangered, or for proposed critical habitat designations, provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the agency's proposed action. The conservation recommendations in a conference report are advisory. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the Federal action alter the content of the opinion (see 50 CFR 402.10(d)).

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Great Lakes breeding population of the piping plover is appreciably diminished. In the case of occupied habitat, such activities may also jeopardize the continued existence of the Great Lakes population of piping plovers. In the case of unoccupied habitat, such activities may alter the ability of an area to develop the primary constituent elements.

An activity will likely not adversely modify critical habitat within a designated critical habitat unit if the specific area does not contain any primary constituent elements. For example, existing areas such as parking lots, paved roads, and various kinds of human-built structures within critical habitat unit boundaries would not furnish habitat or biological features for piping plovers. Furthermore, some activities would not be restricted by critical habitat designation because they would have no adverse effect on the primary constituent elements or the ability of an area to develop those elements.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal

agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, the effects of destruction or adverse modification of critical habitat would almost always be reflected in the effects on the species itself when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the piping plover is not likely to result in regulatory protection of the species above that already in place due solely to the presence of the listed species. However, designation of critical habitat in areas that are not known to be occupied by this species may result in additional consultations between us and other Federal agencies; these additional consultations may affect Federal actions beyond those that are already affected by the listing of the piping plover as endangered.

Federally funded, permitted, or authorized activities that could adversely affect critical habitat of the Great Lakes breeding population of the piping plover include, but are not limited to the following: (1) Marina and boat launch construction and maintenance; (2) harbor dredging and dredge spoil placement and disposal; (3) fill of interdunal wetlands for residence, driveway, or other construction; (4) waste-water discharge from communities; (5) all-terrain vehicular activity on beaches or the construction of facilities that increase such activity; (6) beach stabilization activities that impede natural overwash processes including beach nourishment, planting of vegetation, and construction and maintenance of seawalls, breakwaters, and other off-shore stabilizing devices; and (7) sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded. Additionally, public access may be temporarily or seasonally restricted on beaches having a Federal nexus in order to determine which areas may be utilized for nesting. These beaches could be closed to assess the use by piping plovers in the spring

months. Some of these closures may be voluntary by governmental and private land managers. Most closures would end prior to the time the public would frequent these beaches. Designation of critical habitat for piping plovers breeding in the Great Lakes notifies the U.S. Army Corps of Engineers, other permitting agencies, and the public that the Clean Water Act section 404 nationwide permits and other Federal authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we will review the direct and indirect effects of the proposed projects on piping plovers and their critical habitat.

#### *Relationship to Incidental Take Permits Issued Under Section 10*

One habitat conservation planning effort is currently in progress within the range of the Great Lakes breeding population of piping plovers. The Magic Carpet Woods Association applied to the Service for an Incidental Take Permit for the piping plover. Incidental take is a potential indirect result of the applicant's proposed residential development along a 0.8 km (0.5 mi) section of Lake Michigan beach in Leelanau County, Michigan. A Habitat Conservation Plan (HCP) submitted with the application will likely avoid or minimize incidental take of piping plovers. The proposed development falls within proposed piping plover critical habitat; however, no construction is proposed on the beach portion of the property. We will continue to work with the applicant so as to prevent the project from adversely modifying or destroying proposed critical habitat. The beach on this property currently does not constitute piping plover nesting habitat, but likely provides foraging habitat and potential nesting habitat.

In the event that additional HCPs covering the Great Lakes piping plover are developed in the future within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species. We fully

expect that HCPs undertaken by local jurisdictions (e.g., townships, counties) and other parties will identify, protect, and provide appropriate management for lands that are essential for the long-term conservation of the species. We believe that our analyses of future HCPs and future permits under section 7 will show that activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the piping plover and assure that they do not adversely modify or destroy the critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(b) permits for the piping plover should trigger revisions of designated critical habitat to exclude lands within HCP areas, and, if so, by what mechanism (see Public Comments Solicited section).

#### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comment on the economic analysis or further comments on the proposed rule.

#### Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat for the Great Lakes breeding population of piping plovers as provided by section 4 of the Act, including whether the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat;

2. Specific information on the amount and distribution of piping plover nesting habitat in the Great Lakes region, and what nesting habitat is essential to the conservation of the Great Lakes breeding population of the species and why;

3. Specific information on the amount and distribution of Great Lakes breeding piping plovers;

4. Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the Great Lakes breeding population of piping plover, such as those derived from non-consumptive uses (e.g., hiking, camping, birdwatching, enhanced watershed protection, "existence values," and reductions in administrative costs; and

7. The advisability of designating as critical habitat sites that are not documented to have occupied historically but are deemed potential breeding habitat because their characteristics are suitable for breeding by piping plovers.

Additionally, we are seeking comments on critical habitat designation relative to future HCPs. Future conservation planning efforts may occur within the range of the piping plover in areas we are proposing as critical habitat. We invite comments on the appropriateness of the following alternative approaches we are considering regarding critical habitat designations within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the piping plover.

- (1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

- (2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on

the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the piping plover, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

- (3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

- (4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

- (5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received by September 5, 2000.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION**

section of the preamble helpful in understanding the rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Great Lakes breeding population of piping plover was listed as an endangered species in 1985. In fiscal years 1992 through 1999, we conducted only one formal section 7 consultation with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the piping plover.

Approximately 255 km (159 mi) of the areas encompassing proposed critical habitat for the Great Lakes breeding population of piping plovers are currently unoccupied by piping plovers. The remaining 49 km (30 mi) of the total designated critical habitat area are currently occupied by piping plovers. Under the Act, critical habitat may not be adversely modified or destroyed by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 3 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species.

The designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however,

they continue to be bound by the provisions of the Act concerning "take" of the species).

Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding, but we expect little additional impact from designating these areas as critical habitat. We will evaluate this impact through our economic analysis (see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of piping plovers since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in unoccupied areas proposed as critical habitat; we will evaluate this possibility through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any additional effects in areas of occupied habitat. The critical habitat designation may have some additional effects on the unoccupied areas of proposed critical habitat. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of critical habitat with unknown occupancy.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 3.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only <sup>1</sup>	Additional activities potentially affected by critical habitat designation <sup>2</sup>
Federal Activities Potentially Affected <sup>3</sup> .....	Direct take and activities such as removing or destroying piping plover breeding habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, boat launch and marina construction or maintenance, beach nourishment); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities (e.g., off-road vehicle parks, paved walking paths); sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded (e.g., shoreline development, building of recreational facilities such as off-road vehicle parks, road building); activities that may result in increased human activity and disturbance..	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected, but consultation will be required on these activities in additional areas.
Private and other non-Federal Activities Potentially Affected <sup>4</sup> .	Direct take and activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, boat launch and marina construction or maintenance, beach nourishment) and appreciably decreasing habitat value or quality (e.g., increased predation, invasion of exotic species, increased human presence or disturbance) that require a Federal action (permit, authorization, or funding).	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected, but consultation will be required on these activities by the Federal agency that regulates that Federal action in additional areas.

<sup>1</sup> This column represents the activities potentially affected by listing the piping plover as an endangered species (December 11, 1985; 50 FR 50726) under the Endangered Species Act.

<sup>2</sup> This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>3</sup> Activities initiated by a Federal agency.

<sup>4</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

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

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. However, we would expect additional restrictions in areas of unoccupied habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, tribal, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potentially adversely modifying critical habitat are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, water delivery, and diversion by Federal agencies;

(3) Sale, exchange, or lease of lands owned by a Federal agency;

(4) Road construction and maintenance and right-of-way designation;

(5) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency;

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service; and

(9) Activities funded, carried out, or authorized by any Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the unoccupied areas of proposed critical habitat. In the economic analysis, we will evaluate whether designation of critical habitat in the unoccupied areas will have an effect on activities carried out by small entities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat in areas where they have not previously undergone consultation not to jeopardize the species.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. Critical habitat designation is applicable only to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Great Lakes piping plover with the

appropriate State agencies. The designation of critical habitat for the piping plover imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Great Lakes breeding population of piping plover.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement

at 512 DM 2, we understand that we must coordinate with recognized Federal Tribes on a Government-to-Government basis. We believe that certain Tribal lands are essential for the conservation of the piping plover because they support essential populations and habitat. Therefore, we are considering designating critical habitat for the piping plover on Tribal lands. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat according to section 4(b)(2) of the Act. However, we cannot exclude such areas from critical habitat if doing so will result in the extinction of the species. Due to the short amount of time allowed under the court order for preparing this proposed rule, we have not yet completed consultation with the affected Tribe, but we will do so before making a final decision on critical habitat.

*Public Hearings*

We have scheduled seven public hearings at the following addresses on the dates indicated.

1. Newberry, MI on July 19, 2000, at Newberry High School Auditorium, 700 Newberry Avenue.

2. Traverse City, MI on July 20, 2000, at Grand Traverse Civic Center, 1213 West Civic Center Drive.

3. Ashland, WI on July 17, 2000, at the Northern Great Lakes Center, 29270 County Highway G.

4. Green Bay, WI on July 18, 2000, at Brown County Central Library, 515 Pine Street.

5. Indiana Dunes National Lakeshore, IN on July 24, 2000, at the Dorothy Buell Memorial Visitors Center, just west of Beverly Shores on Kemil Road between U.S. Highways 12 and 20.

6. Cleveland, OH on July 25, 2000, at The Great Lakes Science Center, 601 Erieside Avenue.

7. Watertown, NY on July 27, 2000, at Dulles State Office Building, 317 Washington Street, 1st Floor Conference Room.

All comments that we receive at these hearings, both verbal and written, will be considered prior to making our decision on critical habitat designation. Copies of the transcripts from the hearings will be available for review by scheduling an appointment during normal business hours at the locations given above (see **ADDRESSES** section).

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Fort Snelling Regional Office (see **ADDRESSES** section).

Author: The primary author of this notice is Laura J. Ragan (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulations Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

#### PART 17—[AMENDED]

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, piping” under “BIRDS” 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, piping .....	<i>Charadrius melodus</i>	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA
*	*	*	*	*	*		*

3. In § 17.95, add critical habitat for the Great Lakes piping plover (*Charadrius melodus*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

#### § 17.95 Critical habitat—fish and wildlife.

\* \* \* \* \*

##### (b) *Birds.*

\* \* \* \* \*

#### PIPING PLOVER (*Charadrius melodus*)—Great Lakes Breeding Population

1. Critical habitat units are depicted for St. Louis County, Minnesota; Douglas, Ashland, Marinette, Oconto, and Manitowoc Counties, Wisconsin; Lake County, Illinois; Porter County, Indiana; Erie and Lake Counties, Ohio; Erie County, Pennsylvania; Oswego and Jefferson Counties, New York; and Alger, Schoolcraft, Luce, Mackinac, Chippewa, Iosco, Presque Isle, Cheboygan, Emmet, Charlevoix, Leelanau, Benzie, Mason, and

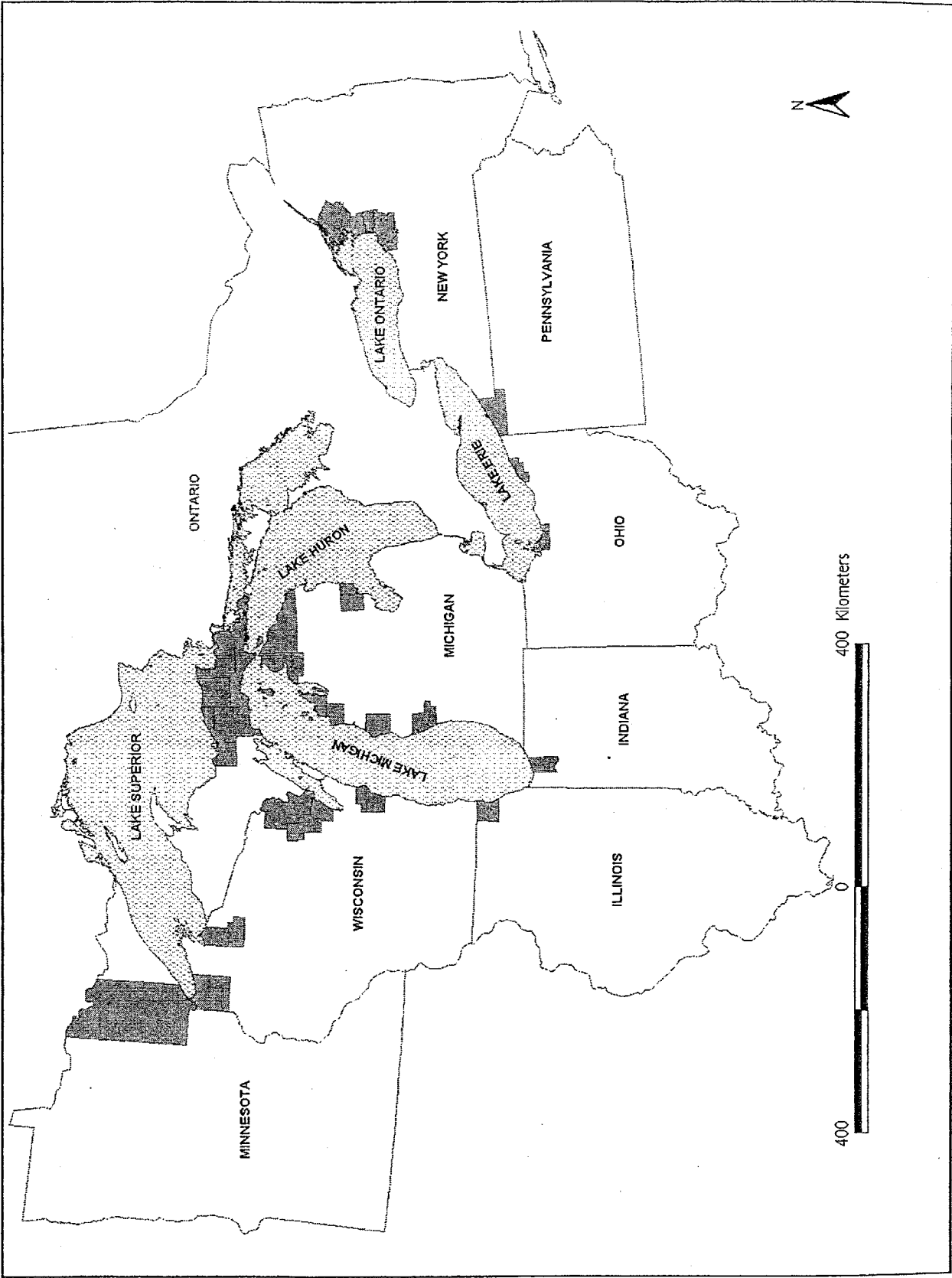
Muskegon Counties, Michigan, on the maps below.

2. The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support, or have the potential to support, open, sparsely vegetated sandy habitats—sand spits or sand beaches associated with wide, unforested systems of dunes and interdune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 kilometers (km) (0.12 miles (mi)) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (5 acres) and a low level of disturbance from human activities and from domestic animals. These appropriately sized sites must also have areas of at least 50–100 meters (m) (165–330 feet (ft)) in length where (1) the beach width is more than 7 m (23 ft), (2) there is cover for nests and chicks, and (3) the distance to the

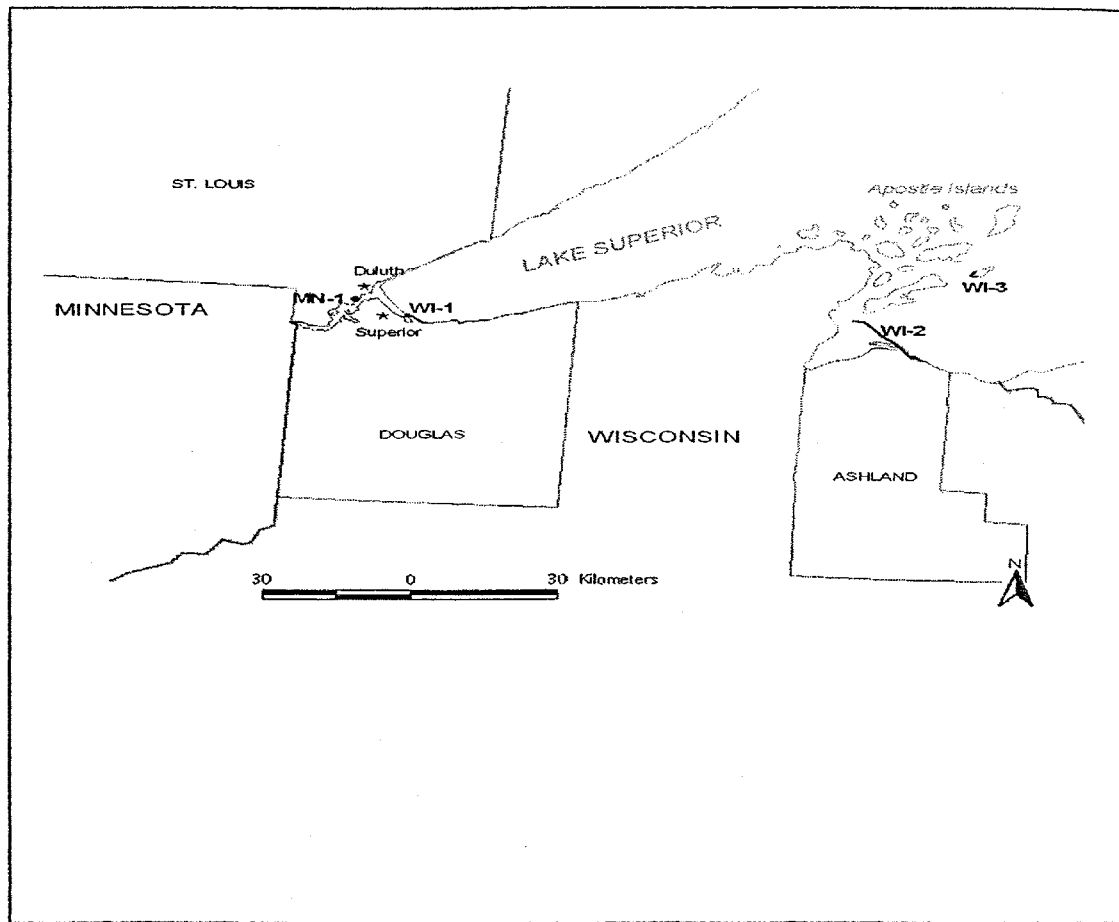
treeline (from the normal high water line to where the forest begins) is more than 50 m (165 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge or sand/vegetation boundary in areas where the dune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas of at least 7 m (23 ft) exist between the dune and the treeline. Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.39 inches (in)) diameter), gravel (stones smaller than 1 cm (0.39 in) diameter), or debris such as driftwood, wrack, root masses, or dead shrubs.

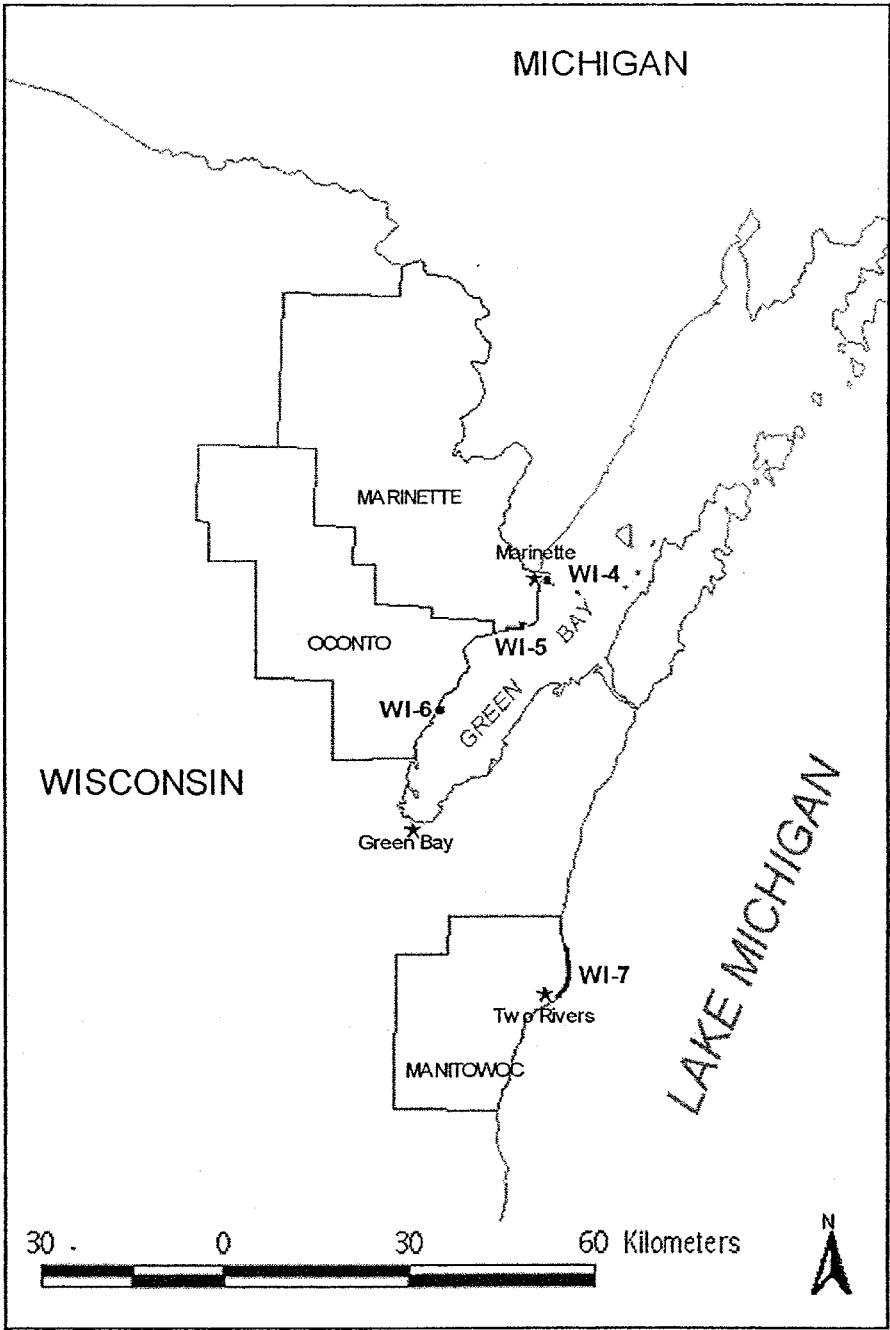
3. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures.

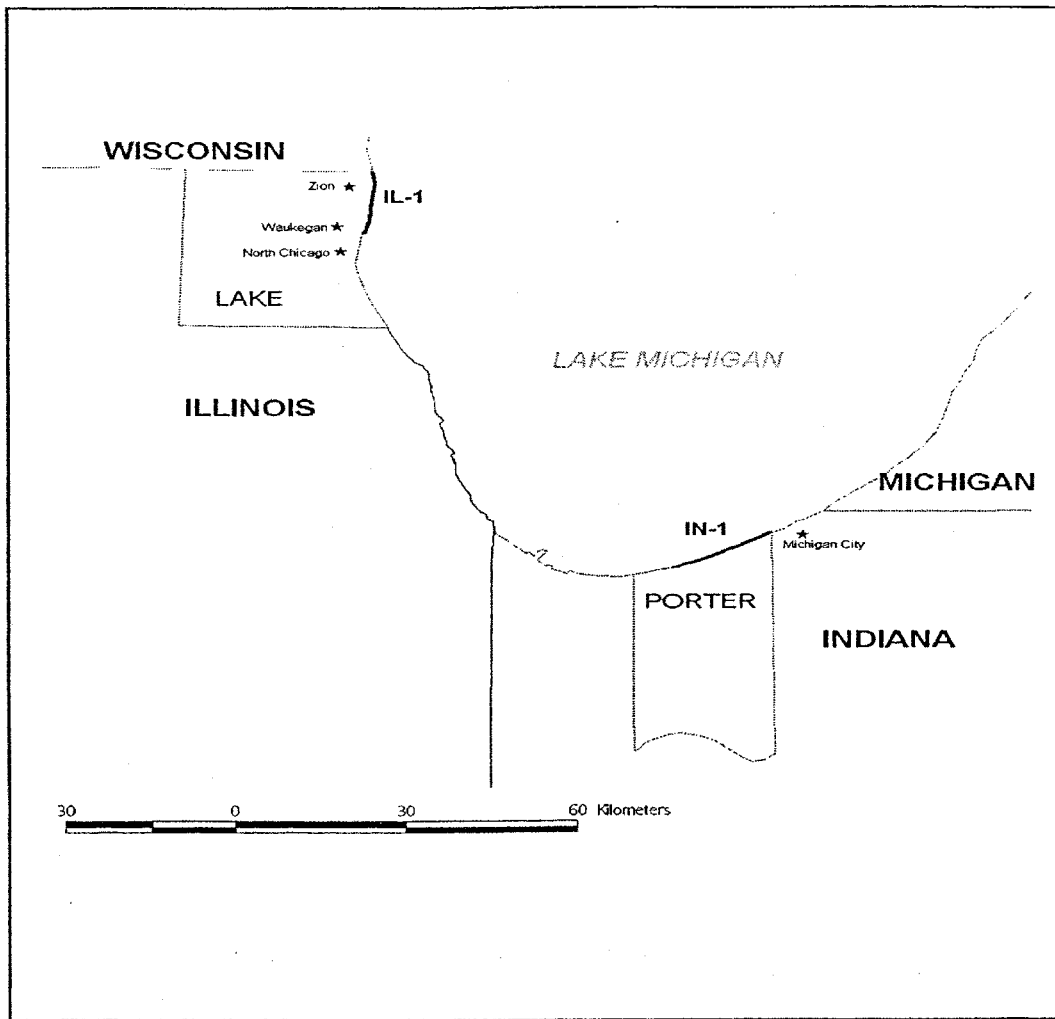
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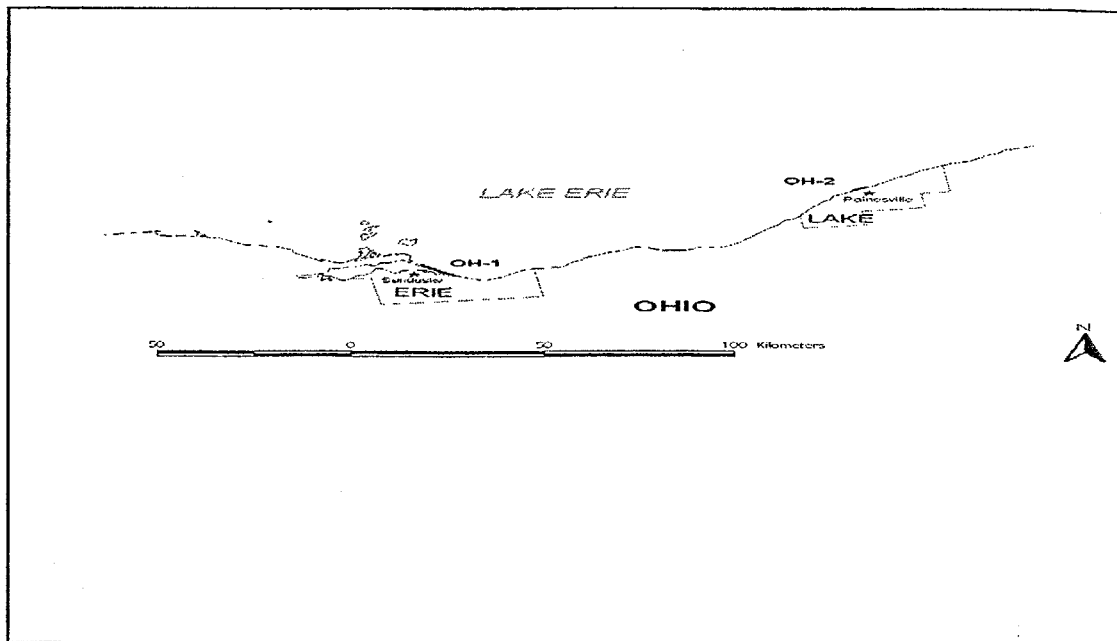
## Proposed Critical Habitat Units in Minnesota and Northern Wisconsin

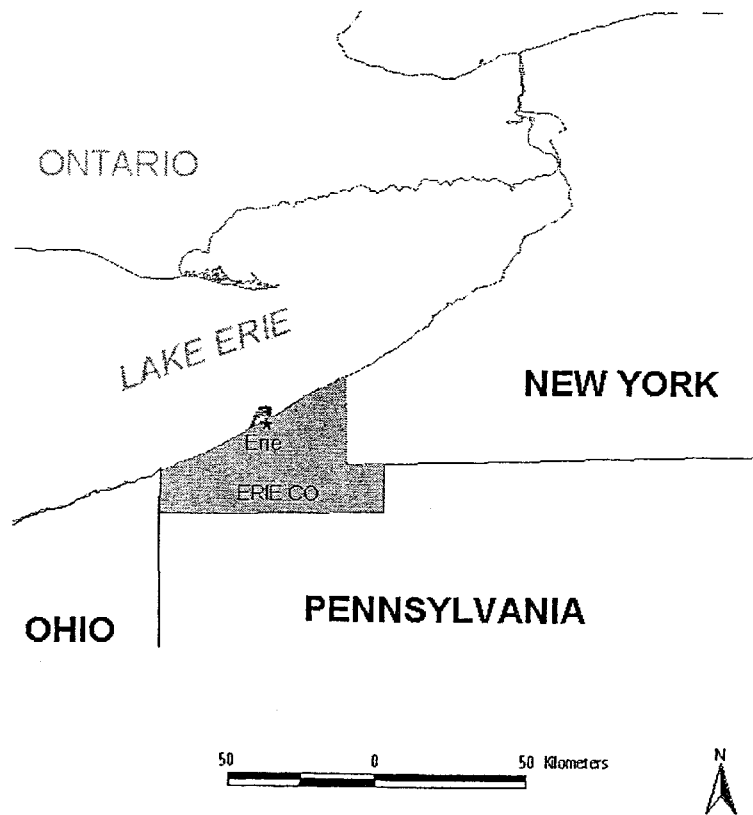




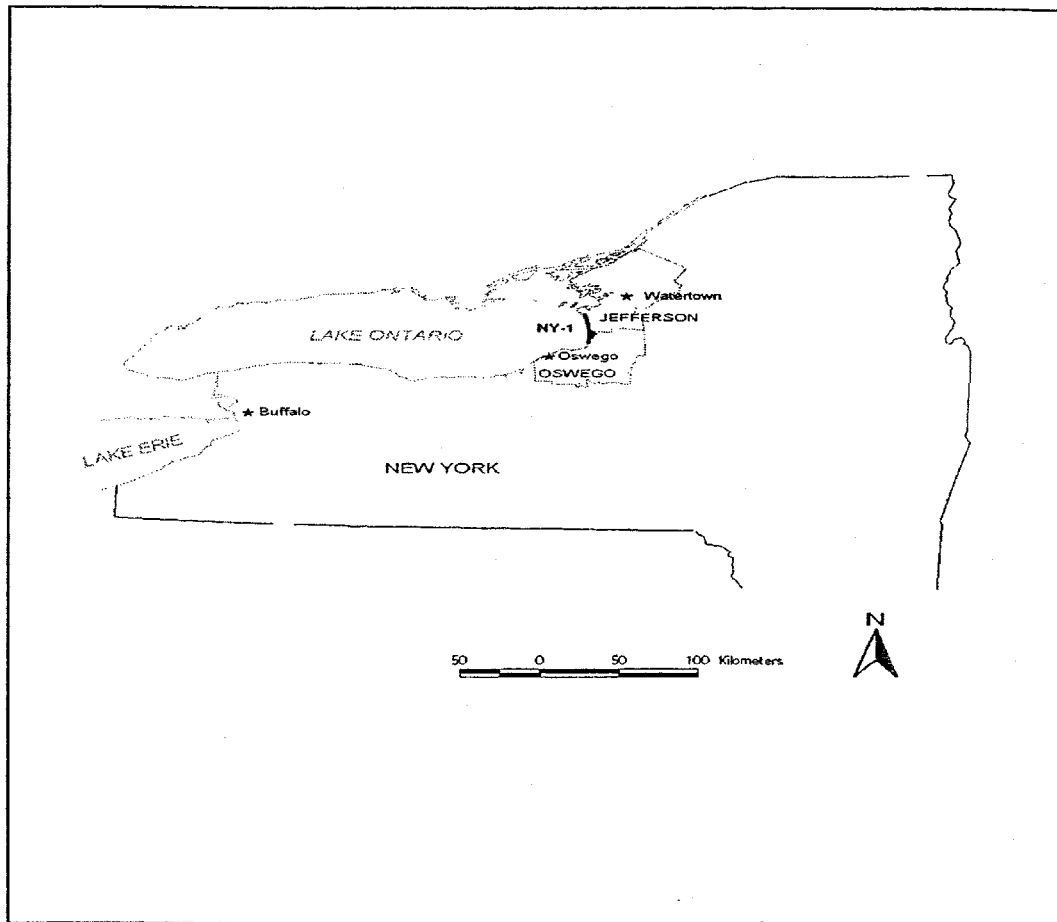


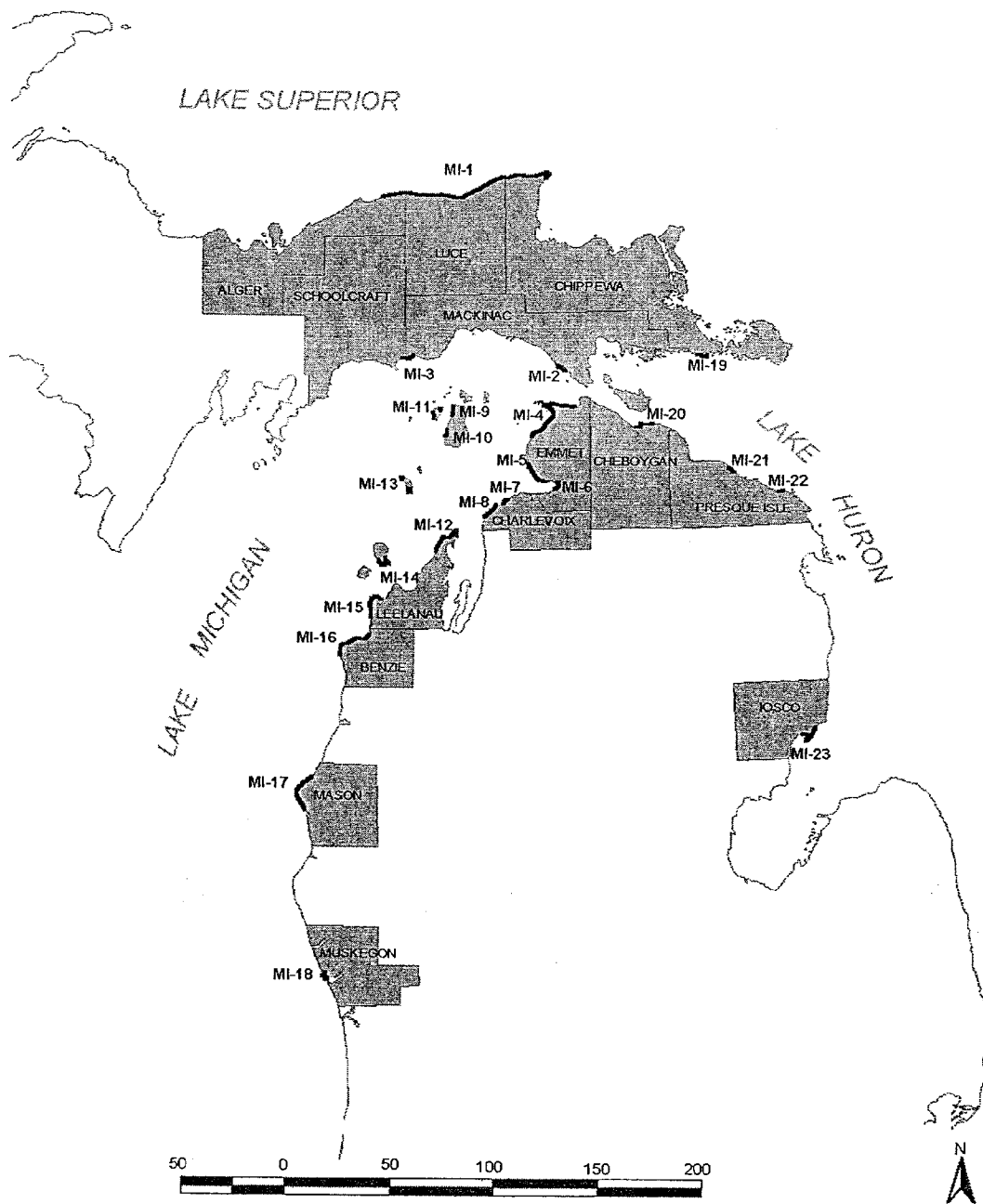
## Proposed Critical Habitat Units in Ohio





## Proposed Critical Habitat Units in New York





Dated: June 28, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and  
Parks.*

[FR Doc. 00-16815 Filed 6-30-00; 9:00 am]

BILLING CODE 4310-55-C