

businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

A preliminary environmental assessment has been prepared for this action. The Districts expects, due to the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Restricted areas, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334, as follows:

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for Part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.82 would be added to read as follows:

**§ 334.82 Naragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.**

(a) *The area.* The waters within a “C-shaped” area adjacent to and surrounding Coasters Harbor Island beginning at Coddington Point at latitude 41°31′24.0″ N, longitude 71°19′24.0″ W; thence west southwest to latitude 41°31′21.5″ N, longitude 71°19′45.0″ W; thence south southwest

to latitude 41°31′04.2″ N, longitude 71°19′52.8″ W; thence due south to latitude 41°30′27.3″ N, longitude 71°19′52.8″ W; thence south southeast to 41°30′13.8″ N, longitude 71°19′42.0″ W; thence southeast to latitude 41°30′10.2″ N, longitude 71°19′32.6″ W; thence due east to latitude 41°30′10.2″ N, longitude 71°19′20.0″ W; thence northerly along the mainland shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and federal, local or state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

(2) [Reserved]

Dated: November 3, 2003.

**Michael B. White,**

*Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 03-28706 Filed 11-17-03; 8:45 am]

**BILLING CODE 3710-92-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-7587-9]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Del Monte Corporation (Oahu Plantation) Superfund Site from the National Priorities List; Correction.

**SUMMARY:** The Environmental Protection Agency published a document in the **Federal Register** of October 30, 2003 concerning request for comments on a Notice of Intent for Partial Deletion of the Del Monte Corporation (Oahu Plantation) Superfund Site from the National Priorities List. The document contained an error.

**FOR FURTHER INFORMATION CONTACT:** Janet Rosati, 415-972-3165.

**Correction**

In the **Federal Register** of October 30, 2003, in FR Doc. 03-27161, on page 61784, in the second column under “IV. Site Background and History,” correct the location of the Poamoho Section in relation to the Kunia Well to read:

The southern and northern boundaries of the Poamoho Section are located 3 miles north and 4.5 miles north, respectively, of the Kunia Well.

Dated: November 10, 2003.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 03-28786 Filed 11-17-03; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AT52**

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl**

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce that, based on the October 10, 2003, decision in *Center for Biological Diversity v. Norton*, Civ. 01-409 TUC DCB (D. Ariz.), we are once again soliciting comment on our July 21, 2000, proposed rule (hereinafter referred to as the July 2000 proposal) to designate critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*) (65 FR 45336). We issued a final rule to the July 2000 proposal on February 1, 2001 (66 FR 8530). The final rule did not include some Forest Service and tribal lands that had been proposed for designation as critical habitat in the July 2000 proposal. This final rule is still in effect while we reconsider the proposed rule and issuance of a new final rule. Comments previously submitted on the July 2000 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

The Mexican spotted owl (owl) inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. The July 2000 proposal included

approximately 5.5 million hectares (ha) (13.5 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands. The final rule designated approximately 1.9 million ha (4.6 million ac) of critical habitat on Federal lands in Arizona, Colorado, New Mexico, and Utah.

**DATES:** We will accept comments until December 18, 2003.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505-346-2542.

3. You may send your comments by electronic mail (e-mail) to "R2FWE\_AL@fws.gov." For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

All comments and materials received, as well as supporting documentation used in preparation of this notice and the July 2000 proposed rule (65 FR 45336) will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joy Nicholopoulos, New Mexico State Administrator, New Mexico Ecological Services Field Office (telephone 505-761-4706, facsimile 505-346-2542).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

Comments previously submitted on the July 2000 proposal need not be resubmitted, because they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule. It is our intent that any final action resulting from our July 2000 proposal be as accurate as possible.

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires us to consider the economic and other relevant impacts of specifying any area as critical habitat and authorizes us to exclude areas from designation upon finding that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, so long as excluding those areas will not result in the extinction of the species concerned. We will conduct a

new analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *New Mexico Cattle Growers Ass'n v. USFWS*, 248 F.3d 1277 (10th Cir. 2001). We will also undertake a new National Environmental Policy Act (NEPA) analysis for this critical habitat designation. We intend to publish a notice of availability and reopening of the comment period in the **Federal Register** to accept public comments on the draft economic analysis and draft NEPA compliance documents.

We hereby solicit data and comments from the public on all aspects of the July 2000 proposal, including new scientific or commercial data and new data on economic and other impacts of the designation. We also are specifically seeking comment on the exclusion of tribal lands (see "Designation of Critical Habitat on Tribal Lands" section below). The final designation may differ from the July 2000 proposal based on new information received during the public comment period and the findings of the economic analysis and NEPA assessment. We particularly seek comments concerning:

- (1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act;

- (2) Specific information on the amount and distribution of owl habitat, and what habitat is essential to the conservation of the species and why;

- (3) Land use designations and current or planned activities in or adjacent to the areas proposed, and their possible impacts on proposed critical habitat;

- (4) Any foreseeable economic or other potential impacts resulting from the proposed designation, including any impacts on small entities;

- (5) Economic and other values associated with the benefits of designating critical habitat for the owl, such as those derived from nonconsumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

- (6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

- (7) Conservation benefits to the owl from tribal or other management plans;

- (8) The possible effects of a critical habitat designation on tribal or other lands; and

- (9) The possible effects on tribal or other resources resulting from designation of critical habitat on nontribal lands.

If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018-AT52" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346-2525.

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 addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you would like for us to withhold your name and/or address, you must state this 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**Background**

*Recent Court Actions Related to Critical Habitat for the Owl*

On March 13, 2000, the United States District Court for the District of New Mexico, (*Southwest Center for Biological Diversity v. Babbitt*, CIV 99-519 LFG/LCS-ACE), ordered us to propose critical habitat for the Mexican spotted owl within 4 months of the Court's order, and to complete and publish a final designation of critical habitat by January 15, 2001. On July 21, 2000, we published a proposal to designate critical habitat for the Mexican spotted owl on approximately 5.5 million hectares (ha) (13.5 million acres (ac)) in Arizona, Colorado, New Mexico, and Utah, mostly on Federal

lands (65 FR 45336). The initial comment period was open until September 19, 2000. During this 60-day comment period, we held 6 public hearings on the proposed rule. On October 20, 2000, we published a notice announcing the reopening of the comment period and the availability of the draft economic analysis and draft environmental assessment on the proposal to designate critical habitat for the owl (65 FR 63047). The final comment period was open until November 20, 2000. On February 1, 2001 (66 FR 8530), we published the final rule designating critical habitat for the owl. The final rule excluded all National Forest Service lands in Arizona and New Mexico and certain tribal lands and designated critical habitat on approximately 1.9 million ha (4.6 million ac). On August 27, 2001, the Center for Biological Diversity filed a complaint challenging our decision to exclude these lands from the final designation of critical habitat for the owl.

On January 13, 2003, the United States District Court for the District of Arizona, (*Center for Biological Diversity v. Norton*, Civ. No. 01-409 TUC DCB), ruled that our final rule designating critical habitat for the owl violated the Act, as well as the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The Court ordered us to repropose critical habitat within 3 months and finalize within 6 months from the date of the order. The Court also stated that the current critical habitat designation for the owl (*i.e.*, that promulgated by 66 FR 8530 and codified at 50 CFR 17.95) shall remain in effect and be enforced until such time as we publish a new final designation of critical habitat for the owl. In a subsequent order, on February 18, 2003, the original deadlines were extended to allow until October 13, 2003, to repropose critical habitat for the owl and until April 13, 2004, to publish a new final designation of critical habitat.

On August 28, 2003, we filed a motion with the Court seeking a stay from the Court's January 13, 2003, order and an extension of time to complete the redesignation. A supporting declaration explained our budgetary difficulties for work on critical habitat designations in Fiscal Year 2003, and explained how we would completely exhaust our budget for critical habitat designations well before the end of the fiscal year due to other court orders with due dates preceding this one. On October 10, 2003, the Court ruled that it would permit a limited extension and ordered the parties to meet and confer within 15 days of the order to prepare

a reasonable timeline for compliance with the January 13, 2003, order. The Court also indicated that a notice reopening the comment period on the July 2000 proposal is appropriate. On October 30, 2003, the parties submitted a Joint Proposed Timeline and Memorandum of Dispute to the Court. The parties agreed that this notice would solicit comment regarding all of the lands proposed for designation that were not included in the final designation. The parties did not agree to a schedule for completion of the final rule, and a variety of other matters. We anticipate that the Court will resolve these issues shortly.

#### *Designation of Critical Habitat on Tribal Lands*

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. This is especially true where the habitat is occupied by the species and is therefore already subject to protection under the Act through section 7 consultation requirements. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

At this time, for the general reasons described above and the preliminary 4(b)(2) analysis below, as well as the specific mechanisms in place for each tribe whose lands are at issue, we anticipate that the 4(b)(2) analysis process will lead us to exclude all tribal lands in our final designation for the owl. We emphasize that this is only a tentative conclusion. Any exclusions in the final rule will be the result of a reanalysis, including consideration of

all comments received and the findings of the economic analysis and NEPA assessment.

In making our final decision with regard to tribal lands, we will be considering several factors. At this time, we have received management plans from those tribes whose lands were excluded from the January 2001 final rule based on the definition of critical habitat, and we have been notified by the San Carlos Apache Tribe that their completed management plan is in the process of being submitted to the Tribal Council for approval. We anticipate receiving either a draft or final management plan shortly and will make it available to the public upon receipt. You may request copies of these by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section above). As discussed below, we will consider the benefits to the owl from these management plans. Additionally, we and the tribes currently have cooperative working relationships, that have enabled us to implement natural resource programs of mutual interest for the benefit of the owl and other threatened and endangered species. We will take into account the potential adverse impact to these current working relationships from designation of critical habitat on tribal lands.

We provide the following preliminary 4(b)(2) analysis so that we may obtain more meaningful comment on our anticipated exclusion of these tribal lands:

#### (1) Benefits of Inclusion

Few additional benefits would derive from including tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation in a critical habitat designation for the owl beyond what will be achieved through the implementation of their management plans. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal. We previously determined that the tribal management plans for the owl conform with the Mexican Spotted Owl Recovery Plan and provide a conservation benefit. Thus, we tentatively conclude that few regulatory benefits to the owl would be gained from a designation of critical habitat on these tribal lands.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, the tribes are already working with the Service to address the habitat needs of the species, and are fully aware of the conservation value of their lands. Thus, the educational benefits that might follow critical habitat designation, such as providing information on areas that are important for the long-term survival and conservation of the species, have already been realized. Further, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat.

#### (2) Benefits of Exclusion

The benefits of excluding the tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation from designated critical habitat appear to be more significant. We tentatively conclude that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the tribes to develop and implement Tribal conservation and natural resource management plans for their lands and resources; (2) the establishment and maintenance of effective working relationships to promote the conservation of the owl and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the conservation needs of the species; and (4) by providing conservation benefits from the tribal management plans to the forest ecosystem upon which the owl depends which exceed those that would be provided by the designation of critical habitat.

In summary, we view each of the management plans as a continuance of cooperative and productive relationships that have and will continue to provide additional substantive conservation benefits to the owl and its habitat. The additional benefits would be less likely if critical habitat was designated because the tribes view critical habitat as an intrusion on their ability to manage their own lands and trust resources. We tentatively conclude that the benefits of

including these tribal lands in critical habitat are small or nonexistent due to the protection afforded the owl through tribal management plans. These plans provide benefits to the owl through fire abatement projects, which reduce the risk of catastrophic fire, the primary threat to the owl; monitoring; protection of nest sites; and survey efforts. Subject to our reanalysis, after considering public comments and the economic impacts of the designation, we tentatively conclude that the benefits of excluding these areas from being designated as critical habitat for the owl are more significant than the benefits of including them, and include the continued implementation of tribal owl management plans and the continuance of our cooperative working relationships with these tribes for the mutual benefit of the owl and other threatened and endangered species.

#### *Current Status of Critical Habitat for the Owl*

As a result of the Court orders in *Center for Biological Diversity v. Norton*, we consider critical habitat to be proposed for the owl in those areas excluded from the final designation published on February 1, 2001 (66 FR 8530). Specifically, Forest Service lands in Arizona and New Mexico and tribal lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe were excluded from the final designation of critical habitat for the owl and are now considered to be proposed as critical habitat. Areas designated as critical habitat for the owl in the February 1, 2001, final designation remain in effect until critical habitat is refinalized, pursuant to the Court's order.

Section 7(a)(2) of the Act requires 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 critical habitat, if any is designated or proposed. Activities on Federal lands that may affect the owl or its proposed critical habitat will require consultation with us pursuant to section 7 of the Act. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Federal agencies may request formal conferencing on the July 2000 proposed critical habitat with respect to Forest Service lands in Arizona and New Mexico and the lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe.

For areas that were included in the final critical habitat designation, section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, or require a Federal permit, license, or other authorization, or involve Federal funding.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03-28483 Filed 11-17-03; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

#### **Migratory Bird Hunting; Application for Approval of Tungsten-Bronze-Iron as a Nontoxic Shot Material for Waterfowl Hunting**

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

**ACTION:** Notice of application.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) hereby provides public notice that International Nontoxic Composites Corporation of Ontario, Canada, has applied for approval of Tungsten-Bronze-Iron shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the shot under the criteria set out in Tier 1 of the nontoxic shot approval procedures given at 50 CFR 20.134.

**DATES:** A comprehensive review of the Tier 1 information is to be concluded by January 20, 2004.

**ADDRESSES:** The International Nontoxic Composite Corporation application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia,