

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****DEPARTMENT OF DEFENSE****Department of the Army; Corps of Engineers**

[OR 125 and 128 –6334 PD; HAG 4–0104]

**Seasonal Restrictions on Public Access to Federal Lands on the North Spit of Coos Bay and the New River Area of Critical Environmental Concern**

**AGENCIES:** USDI, Bureau of Land Management, Coos Bay District, Umpqua and Myrtlewood Resource Areas, North Bend, Oregon; Department of Defense, U.S. Army Corps of Engineers, Coos Bay Field Office, Coos Bay, Oregon.

**ACTION:** Supplemental rule; seasonal closure.

**SUMMARY:** This document seasonally restricts public access to certain lands managed by the BLM and the ACOE in Coos County, and lands managed by the BLM in Curry County, Oregon to protect the threatened population of Western Snowy Plovers from motorized and nonmotorized recreational use during their nesting season (15 March–15 September).

**EFFECTIVE DATE:** April 12, 2004.

**ADDRESSES:** Mail or personal delivery: District Manager, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Email: *coos\_bay@or.blm.gov*.

**FOR FURTHER INFORMATION CONTACT:** Alan Hoffmeister, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Telephone: (541) 756–0100. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Procedural Matters
- IV. Closure

**I. Public Comment Procedures**

The BLM and ACOE find good cause to publish this closure notice effective upon publication, without providing for public comment, due to the immediate need to protect the Oregon coast population of threatened Western Snowy Plovers from recreational impacts during their nesting season. Western Snowy Plovers are very

sensitive to disturbance and their cryptic eggs and young are easily trampled by unsuspecting visitors. The Coos Bay North Spit is the most important nesting area for Western Snowy Plovers on the Oregon coast and the loss of even a single nest at this site is considered significant under the Endangered Species Act. Lands managed by the BLM for Western Snowy Plovers at the New River ACEC are also vital for the recovery of this species in Oregon.

**II. Background**

The Pacific coast population of the Western Snowy Plover was listed as a Federally Threatened species on March 5, 1993, pursuant to the Endangered Species Act of 1973, as amended. Beach access restrictions are necessary to protect Western Snowy Plovers, their nests and young, and to comply with the Endangered Species Act and the U.S. Fish and Wildlife Service's Biological Opinion (BO) 1–7–00–F–421. The BO was prepared in response to the BLM's request for formal consultation on its Biological Assessment for Management of Federal Lands on the North Spit of Coos Bay During the 2000–2001 Western Snowy Plover Nesting Seasons (USDI 2000). The BO states that recreational activity within and adjacent to Western Snowy Plover areas can have significant adverse impacts to plovers, and concurred with BLM's proposed seasonal restrictions to be published in the **Federal Register**. Previous **Federal Register** notices, published in 1999 after the grounding of the New Carissa and its subsequent oil spill, restricted access to all or part of the beach and inland areas managed by the Bureau of Land Management on the North Spit of Coos Bay (64 FR 7904, Feb. 17, 1999; 64 FR 16479, April 5, 1999; 64 FR 45562, Aug. 20, 1999). These restrictions were implemented for public safety and the need to reduce disturbance to breeding and wintering Western Snowy Plovers during the lengthy clean-up process that followed the grounding of the New Carissa. A new notice is now warranted.

A previous notice for the New River area (16108 FR 61, April 11, 1996) restricted access only at the Floras Lake plover nest site. Based on current nest distribution, further restrictions are necessary for beaches and Habitat Restoration Area (HRAs) within the New River Area of Critical Environmental Concern (ACEC), and to comply with the New River ACEC Management Plan, the Endangered Species Act, and BLM Manual 6840.

**III. Procedural Matters**

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The lands described in this rule are only those public lands managed by either the BLM or the ACOE. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083]*

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is in accordance with rules enforced by the State of Oregon for the lands in the North Spit and the Sixes River that are under the state's authority and jurisdiction. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]*

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications.

**Paperwork Reduction Act**

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**IV. Closure**

Pursuant to 43 CFR 3864.1 and 36 CFR 327.12(a), notice is hereby given

that the BLM and the ACOE are seasonally restricting access to portions of public lands. On the North Spit of Coos Bay, public access to the Western Snowy Plover HRAs is to be seasonally restricted as follows: the inland Western Snowy Plover HRAs totaling approximately 175 acres located in T. 25 S., R. 14 W., Sections 23, 24, 25, 26 and 35 are to be closed to all public access during the plover breeding season, 15 March–15 September. During the remaining portions of the year (16 September–14 March), these areas are open to non-vehicular recreational use, except for the fenced 1994 HRA and South Spoils area located in section 35. Also closed to all public access during the plover breeding season, 15 March–15 September, is the dry upper portion of the beach (above the mean high tide line) between the Federal Aviation Administration (FAA) tower and a point approximately 200 yards north of the Coos Bay North Jetty to the deflation plain east of the foredune (approx. 78 acres) located in T. 25 S., R. 14 W. Sections 13, 23, 24, 26 and 35. During the closure period, the area will be clearly posted. During the remaining portions of the year (16 September–14 March), these beach areas are open for recreational use, including motorized vehicles.

In addition to the above areas, this notice revises previously published access restrictions to public lands administered by the BLM within the New River Area of Critical Environmental Concern (ACEC). Public access to Western Snowy Plover nesting areas within the ACEC shall be seasonally restricted as follows: The dry upper portion of the beach (above the mean high tide line) to the deflation plain east of the foredune located in the north 0.4 mile of T. 31 S., R. 15 W., Section 8, and the dry upper portion of the beach (above the mean high tide line) to the deflation plain east of the foredune located in T. 30 S., R. 15 W., Sections 3, 10, 15, 21, 22, 28, 32, and 33. Also closed to public access during the plover breeding season is the Western Snowy Plover HRA on the New River Spit located in T. 30 S., R. 15 W., Sections 3, 10, 15, 21, 22, including untreated plover habitat in Sections 21, 28, 32, and 33. All Western Snowy Plover habitat listed above shall be closed to all public access during the plover breeding season, 15 March–15 September with the exception of BLM land located in the south 0.6 miles of T. 31 S., R. 15 W., Section 8, and the south 0.25 mile of T. 30 S., R. 15 W., Section 28. In the event that plovers nest on BLM lands within the New River ACEC

not closed by this notice, BLM will enclose the nest(s), post the immediate area closed, and rope around it to limit disturbance. During the remaining portions of the year (16 September–14 March), these areas are open to non-vehicular public use.

Closure signs will be posted at main entry points to all locations affected by this Notice. Maps of the closure areas and further information may be obtained from the Coos Bay District Office. The described seasonal closures will remain in effect annually until further notice.

Under the authority found in 43 U.S.C. 1733, and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules on public lands in the area known as North Spit and New River; and under 16 U.S.C. 460d, and 36 CFR 327.12(a) the U.S. Army Corps of Engineers will enforce the following rules on lands administered by the U.S. Army Corps of Engineers in the area known as North Spit:

#### Supplemental Rules for North Spit and New River

##### Sec. 1 Prohibited acts.

(a) Prohibited acts. During the posted dates and within the closed areas, you must not:

- (1) Operate any motorized vehicle.
- (2) Enter by any non-motorized means, including but not limited to foot, bicycle, off road vehicle, horse, or non-powered aircraft.
- (3) Discharge any firearm.
- (4) Start, build or maintain any fire.
- (5) Light or discharge any fireworks or incendiary devices.

(b) Exemptions. The following are exempt from prosecution under the prohibited acts:

1. Any person operating a motorized vehicle on a publicly maintained State or County road;
2. Any Federal, State or local officer or employee in the scope of their duties;
3. Members of any organized rescue or fire-fighting force in the performance of official duty; and
4. Any person authorized in writing by BLM.

##### Sec. 2 Penalties.

On public lands fitting the criteria in the Sikes Act (16 U.S.C. 670), under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 16 U.S.C. 670j(a)(2). If you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than \$500 or imprisoned for no more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On all public lands under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7 if you violate any of these supplementary rules

on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On lands managed by the U.S. Army Corps of Engineers under 16 U.S.C. 460d and 36 CFR 327.25 if you violate any of these supplementary rules, you may be fined no more than \$500 or imprisoned for not more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

**Judy E. Nelson,**

*Acting Associate State Director, Oregon/  
Washington Bureau of Land Management.*

**Charles S. Markham,**

*Lieutenant Colonel, EN, Acting Commander,  
U.S. Army Corps of Engineers.*

[FR Doc. 04–8156 Filed 4–9–04; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

#### Notice of Supplementary Rule for Public Lands in California

**AGENCY:** Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

**ACTION:** Camping closure of selected Federal lands, Imperial County, CA.

**SUMMARY:** The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule will apply to public lands located in the East Mesa lying west of the Old Coachella Canal and north of Interstate 8 near Gordon's Well in Imperial County, CA. This rule is being issued to protect the flat-tailed horned lizard and will continue a current camping closure.

**FOR FURTHER INFORMATION CONTACT:** Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243, (760) 337–4420.

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion of the Supplementary Rule

BLM has determined this rule is necessary to support the decision record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the