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**Author(s)**

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office (see ADDRESSES).

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

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. Amend § 17.12(h) by adding an entry for “*Arctostaphylos franciscana* (Franciscan manzanita)” to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family	Sta- tus	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
* <i>Arctostaphylos franciscana</i>	* Franciscan manzanita.	* U.S.A. (CA) .....	* Ericaceae .....	* E	* XXX	* NA	* NA
*	*	*	*	*	*	*	*

Dated: August 27, 2011.  
**Gregory E. Siekaniec,**  
*Acting Director, Fish and Wildlife Service.*  
 [FR Doc. 2011–22990 Filed 9–7–11; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS–R4–ES–2011–0059; MO 92210–0–0008]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Snowy Plover and Reclassify the Wintering Population of Piping Plover**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the snowy plover (*Charadrius alexandrinus*) as endangered or threatened and to reclassify the wintering population of piping plover (*Charadrius melodus*) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted. This finding is based on our determination that the petition did not identify listable entities. Therefore, we

are not initiating a status review for either species in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the snowy plover or the piping plover or their respective habitats at any time.

**DATES:** The finding announced in this document was made on September 8, 2011.

**ADDRESSES:** This finding is also available on the Internet at <http://www.regulations.gov> at Docket Number FWS–R4–ES–2011–0059. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Avenue, Panama City, FL 32405. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Don Imm, Project Leader, Panama City Field Office (see ADDRESSES), by telephone at 850–769–0552 ext. 238, or by facsimile to 850–763–2177. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species

presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time that the petition was submitted to us. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and to publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in a 12-month finding.

*Petition History*

On September 5, 2000, we received a petition dated September 4, 2000, from Robert R. Reid, Jr., on behalf of the Alabama Audubon Council, Alabama Environmental Council, and Alabama Ornithological Society (petitioners), requesting that the snowy plover be listed as threatened or endangered, and that the wintering population of piping plover be reclassified from threatened to endangered under the Act, and that critical habitat be designated under the

Act for both species. The petition was submitted concurrently with comments in response to the request for public comments contained in our proposal to designate critical habitat for wintering piping plover (July 6, 2000; 65 FR 41782) and our extension of the comment period for that proposal (65 FR 64414; October 27, 2000). We responded to the petitioner's comments related to the critical habitat rulemaking in the final rule for the designation of critical habitat for wintering piping plover (66 FR 36038; July 10, 2001).

The petition mentions common threats to both species, provides brief examples of potential population declines, and discusses the petitioners' views on how consultations would benefit from critical habitat designations. The petition also discusses the petitioners' views on the economic advantages of critical habitat and mentions that "inhabited" and "uninhabited" lands should be included in the critical habitat designations. Few references were provided to support the statements in the petition.

The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a); however, no scientific name for either species was included in the petition. In an October 11, 2000, letter to the petitioners, we acknowledged receipt of the petition. We determined that issuing an emergency regulation temporarily listing either species under section 4(b)(7) of the Act was not warranted. We notified the petitioners that, due to court orders and judicially approved settlement agreements for other listing and critical habitat determinations under the Act that required nearly all of our listing and critical habitat funding for fiscal year 2001, we would not be able to further address the petition at that time, but we anticipated addressing the action when workload and funding allowed. Funding limitations have prevented the Service from responding to the petition until now. This finding addresses the petition. In separate sections below, we address the petitioners' requests to list the snowy plover as threatened or endangered and to reclassify the wintering population of piping plover as endangered.

### **Snowy Plover (*Charadrius alexandrinus*)**

#### *Species Information*

Snowy plovers are small shorebirds, about 6.7 inches (17 centimeters (cm)) long. The plumage is pale gray or brown above, and pure white below. Their bills

and legs are dark (Gore 1996, p. 73). Snowy plovers require expansive, open dry sandy beaches for breeding, and both dry and tidal sand flats for foraging (Woolfenden 1978, p. 9). They primarily feed on small crustaceans, mollusks, worms, and insects that they glean from beaches and sand flats. They nest on open, dry white sand where a typical clutch of three eggs is laid in a slight depression, sometimes lined with bits of shell (Woolfenden 1978, p. 9). In Florida, nests have been documented as early as February, with pair bonding reported as early as January (Gore and Chase 1989, p. 8).

Two subspecies of snowy plover that nest in North America were recognized by the American Ornithological Union (AOU) in 1957 (5th edition of its Check-list, pp. 168–169): The western snowy plover (*Charadrius alexandrinus nivosus*) and the Cuban or Southeastern snowy plover (*C. a. tenuirostris*). Since that time, however, the AOU has not conducted a review of this subspecies distinction. The AOU stopped listing subspecies as of the 6th edition (1983) of its Check-list, although it recommended the continued use of the 5th edition for taxonomy at the subspecific level. The AOU has not formally or officially reviewed the subspecific treatment of most North American birds. In the 7th edition (1998, p. xii) of the Check-list, the AOU explained that its decision to omit subspecies "carries with it our realization that an uncertain number of currently recognized subspecies, especially those formally named early in this century, probably cannot be validated by rigorous modern techniques."

Page *et al.* (1995, p. 3) state that two subspecies of snowy plover have been recognized for North America (and partially in South and Central Americas): *Charadrius alexandrinus tenuirostris* is found on the Gulf Coast east of Louisiana through Florida, the Bahama Islands, the north coast of the Yucatan Peninsula, the Greater and Lesser Antilles, and islands off the north coast of Venezuela; and *C. a. nivosus* is found elsewhere in the United States and Mexico (including coastal California and Baja California; locally in the Great Basin of California, Oregon, Nevada, and Utah; very locally in southern Saskatchewan, central Montana, southern Wyoming, central and eastern Colorado, and southern Arizona; sparsely but widely distributed over southeast New Mexico and east through north central Texas, central Oklahoma, and central Kansas; the southern Texas coast into northeast Mexico; and the central Mexican

plateau) (AOU 1957, pp. 168–169; Cramp 1983, p. 153). Others (Oberholser 1974, p. 312; Johnsgard 1981, pp. 191–192; Jacobs 1986, p. 3; Gore 1996, p. 74) have stated that *C. a. tenuirostris* includes birds in coastal Texas and northeastern Mexico, as well as birds of the interior Great Plains.

Gorman (2000, pp. 36–38) performed genetic studies that concluded the Greater Antillean snowy plovers, represented only by samples from Puerto Rico, were clearly differentiated from mainland birds in Florida. Furthermore, Florida birds were much more closely related to other continental populations of *Charadrius alexandrinus nivosus* than to Puerto Rican *C. a. tenuirostris*. Among birds east of the Rocky Mountains, Texas coastal and Great Plains birds appeared to be more closely related to other eastern birds than birds west of the Rocky Mountains.

Gorman (2000, pp. 36–38) admits that, in the absence of further sampling, it is not clear whether all snowy plover populations in the West Indies and Bahamas would be grouped with birds from Puerto Rico or with birds from east of the Rocky Mountains. Differentiation among the eastern continental U.S. populations is apparently insufficient to warrant separate populations. Thus, these results suggest that snowy plovers east of Louisiana, including Florida, along the Gulf Coast may be grouped with Great Plains and other Gulf Coast birds. The Service accepts the characterization of the snowy plover as two subspecies in North America, *Charadrius alexandrinus nivosus* and *C. a. tenuirostris*.

It is not clear which demarcation the petitioners relied upon for the petition request, because neither a species nor subspecies scientific name was provided for the snowy plover in the petition. At times, the petitioners reference inclusion of the Texas coastline as part of the "Gulf Coast" snowy plover range; yet most references to population data are from Florida and, possibly, Alabama. No reference is made to the Caribbean population. The genetic studies performed by Gorman were reported earlier in the same year as the petition, and may not have been available to the petitioners prior to submission of the petition. Gorman (2000, pp. 36–38) made a recommendation that small management units based on demographic considerations might be adopted. Regardless of the petitioners' intention, they failed to provide a scientific name and to clearly identify the petitioned entity of the snowy plover.

### Previous Federal Actions

The Pacific Coast vertebrate population segment of *Charadrius alexandrinus nivosus*, the Western snowy plover, was listed as threatened under the Act on March 5, 1993 (58 FR 12864). The Pacific coast population is defined as those individuals that nest within 50 miles of the Pacific Ocean on the mainland coast, peninsulas, offshore islands, bays, estuaries, or rivers of the United States and Baja California, Mexico. No other populations of the snowy plover are currently federally listed as threatened or endangered species.

### Evaluation of Listable Entity

Upon receipt of a petition to list, delist, or reclassify a species, we are to consider whether such petition “clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved” (50 CFR 424.14(b)(2)(i)). Throughout the subject petition, the term “snowy plover” is used with references to the “Gulf Coast” without providing a scientific name or distinguishing the snowy plover as a species, subspecies, or population. At the time of receipt of the petition, the Pacific Coast population of the Western snowy plover was listed as a threatened species (March 5, 1993; 58 FR 12864). The snowy plover breeding and wintering ranges provided in the petition identified ranges of both the *Charadrius alexandrinus nivosus* and *C. a. tenuirostris*. Thus, the petition did not fully identify what constituted the entity and as petitioned, did not, therefore, meet the “listable entity” requirement for a substantial finding.

### Piping Plover (*Charadrius melodus*)

#### Species Information

The piping plover is a small (6.7 to 7.1 inches (17 to 18 cm)) pale-colored migratory shorebird that breeds in three separate areas of North America: The Northern Great Plains, the Great Lakes, and the Atlantic Coast. The piping plover winters in coastal areas of the United States from North Carolina to Texas, along the coast of eastern Mexico, on Caribbean islands from Barbados to Cuba, and the Bahamas (Plissner and Haig 1997, pp. 8–9). Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree (Plissner and Haig 1997, pp. 9–11; Wemmer 2000, p. 47). The source breeding population of a given wintering individual bird cannot be determined in the field unless the

individual bird has been banded or otherwise marked.

Piping plovers spend about two-thirds of the year on migratory and wintering grounds. Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. Migration is poorly understood, but preliminary data suggest that plovers use inland and coastal stopover sites when migrating from interior breeding areas to wintering grounds (McConnaughey *et al.* 1990, p. 19). Observations of color-marked birds in Alabama indicated wintering plovers were least mobile from late November through late January (Johnson and Baldassarre 1988, p. 221). Concentrations of spring and fall migrants also have been observed along the Atlantic Coast (Service 1996, pp. 129–138). In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites.

Habitat on the wintering grounds consists of exposed sandflats, beaches, washovers and algal flats. Mudflats and sandflats provide foraging areas where piping plovers feed primarily on marine and freshwater invertebrates. Foraging accounted for about 75 percent of observed piping plover behavior in an Alabama study (Johnson and Baldassarre 1988, p. 217). The number of plovers foraging in an area may be dependent on density of food sources (Zonick 2000, p. 90).

Two subspecies of piping plover, *Charadrius melodus melodus* (Atlantic Coast of North America) and *C. m. circumcinctus* (Northern Great Plains of North America), were recognized by the American Ornithological Union (AOU) in 1957 (5th edition of its Check-list 1957, pp. 167–168) and in 1983 (6th edition of its Check-list 1983, pp. 170–171). However, the AOU has not conducted a review of this subspecies distinction since that time. The Service accepts the characterization of the piping plover as two subspecies in North America, *C. m. melodus* and *C. m. circumcinctus*.

### Previous Federal Actions

On December 11, 1985 (50 FR 50726; effective January 10, 1986), the piping plover (*Charadrius melodus*) was listed as endangered in the Great Lakes watershed of both the United States and Canada, and as threatened in the remainder of its range in the United States (Northern Great Plains, Atlantic and Gulf Coasts, Puerto Rico, Virgin

Islands), Canada, Mexico, Bahamas, and the West Indies. The threatened status included all piping plover when on their wintering grounds.

Protection of the entire species *Charadrius melodus* under the Act reflects its status range wide. However, the Service has consistently recognized three separate breeding populations of piping plovers, on the Atlantic Coast, Great Lakes, and Northern Great Plains. A recovery plan established delisting criteria for the Atlantic Coast breeding population (Service 1996, pp. 57–58). A joint recovery plan specified separate delisting criteria for the Great Lakes and Northern Great Plains breeding populations (Service 1988, pp. 54–55). After the September 4, 2000, petition was submitted to the Service, critical habitat was designated for the Great Lakes (66 FR 22938; May 7, 2001) and Northern Great Plains breeding populations (67 FR 57637; September 11, 2002), and for piping plovers from the three breeding populations while on the wintering grounds (66 FR 36038; July 10, 2001).

### Evaluation of Listable Entity

The petition asserts the “Need to Designate the Wintering Gulf Population of Piping Plover as Endangered” (petition, p. 6). The petition focused solely on conditions along the Gulf coast and the status of the piping plover along the Gulf coast. The petition did not differentiate between species, subspecies, and distinct population segments, nor did the petition include a scientific name in its recommendation to change the status of the piping plover to endangered within the Gulf of Mexico. However, the petitioners were responding to a proposed rule to designate critical habitat for the piping plover (*Charadrius melodus*) while on its wintering grounds (65 FR 41782; July 6, 2000) in the same document as the petition. The Service accepts the petition as a request to reclassify wintering piping plover of the listed entity (*C. melodus*) from a threatened to an endangered species.

Upon receipt of a petition to list, delist, or reclassify a species, we are to consider whether such petition “clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved” (50 CFR 424.14(b)(2)(i)). Under the Act, a species is defined as including any subspecies of fish or wildlife of plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532).

Piping plovers on their wintering or migration grounds, such as the Gulf coast, do not constitute a valid entity. The listing (50 FR 50726; December 11, 1985) of the species classified all piping plovers on the Great Lakes watershed breeding grounds as endangered and all other piping plover as threatened including on their breeding grounds in the Northern Great Plains and Atlantic Coast and on their migration and wintering grounds. This, along with the proposed designation of critical habitat for wintering piping plover, may have given the impression that the piping plover constitutes a listable entity while on its wintering grounds. However, this is not the case. Birds from all three of the recognized breeding grounds use and share the same Gulf coast wintering habitats. Thus, the birds on the wintering grounds are all of the listed entity (*C. melodus*) but from three separate recognized breeding grounds. Thus, the petition's identification of a "Gulf wintering population of piping plover" is, therefore, not a listable entity.

### Finding

In summary, on the basis of our determination under section 4(b)(3)(A) of the Act, the petition does not present substantial information indicating that listing the snowy plover as threatened or endangered is warranted, because the entity as petitioned is not listable. No scientific name of the petitioned entity was provided, and there are two subspecies of the snowy plover accepted for North America.

The petition also does not present substantial information indicating that reclassifying piping plover while wintering on the Gulf coast as endangered is warranted, because the entity as petitioned is not listable. The piping plover, as currently listed, represents all of the three recognized breeding entities wherever they reside or winter in their life cycle. The petition does not specify a listable entity for the requested reclassification.

Although we will not review the status of the snowy plover or the piping plover at this time, we encourage interested parties to continue to gather data that will assist with the conservation of these species. If you wish to provide information regarding

the snowy plover or piping plover, you may submit your information or materials to the Project Leader, U.S. Fish and Wildlife Service Panama City Field Office (see **ADDRESSES**), at any time.

### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the U.S. Fish and Wildlife Service, Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service Panama City Field Office (see **ADDRESSES**).

### Authority

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

Dated: August 22, 2011.

**Daniel M. Ashe,**

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

[FR Doc. 2011-22900 Filed 9-7-11; 8:45 am]

**BILLING CODE 4310-55-P**