

incremental impacts associated with critical habitat designation for the wintering population of the piping plover in Texas to be of sufficient magnitude to affect energy production or delivery, and the energy-related impacts are not considered a "significant adverse effect." As such, we do not expect that, if made final, the proposed revised designation of critical habitat for the wintering population of the piping plover in Texas to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, permits, or that

otherwise require approval or authorization from a Federal agency. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The proposed revised designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—Takings*

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing revised critical habitat for the wintering population of the piping plover in Texas in a takings implications assessment. Our takings implications assessment concludes that this proposed revision to critical habitat for the wintering populations of piping plover in Texas does not pose significant takings implications.

**References Cited**

A complete list of all references we cited in the proposed revised rule and this rulemaking is available on the Internet at <http://www.regulations.gov> or by contacting the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION** section).

**Author(s)**

The primary authors of this rulemaking are staff members of the Corpus Christi Ecological Services Field Office.

**Authority**

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

Dated: November 25, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8–28752 Filed 12–8–08; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 226**

**RIN 0648–AV74**

**Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of two public hearings.

**SUMMARY:** We, NMFS, will hold two public hearings in Florida in January of 2009, to receive public comments on the proposal to designate critical habitat for the endangered U.S. distinct population segment (DPS) of smalltooth sawfish that published on November 20, 2008.

**DATES:** The hearings will be held from 7 to 9 p.m. on January 5, 2009, in Naples, FL and on January 14, 2009, in Cape Coral, FL.

**ADDRESSES:** The January 5, 2009, hearing will be held at the Port of the Islands Hotel, 25000 Tamiami Trail E, Naples, FL; and the January 14, 2009, hearing will be held at the Hampton Inn and Suites, 619 SE 47<sup>th</sup> Terrace, Cape Coral, FL.

You may also submit comments, identified by the Regulatory Information Number (RIN) 0648–AV74, by any of the following methods:

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Facsimile (fax) to: 727–824–5309.

Electronic Submissions: Submit all electronic comments to [www.regulations.gov](http://www.regulations.gov) by clicking on "Search for Dockets" at the top of the screen, then entering the RIN in the "RIN" field and clicking the "Submit" tab.

Instructions: All comments received are considered part of the public record and will generally be posted to <http://www.regulations.gov>. All Personal Identifying Information (i.e., name, address, etc.) voluntarily submitted may

be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Please provide electronic attachments using Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. All comments must be received by midnight EST on January 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** Shelley Norton, NMFS, Southeast Regional Office, at 727-824-5312; or Lisa Manning, NMFS, Office of Protected Resources, at 301-713-1401.  
**SUPPLEMENTARY INFORMATION:**

#### **Background**

On November 20, 2008, we published a proposed rule (73 FR 70290) to designate critical habitat for the endangered U.S. DPS of smalltooth sawfish. We stated that we would hold public hearings on the proposed designation. NMFS will accept oral comments on the proposed critical habitat designation at the two public hearings mentioned in the "Dates" section of this notice.

#### **Special Accommodations**

These hearings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Norton at (727) 824-5312 at least 7 working days prior to the hearing date.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 3, 2008.

**P. Michael Payne,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. E8-29134 Filed 12-8-08; 8:45 am]

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