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Contents

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

Agriculture Department

See Animal and Plant Health Inspection Service

See Forest Service

See Grain Inspection, Packers and Stockyards
Administration

Air Force Department

NOTICES

Environmental statements; availability, etc.:

Langley Air Force Base, VA; Initial F-22 Operational
Wing of F-22 Raptors, 3883

Privacy Act:

Systems of records, 3883–3886

Animal and Plant Health Inspection Service

NOTICES

Reports and guidance documents; availability, etc.:

Noxious Weeds Program action plan, 3874–3875

Census Bureau

NOTICES

Agency information collection activities:

Proposed collection; comment request, 3876–3877

Centers for Disease Control and Prevention

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 3900–
3901

Grant and cooperative agreement awards:

American Academy of Pediatrics, 3901–3902

Coast Guard

RULES

Ports and waterways safety:

Chesapeake Bay entrance and Hampton Roads, VA;
regulated navigation area, 3812–3814

San Pedro Bay, CA; security zones, 3814–3816

Commerce Department

See Census Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 3875–
3876

Commodity Futures Trading Commission

NOTICES

Contract market proposals:

Kansas City Board of Trade—

Hard red winter wheat, 3881–3882

Corporation for National and Community Service

NOTICES

Meetings; Sunshine Act, 3882

Defense Department

See Air Force Department

NOTICES

Grants and cooperative agreements; availability, etc.:

National Security Education Program; institutional grants,
3882–3883

Delaware River Basin Commission

NOTICES

Meetings and hearings, 3886–3888

Education Department

NOTICES

Meetings:

National Assessment Governing Board, 3888

Energy Department

See Energy Efficiency and Renewable Energy Office

See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office

NOTICES

Meetings:

Federal Energy Management Advisory Committee, 3888–
3889

Environmental Protection Agency

RULES

Air quality implementation plans; approval and
promulgation; various States:

California, 3816–3820

Indiana; withdrawn, 3816

PROPOSED RULES

Air quality implementation plans; approval and
promulgation; various States:

California, 3849

NOTICES

Meetings:

Clean Air Act Advisory Committee, 3897

Reports and guidance documents; availability, etc.:

Particulate matter risk analysis methodology document;
comment request, 3897–3898

Superfund; response and remedial actions, proposed
settlements, etc.:

Liberty Industrial Finishing Site, NY, 3898

White Bridge Road Site, NJ, 3898

Executive Office of the President

See Trade Representative, Office of United States

Federal Aviation Administration

PROPOSED RULES

Airworthiness directives:

Honeywell, 3844–3846

Federal Deposit Insurance Corporation

NOTICES

Meetings; Sunshine Act, 3898–3899

Federal Emergency Management Agency

NOTICES

Disaster and emergency areas:

New York, 3899

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:
 FPL Energy Marcus Hook, L.P., et al., 3890–3892
 Portland General Electric Co. et al., 3892–3893

Environmental statements; availability, etc.:
 Atlanta Power Co.-Idaho, 3894

Meetings; Sunshine Act, 3894–3897

Applications, hearings, determinations, etc.:
 Conectiv Bethlehem, Inc., 3889
 Coral Canada US Inc., 3889
 HC Power Marketing LLC, 3890

Federal Railroad Administration**NOTICES**

Exemption petitions, etc.:
 Burlington Northern & Santa Fe Railway Co., 3931

Federal Reserve System**NOTICES**

Agency information collection activities:
 Discontinuance, 3933–3934

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:
 Critical habitat designations—
 Newcomb's snail, 3849–3867
 Various plants from Kauai and Niihau, HI, 3939–4098

NOTICES

Environmental statements; availability, etc.:
 Incidental take permits—
 Williamson County, TX; Bone Cave harvestman, 3907–3908

Meetings:
 Aquatic Nuisance Species Task Force, 3908

Food and Drug Administration**NOTICES**

Agency information collection activities:
 Proposed collection; comment request, 3902–3904

Forest Service**NOTICES**

Meetings:
 Land Between the Lakes Advisory Board, 3875

Grain Inspection, Packers and Stockyards Administration**NOTICES**

Agency designation actions:
 Iowa, 3875

Health and Human Services Department

See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

NOTICES

Meetings:
 Complementary and Alternative Medicine Policy, White House Commission, 3899–3900

Housing and Urban Development Department**NOTICES**

Agency information collection activities:
 Reporting and recordkeeping requirements, 3907

Terrorist attacks of September 11, 2001; statutory and regulatory waivers granted to New York State for recovery, 4163–4166

Indian Affairs Bureau**PROPOSED RULES**

Economic enterprises:
 Gaming on tribal lands acquired after October 17, 1988; determination procedures; correction, 3846

Interior Department

See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**RULES**

Income taxes:
 Stock and other personal property disposition; recognized loss allocation and foreign tax credit limitation computation; correction, 3811–3812

PROPOSED RULES

Income taxes, etc.:
 Statutory stock options; Federal Insurance Contributions Act, Federal Unemployment Tax Act, and income tax collection at source; application; hearing, 3846–3847

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 3932–3933

International Trade Administration**NOTICES**

Antidumping:
 Carbon and alloy steel wire rod from—
 Various countries, 3877–3878
 Cased pencils from—
 China, 3878–3879

Labor Department

See Occupational Safety and Health Administration

Land Management Bureau**NOTICES**

Agency information collection activities:
 Submission for OMB review; comment request, 3908–3909

Coal leases, exploration licenses, etc.:
 Wyoming, 3909–3910

Committees; establishment, renewal, termination, etc.:
 Utah Resource Advisory Council, 3910

Environmental statements; notice of intent:
 Grand Staircase-Escalante National Monument, UT, 3910–3911

Meetings:
 Colorado Canyons National Conservation Area Advisory Council, 3911

Oil and gas leases:
 Colorado, 3911
 Wyoming, 3911–3912

Merit Systems Protection Board**RULES**

Practice and procedure:
 Case suspension procedures, 3811

National Council on Disability**NOTICES**

Meetings; Sunshine Act, 3916–3917

National Highway Traffic Safety Administration**NOTICES**

Agency information collection activities:
 Submission for OMB review; comment request, 3931–3932

National Institutes of Health**NOTICES**

Inventions, Government-owned; availability for licensing, 3904–3905

Meetings:

Fogarty International Center Advisory Board, 3905
 National Institute of Child Health and Human Development, 3907
 National Institute of General Medical Sciences, 3905–3907

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—
 Groundfish; reporting and recordkeeping requirements, 4099–4161
 Pollock, 3825

West Coast States and Western Pacific fisheries—
 Pacific Coast groundfish; correction, 3820–3824

PROPOSED RULES

International fisheries regulations:

Pacific halibut—
 Guided recreational fishery; guideline harvest levels, 3867–3873

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 3879–3881

National Science Foundation**NOTICES**

Agency information collection activities:
 Submission for OMB review; comment request, 3917

Nuclear Regulatory Commission**NOTICES**

Applications, hearings, determinations, etc.:
 Earthline Technologies, 3917–3918

Occupational Safety and Health Administration**NOTICES**

Nationally recognized testing laboratories, etc.:
 Intertek Testing Services, NA, Inc., 3912–3913
 TUV Rheinland of North America, Inc., 3913–3916

Office of United States Trade Representative

See Trade Representative, Office of United States

Postal Rate Commission**NOTICES**

Domestic rates, fees, and mail classifications:
 First-Class Mail service standards; complaint filed, 3918–3921

Public Health Service

See Centers for Disease Control and Prevention
 See Food and Drug Administration
 See National Institutes of Health

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:
 American Stock Exchange LLC, 3921–3923

National Association of Securities Dealers, Inc., 3923–3927

National Association of Securities Dealers, Inc.;
 correction, 3937
 Philadelphia Stock Exchange, Inc., 3927–3929

Small Business Administration**PROPOSED RULES**

HUBZone program:
 Miscellaneous amendments, 3826–3844

Surface Mining Reclamation and Enforcement Office**PROPOSED RULES**

Permanent program and abandoned mine land reclamation plan submissions:
 Kentucky, 3847–3849

Surface Transportation Board**NOTICES**

Railroad operation, acquisition, construction, etc.:
 Martin Marietta Materials, Inc., 3932

Thrift Supervision Office**NOTICES**

Agency information collection activities:
 Discontinuance, 3933–3934

Trade Representative, Office of United States**NOTICES**

Committees; establishment, renewal, termination, etc.:
 NAFTA Chapter Twenty roster, 3929–3930

Transportation Department

See Coast Guard

See Federal Aviation Administration

See Federal Railroad Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

NOTICES

Aviation proceedings:

Agreements filed; weekly receipts, 3930
 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 3930–3931

Treasury Department

See Internal Revenue Service

See Thrift Supervision Office

Veterans Affairs Department**NOTICES**

Agency information collection activities:
 Proposed collection; comment request, 3934–3935
 Submission for OMB review; comment request, 3935–3936

Separate Parts In This Issue**Part II**

Interior Department, Fish and Wildlife Service, 3939–4098

Part III

Commerce Department, National Oceanic and Atmospheric Administration, 4099–4161

Part IV

Housing and Urban Development Department, 4163–4166

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

12013811

13 CFR**Proposed Rules:**

1213826

1253826

1263826

14 CFR**Proposed Rules:**

393844

25 CFR**Proposed Rules:**

2923846

26 CFR

13811

Proposed Rules:

13846

313846

30 CFR**Proposed Rules:**

9173847

33 CFR165 (2 documents)3812,
3814**40 CFR**

52 (3 documents)3816, 3819

Proposed Rules:

523849

50 CFR

6003820

6603820

679 (2 documents)3825,
4100**Proposed Rules:**

17 (2 documents)3849, 3940

3003867

Rules and Regulations

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comment.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is issuing interim regulations to implement procedures under which a case may be suspended for up to 60 days to permit the parties to pursue discovery or settlement.

DATES: *Effective date:* January 28, 2002. *Comment date:* Submit comments on or before March 29, 2002.

ADDRESSES: Send or deliver comments to Robert E. Taylor, Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653-7130; or email: mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200; fax: (202) 653-7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION: This interim regulation amends the Board's rules of practice and procedure at 5 CFR part 1201 by adding a new section 1201.28, "Case Suspension Procedures."

In November 1999, the Merit Systems Protection Board (MSPB) established a pilot project to allow employee-appellants and agencies up to 60 days additional time to pursue discovery and settlement efforts in pending initial appeals. The pilot program was initiated, in part, in response to concerns raised by Board practitioners that the 120-day time limit for adjudicating appeals prevented the parties from conducting the discovery they believed necessary to prevail on appeal. The pilot simplified the process

for obtaining a suspension of case processing to accommodate parties before the Board.

Under the pilot, the presiding judge was authorized to grant a 30-day suspension of case processing to parties who mutually requested the additional time. A second 30-day suspension was granted if the parties agreed that further time was necessary. Parties were not required to provide evidence and argument to support a joint request for additional time, so long as the request was made early in the proceedings.

The Board believes that the pilot has been successful in addressing the concerns regarding adequate time to conduct discovery and in facilitating settlement of complex cases. As of November 13, 2001, the Board's administrative Judges had granted 712 case suspension requests. In those 712 suspensions, the administrative judges had granted an additional 30-day case suspension in 240 appeals.

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend 5 CFR part 1201—Practices and Procedures, Subpart B—Procedures for Appellate Cases, to add a new §1201.28 immediately after § 1201.27.

§ 1201.28 Case suspension procedures.

(a) *Joint requests.* The parties may submit a joint request for additional time to pursue discovery or settlement. Upon receipt of such request, the judge will suspend processing of the case for a period up to 30 days. The judge will grant an extension of the suspension period for up to an additional 30 days upon a joint request from the parties for additional time.

(b) *Unilateral requests.* Either party may submit a unilateral request for additional time to pursue discovery as provided in this subpart. Unilateral requests for additional time may be granted at the discretion of the judge.

(c) *Time for filing requests.* The parties must file a joint request that the adjudication of the appeal be suspended within 45 days of the date of the acknowledgment order (or within 7 days of the appellant's receipt of the agency file, whichever date is later). A request for an additional 30-day suspension period must be made on or before the fifth day before the end of the first 30-day suspension period.

(d) *Untimely requests.* The judge may consider requests for initial suspensions that are filed after the time limit set forth in paragraph (c) of this section. Such requests for additional time may be granted at the discretion of the judge.

(e) *Early termination of suspension period.* The suspension period may be terminated prior to the end of the agreed upon period if the parties request the judge's assistance relative to discovery or settlement during the suspension period and the judge's involvement pursuant to that request is likely to be extensive.

Dated: January 22, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02-1958 Filed 1-25-02; 8:45 am]

BILLING CODE 7400-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8973]

RIN 1545-AW09

Allocation of Loss With Respect to Stock and Other Personal Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8973) which were published in the **Federal Register** on Friday, December 28, 2001 (66 FR 67081). The final regulations relate to the allocation of loss recognized on the disposition of stock and other personal property under sections 861 and 865.

DATES: This correction is effective January 8, 2002.

FOR FURTHER INFORMATION CONTACT:
David A. Juster (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 861 and 865 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD8973) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8973), which was the subject of FR Doc. 01-31819, is corrected as follows:

§ 1.861-8T [Corrected]

1. On page 67083, column 3, § 1.861-8T, line 3 of the paragraph heading, the language "for other sources and activities (temporary)." is corrected to read "from other sources and activities (temporary)."

§ 1.865-2 [Corrected]

2. On page 67086, column 2, § 1.865-2(a)(4)(iv), *Example 3.* (i), line 10, the language "country X for \$1,000. On January 2, 2002, R" is corrected to read "Country X for \$1,000. On January 2, 2002, R".

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 02-2046 Filed 1-25-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05-01-046]

RIN 2115-AE84

**Regulated Navigation Area;
Chesapeake Bay Entrance and
Hampton Roads, VA and Adjacent
Waters**

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard is amending the regulations for the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—regulated navigation area (Lower Chesapeake Bay RNA). This change to the Lower Chesapeake Bay RNA excludes public vessels, owned,

leased, or operated by the U.S. Government, from its navigational charts and publications carriage requirements. This amendment brings carrying requirements for public vessels operating in the Lower Chesapeake Bay RNA in alignment with the requirements for all other U.S. waters.

DATES: This rule is effective April 29, 2002, unless an adverse comment, or notice of intent to submit an adverse comment reaches the Commander, Fifth Coast Guard District (Aow), on or before March 29, 2002. If an adverse comment, or notice of intent to submit an adverse comment is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: Comments should be submitted to the address in this paragraph. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-01-046 and are available for inspection or copying at Commander (Aoww), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA, 23704-5004, between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg Anne Grabins, Fifth Coast Guard District Aids to Navigation Office, (757) 398-6559.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD05-01-046] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the address under **ADDRESSES**. You may submit your comments and material by mail, hand delivery or fax to the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which appear in 33 CFR 1.05-55, because it anticipates no adverse comment. If no

adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule.

If an adverse comment applies to only part of this rule and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change.

Background and Purpose

On May 2, 2001, in Volume 66 of **Federal Register** Number 85, pages 21862-21865, the Coast Guard published a direct final rule that changed 33 CFR part 164, section 164.01 (a) and (c), a change that exempts public vessels equipped with electronic charting and navigation systems from paper chart carriage requirements. This geographically broad rule, which became effective July 31, 2001 (66 FR 42573, August 15, 2001), applies to public vessels operating in the navigable waters of the United States.

A separate part of the CFR, however, still requires public vessels operating in the Lower Chesapeake Bay RNA to carry paper charts, 33 CFR 165.501(d)(7). We are amending the Chesapeake Bay RNA regulation to bring its navigation requirements for public vessels operating in this area in alignment with the requirements for all other U.S. waters.

This rule excludes public vessels from the corrected paper chart requirements contained in 33 CFR 165.501(d)(7),

when operating in the Chesapeake Bay entrance and Hampton Roads, VA, and adjacent waters—regulated navigation area. This exclusion only applies to public vessels equipped with an electronic charting and navigation systems that meet the standards approved by the Federal agency exercising operational control of the vessel.

Discussion of Rule

The intent of the rule is to enable Federal agencies to utilize electronic charting and navigation systems as an alternative to requiring corrected paper charts, when the public vessel is equipped with an electronic system and backup. In addition, this rule is congruent with the direct final rule published May 2, 2001, and makes the requirements for public vessels in the Lower Chesapeake Bay RNA consistent in U.S. waters.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is not necessary.

This direct final rule excludes public vessels from certain requirements that are found in the Regulated Navigation Area regulations in 33 CFR 165.501. Agencies will be allowed the flexibility of using either electronic charts or the currently required corrected paper charts. Consequently, this rule does not impose mandatory costs on the agencies involved.

This direct final rule would apply only to public vessels owned, operated, or leased by the United States Government that are equipped with an approved electronic system.

The Coast Guard does not expect that using electronic charts and navigation systems in place of corrected paper charts will adversely impact maritime safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The Coast Guard believes this rule will not have any significant effect on the environment. This rule is a change to an established Regulated Navigation Area, meeting the categorical exclusion requirements outlined in paragraph (34)(g) of the above instruction. A “Categorical Exclusion Determination” is available in the docket for inspection

or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.501, revise paragraph (d)(7)(i) to read as follows:

§ 165.501. Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters-regulated navigation area.

* * * * *

(d) * * *

(7) * * *

(i) Corrected charts of the Regulated Navigation Area. Instead of corrected paper charts, warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

* * * * *

Dated: January 15, 2002.

T.W Allen,

Commander, Fifth Coast Guard District.

[FR Doc. 02–1871 Filed 1–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–002]

RIN 2115–AA97

Security Zones; San Pedro Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established moving and fixed security zones around any liquefied hazardous gas (LHG) tank vessel while the vessel is anchored, moored, or underway within the Los Angeles-Long Beach,

California, port area. These security zones will take effect upon the entry of any LHG vessel into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the LHG vessel departs the three nautical mile limit. These security zones are needed for national security reasons to protect the LHG vessel, the public, and the surrounding area from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach, or his designated representative.

DATES: The rule is effective from 7 p.m. PST on January 14, 2002 to 11:59 p.m. PDT on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–002 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the potentially explosive nature of the LHG vessel cargo, which includes liquefied petroleum gas (LPG) and liquefied natural gas (LNG), this rulemaking is urgently required to prevent possible terrorist strikes against an LHG vessel in the ports of Los Angeles-Long Beach,

California. The delay inherent in the NPRM process is contrary to the public interest insofar as it would render a LHG vessel vulnerable to subversive activity, sabotage or terrorist attack, and immediate action is necessary to protect persons, vessels and others in the maritime community from the hazards associated with the transport and loading operations of this dangerous cargo. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that further subversive activity may be launched against the United States. In response to these terrorist acts, to prevent similar occurrences, and to protect the ports of Los Angeles-Long Beach, the Coast Guard has established these security zones around any LHG tank vessel while the vessel is anchored, moored, or underway within the Los Angeles-Long Beach, California, port area. Title 33 CFR 165.1151 currently provides for safety zones for LHG tank vessels while at anchor in designated anchorage areas in San Pedro Bay, while transiting San Pedro Bay, and while LHG tank vessels are moored at any berth within the Los Angeles or Long Beach port area. However, in light of the current terrorist threats to national security, these zones are insufficient to protect LHG tank vessels while anchored in San Pedro Bay, or while a LHG vessel is transiting or moored in the port of Los Angeles or Long Beach. This rulemaking will temporarily suspend 33 CFR 165.1151 and will temporarily add the security zones provided for hereunder as 33 CFR 165.T11–062. These security zones are needed to protect LHG tank vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature.

LHG tank vessels periodically transit and moor in the Los Angeles-Long Beach port areas to load butane, propane, and similar gas products. These security zones will take effect upon the entry of any LHG vessel into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the LHG vessel departs the three nautical mile limit. The following areas have been established as security zones:

(1) The waters within a 500 yard radius around a LHG tank vessel, while

the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorages within three nautical miles of the breakwaters;

(2) The waters within 500 yards of a LHG tank vessel, while the vessel is moored at any berth within the Los Angeles or Long Beach, California, port area, inside the Federal breakwaters bounding San Pedro Bay;

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG tank vessel, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three nautical miles outward from the Federal breakwaters.

These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States in the ports of Los Angeles-Long Beach, California. Entry into these moving or fixed security zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, or his designated representative.

These security zones are established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel, a monetary penalty of not more than \$10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway and will be in place for only a few days while LHG tank vessels conduct loading operations, which does not occur very frequently. During calendar year 2001, the safety zones established by section

165.1151 (formerly 165.1101, redesignated June 25, 2001, 66 FR 33637, 33642) were triggered only three times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct

cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34), of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. From January 14, 2002 through June 15, 2002, suspend § 165.1151.

3. From January 14, 2002 through June 15, 2002, add new temporary § 165.T11-062 to read as follows:

§ 165.T11-062 Security Zones: San Pedro Bay, California.

(a) *Location.* The following areas are established as security zones during the specified conditions:

(1) The waters within a 500-yard radius around a liquefied hazardous gas (LHG) tank vessel, while the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorages within three nautical miles of the breakwaters;

(2) The waters within 500 yards of a LHG tank vessel, while the vessel is moored at any berth within the Los Angeles or Long Beach, California, port area, inside the Federal breakwaters bounding San Pedro Bay; and

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG tank vessel, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three nautical miles outward from the Federal breakwaters.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, the following rule applies to the security zones established by this section: No person or vessel may enter or remain in these security zones without the permission of the Captain of the Port Los Angeles-Long Beach, CA.

(2) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(3) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, or his authorized representatives.

(c) *Dates.* This section becomes effective at 7 p.m. PST on January 14, 2002, and will terminate at 11:59 p.m. PDT on June 15, 2002.

Dated: January 14, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02-2039 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122-2; FRL-7133-6]

Approval and Promulgation of Implementation Plans; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule revising Indiana's opacity rules (326 IAC Article 5). In the direct final rule published on November 30, 2001 (66 FR 59708), we stated that if we receive adverse comment by December 31, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on November 30, 2001 (66 FR 59757). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The direct final rule is withdrawn as of January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, Telephone: (312) 886-6524.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

William E. Munro,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

§ 52.770 [Amended]

Accordingly, the addition of 40 CFR 52.770(c)(146) is withdrawn as of January 28, 2002.

[FR Doc. 02-2010 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 254-0318a; FRL-7131-9]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern control oxides of nitrogen (NO_x) emissions from stationary internal combustion engines. We are approving the local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 29, 2002, without further notice, unless EPA receives adverse comments by February 27, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105.
 California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.
 Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

FOR FURTHER INFORMATION CONTACT:
 Charnjit Bhullar, Rulemaking Office

(AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 972-3960.

SUPPLEMENTARY INFORMATION:
 Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. The State's Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. EPA's Evaluation and Action
 - A. How is EPA evaluating the rule?

- B. Does this rule meet the evaluation criteria?
- C. Public comment and final action.
- III. Background Information
 - Why was this rule submitted?
- IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
YSAQMD	2.32	Stationary Internal Combustion Engines	10/10/01	11/28/01

On December 6, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

On January 13, 2000, EPA published a limited approval and limited disapproval of a version of rule 2.32 that was submitted to EPA on September 28, 1994.

C. What Is the Purpose of the Submitted Rule?

YSAQMD Rule 2.32 applies to stationary internal combustion engines within the Federal ozone non-attainment area regulated by the YSAQMD. This rule controls emission of oxides of nitrogen (NO_x) from these engines.

On January 13, 2000, the EPA published a limited approval and limited disapproval of this rule, because some rule provisions conflicted with section 110 and part D of the Clean Air Act.

Those provisions included the following:

- 1. Emissions limits were significantly higher than the emissions limits established as RACT by CARB.
- 2. Annual emission testing of all engines was not required.
- 3. The rule did not require nonresettable fuel meter or nonresettable hour meter.

The revisions are designed primarily to correct these deficiencies. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The YSAQMD regulates ozone nonattainment areas (see 40 CFR part 81), so Rule 2.32 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.

2. Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. *Alternative Control Techniques (ACT) Document—No_x Emission from Stationary Reciprocating Internal Combustion Engines* (EPA-453 / R-93-032).

4. *State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards*, Section 110 of the Clean Air Act (CAA), and Plan Requirements for Nonattainment Areas, Title I, Part D of the CAA.

5. *Requirement for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

6. *CAPCOA / ARB Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines* State of California Air Resources Board, December, 1997.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule corrects the deficiencies identified in our January 13, 2000 action and is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by February 27, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 29, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_x rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 14, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves the state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not

subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(289) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(289) New and amended regulation for the following AQMD were submitted on November 28, 2001, by the Governor’s designee.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(1) Rule 2.32 adopted on October 10, 2001.

* * * * *

[FR Doc. 02-2007 Filed 1-25-02; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 254-0318c; FRL-7132-1]

Interim Final Determination That State Has Corrected the Deficiencies in California, Yolo-Solano Air Quality Management District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32. EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposal, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on January 13, 2000. This action will stay the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This document is effective January 28, 2002. Comments must be received by February 27, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972-3960.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 28, 1994, the State submitted YSAQMD Rule 2.32, for which EPA published a limited disapproval in the **Federal Register** on January 13, 2000. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of YSAQMD rule 2.32 on November 28, 2001. EPA is taking direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of Rule 2.32. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposal set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on January 13, 2000. However, this action will stay the imposition of the offset and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be stayed until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Reporting and recordkeeping, Ozone.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

[FR Doc. 02-2006 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309-1309-01; I.D. 121301A]

RIN 0648-AO69

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

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

ACTION: Corrections to the emergency rule; January through February 2002

Pacific Coast groundfish fishery management measures.

SUMMARY: This document contains corrections to the emergency rule for the January through February 2002 Pacific Coast groundfish fishery management measures published on January 11, 2002.

DATES: Effective January 28, 2002 through February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, NMFS, (206)-526-6140.

SUPPLEMENTARY INFORMATION:

Background

The emergency rule for the January through February 2002 management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 11, 2002 (67 FR 1540). This emergency rule contained a number of errors that require correction.

Corrections

In the rule FR Doc. 01-32261, in the issue of Friday, January 11, 2002 (67 FR 1540) make the following corrections:

1. On page 1541, in the second column, paragraph A.(1)(c), the first sentence is corrected to read as follows:

"(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday."

2. On page 1542, in the third column, paragraph A.(11), the third and fourth sentences are corrected to read as follows:

"If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear."

3. On page 1543, in the second column, paragraph A.(13)(a)(i) is corrected to read as follows:

"(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, other flatfish, lingcod, sablefish, and Pacific whiting;"

4. On page 1543, in the third column, paragraph A.(14)(a)(iii), the first sentence is corrected to read as follows:

“(iii) Midwater trawl gear is pelagic trawl gear, as specified at 50 CFR 660.302 and 660.322 (b)(5).”

5. On page 1544, in the first column, paragraph A.(14)(b)(v), the heading is corrected to read as follows:

“(iv) More than one type of trawl gear on board.”

6. On page 1544, in the third column, paragraph A.(19)(h)(ii) is corrected to read as follows:

“(ii) Columbia—47°30' to 43°00' N. lat.”

7. On pages 1548 and 1549, Table 2 and 3, respectively, and their footnotes are corrected to read as follows:

* * * * *

BILLING CODE 3510-22-S

**Table 2. Trip Limits ^{1/} and Gear Requirements ^{2/} for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.
2	North	1,800 lb/ 2 months	
3	South	50,000 lb/ 2 months	
4	Splitnose - South ^{6/}	25,000 lb/ 2 months	
5	Pacific ocean perch - North ^{6/}	2,000 lb/ month	
6	Chilipepper - South ^{6/}		
7	mid-water trawl	25,000 lb/ 2 months	
8	small footrope trawl	7,500 lb/ 2 months	
9	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year.	
10	DTS complex - North		
11	Sablefish	6,000 lb/ 2 months	
12	Longspine thornyhead	10,000 lb/ 2 months	
13	Shortspine thornyhead	2,600 lb/ 2 months	
14	Dover sole	30,000 lb/ 2 months	
15	DTS complex - South		
16	Sablefish	4,500 lb/ 2 months	
17	Longspine thornyhead	10,000 lb/ 2 months	
18	Shortspine thornyhead	2,600 lb/ 2 months	
19	Dover sole	22,000 lb/ 2 months	
20	Flatfish - North		
21	All other flatfish ^{3/}	Small footrope required; 15,000 lb/ month	
22	Petrale sole	Not limited	
23	Rex sole	Not limited	
24	Arrowtooth flounder	30,000 lb/ trip	
25	Flatfish - South		
26	All other flatfish ^{3/}	Small footrope: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs	
27	Petrale sole	Not limited	
28	Rex sole	Not limited	
29	Arrowtooth flounder	30,000 lb/ trip	
30	All other flatfish ^{3/} - North and South	Large footrope: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits at any time during the year.	
31	Whiting shoreside ^{4/}	20,000 lb/ trip	
32	USE OF SMALL FOOTROPE BOTTOM TRAWL ^{5/} OR MIDWATER TRAWL REQUIRED FOR LANDING ALL OF THE FOLLOWING SPECIES:		
33	Minor shelf rockfish		
34	North	300 lb/ month	
35	South	500 lb/ month	
36	Canary rockfish	200 lb/ 2 months	
37	Widow rockfish		
38	mid-water trawl	CLOSED ^{7/}	
39	small footrope trawl	1,000 lb/ month	
40	Yellowtail - North ^{6/}		
41	mid-water trawl	CLOSED ^{7/}	
42	small footrope trawl	Without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 30,000 lb/ 2 months.	
43	Bocaccio - South ^{6/}	600 lb/ 2 months	
44	Cowcod	CLOSED ^{7/}	
45	Minor nearshore rockfish		
46	North	300 lb/ month	
47	South	300 lb/ month	
48	Lingcod ^{8/}	800 lb/ 2 months	

^{1/} Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border.

"South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

^{2/} Gear requirements and prohibitions are explained above.

^{3/} "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 2 with species specific management measures, including trip limits.

^{4/} The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.

Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.

^{5/} Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

Midwater gear also may be used; the footrope must be bare. See above.

^{6/} Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish

in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.

^{7/} Closed means that it is prohibited to take and retain, possess, or land the designated species

in the time or area indicated. See IV.A.(7).

^{8/} The minimum size limit for lingcod is 24 inches (61 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 3. Trip Limits^{1/} for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		
2	North	1,000 lb/ month	
3	South	25,000 lb/ 2 months	
4	Splitnose - South ^{5/}	25,000 lb/ 2 months	
5	Pacific ocean perch - North ^{5/}	2,000 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Longspine thornyhead	9,000 lb/ 2 months	
10	Shortspine thornyhead	2,000 lb/ 2 months	
11	Dover sole		
12	Arrowtooth flounder		
13	Petrale sole	5,000 lb/ month (all flatfish)	
14	Rex sole		
15	All other flatfish ^{2/}		
16	Whiting ^{3/}	20,000 lb/ trip	
17	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish ^{5/}		
18	North	200 lb/ month	
19	South		
20	40°10' - 34°27' N. lat.	200 lb/ month	
21	South of 34°27' N. lat.	CLOSED ^{4/}	
22	Canary rockfish	CLOSED ^{4/}	
23	Yelloweye rockfish	CLOSED ^{4/}	
24	Cowcod	CLOSED ^{4/}	
25	Bocaccio - South ^{5/}		
26	40°10' - 34°27' N. lat.	200 lb/ month	
27	South of 34°27' N. lat.	CLOSED ^{4/}	
28	Chilipepper - South ^{5/}		
29	40°10' - 34°27' N. lat.	500 lb/ month	
30	South of 34°27' N. lat.	CLOSED ^{4/}	
31	Minor nearshore rockfish		
32	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish ^{6/}	
33	South		
34	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	
35	South of 34°27' N. lat.	CLOSED ^{4/}	
36	Lingcod ^{7/}		
37	North	CLOSED ^{4/}	
38	South		
39	40°10' - 34°27' N. lat.	CLOSED ^{4/}	
40	South of 34°27' N. lat.	CLOSED ^{4/}	

Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
 2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
 3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.
 4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
 5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.
 6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
 7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
 To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

8. On page 1550, in the third column, paragraph B.(4), the last sentence is corrected to read as follows:
 "The crossover provisions at paragraphs A.(12) do not apply to the black rockfish per-trip limits."

9. On page 1550, in the third column, paragraph C.(1), the second to last sentence is corrected to read as follows:
 "The trip limit at 50 CFR 660.323 (a)(1) for black rockfish caught with hook-and-line gear also applies."

10. On page 1551, Table 4 and its footnotes are corrected to read as follows:
 * * * * *

Table 4. Trip Limits^{1/} for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.
2	North	Per trip, no more than 25% of weight of the sablefish landed	
3	South	10,000 lb/ 2 months	
4	Splitnose - South ^{4/}	200 lb/ month	
5	Pacific ocean perch - North ^{5/}	100 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Thornyheads		
10	North of 34° 27' N. lat.	CLOSED ^{3/}	
11	South of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months	
12	Dover sole	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs	
13	Arrowtooth flounder		
14	Petrale sole		
15	Rex sole		
16	All other flatfish ^{2/}		
17	Whiting	300 lb/ month	
18	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish ^{5/}		
19	North	200 lb/ month	
20	South		
21	40°10' - 34°27' N. lat.	200 lb/ month	
22	South of 34°27' N. lat.	CLOSED ^{3/}	
23	Canary rockfish	CLOSED ^{3/}	
24	Yelloweye rockfish	CLOSED ^{3/}	
25	Cowcod	CLOSED ^{3/}	
26	Bocaccio - South ^{5/}		
27	40°10' - 34°27' N. lat.	200 lb/ month	
	South of 34°27' N. lat.	CLOSED ^{3/}	
28	Chilipepper - South ^{5/}		
29	40°10' - 34°27' N. lat.	500 lb/ month	
30	South of 34°27' N. lat.	CLOSED ^{3/}	
31	Minor nearshore rockfish		
32	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{5/}	
33	South		
34	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	
35	South of 34°27' N. lat.	CLOSED ^{3/}	
36	Lingcod ^{6/}		
37	North	CLOSED ^{3/}	
38	South		
39	40°10' - 34°27' N. lat.	CLOSED ^{3/}	
40	South of 34°27' N. lat.	CLOSED ^{3/}	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
 2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
 3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7). in the time or area indicated.
 4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.
 5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
 6/ The size limit for lingcod is 24 inches (61 cm) total length.
 To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

11. On page 1552, in the third column, paragraph D.(1), the first sentence is corrected to read as follows:
 "(1) California. (Note: California law provides that, in times and areas when

the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person.)"

Dated: January 21, 2002.
William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
 [FR Doc. 02-1999 Filed 1-25-02; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 011218304-1304-01; I.D. 012202D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2002, until 1200 hrs, A.l.t., March 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the pollock TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,716 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-1996 Filed 1-23-02; 1:05 pm]

BILLING CODE 3510-22-S

Rules and Regulations

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comment.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is issuing interim regulations to implement procedures under which a case may be suspended for up to 60 days to permit the parties to pursue discovery or settlement.

DATES: *Effective date:* January 28, 2002. *Comment date:* Submit comments on or before March 29, 2002.

ADDRESSES: Send or deliver comments to Robert E. Taylor, Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653-7130; or email: mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200; fax: (202) 653-7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION: This interim regulation amends the Board's rules of practice and procedure at 5 CFR part 1201 by adding a new section 1201.28, "Case Suspension Procedures."

In November 1999, the Merit Systems Protection Board (MSPB) established a pilot project to allow employee-appellants and agencies up to 60 days additional time to pursue discovery and settlement efforts in pending initial appeals. The pilot program was initiated, in part, in response to concerns raised by Board practitioners that the 120-day time limit for adjudicating appeals prevented the parties from conducting the discovery they believed necessary to prevail on appeal. The pilot simplified the process

for obtaining a suspension of case processing to accommodate parties before the Board.

Under the pilot, the presiding judge was authorized to grant a 30-day suspension of case processing to parties who mutually requested the additional time. A second 30-day suspension was granted if the parties agreed that further time was necessary. Parties were not required to provide evidence and argument to support a joint request for additional time, so long as the request was made early in the proceedings.

The Board believes that the pilot has been successful in addressing the concerns regarding adequate time to conduct discovery and in facilitating settlement of complex cases. As of November 13, 2001, the Board's administrative Judges had granted 712 case suspension requests. In those 712 suspensions, the administrative judges had granted an additional 30-day case suspension in 240 appeals.

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend 5 CFR part 1201—Practices and Procedures, Subpart B—Procedures for Appellate Cases, to add a new §1201.28 immediately after § 1201.27.

§ 1201.28 Case suspension procedures.

(a) *Joint requests.* The parties may submit a joint request for additional time to pursue discovery or settlement. Upon receipt of such request, the judge will suspend processing of the case for a period up to 30 days. The judge will grant an extension of the suspension period for up to an additional 30 days upon a joint request from the parties for additional time.

(b) *Unilateral requests.* Either party may submit a unilateral request for additional time to pursue discovery as provided in this subpart. Unilateral requests for additional time may be granted at the discretion of the judge.

(c) *Time for filing requests.* The parties must file a joint request that the adjudication of the appeal be suspended within 45 days of the date of the acknowledgment order (or within 7 days of the appellant's receipt of the agency file, whichever date is later). A request for an additional 30-day suspension period must be made on or before the fifth day before the end of the first 30-day suspension period.

(d) *Untimely requests.* The judge may consider requests for initial suspensions that are filed after the time limit set forth in paragraph (c) of this section. Such requests for additional time may be granted at the discretion of the judge.

(e) *Early termination of suspension period.* The suspension period may be terminated prior to the end of the agreed upon period if the parties request the judge's assistance relative to discovery or settlement during the suspension period and the judge's involvement pursuant to that request is likely to be extensive.

Dated: January 22, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02-1958 Filed 1-25-02; 8:45 am]

BILLING CODE 7400-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8973]

RIN 1545-AW09

Allocation of Loss With Respect to Stock and Other Personal Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8973) which were published in the **Federal Register** on Friday, December 28, 2001 (66 FR 67081). The final regulations relate to the allocation of loss recognized on the disposition of stock and other personal property under sections 861 and 865.

DATES: This correction is effective January 8, 2002.

FOR FURTHER INFORMATION CONTACT:
David A. Juster (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 861 and 865 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD8973) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8973), which was the subject of FR Doc. 01-31819, is corrected as follows:

§ 1.861-8T [Corrected]

1. On page 67083, column 3, § 1.861-8T, line 3 of the paragraph heading, the language "for other sources and activities (temporary)." is corrected to read "from other sources and activities (temporary)."

§ 1.865-2 [Corrected]

2. On page 67086, column 2, § 1.865-2(a)(4)(iv), *Example 3.* (i), line 10, the language "country X for \$1,000. On January 2, 2002, R" is corrected to read "Country X for \$1,000. On January 2, 2002, R".

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 02-2046 Filed 1-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05-01-046]

RIN 2115-AE84

**Regulated Navigation Area;
Chesapeake Bay Entrance and
Hampton Roads, VA and Adjacent
Waters**

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard is amending the regulations for the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—regulated navigation area (Lower Chesapeake Bay RNA). This change to the Lower Chesapeake Bay RNA excludes public vessels, owned,

leased, or operated by the U.S. Government, from its navigational charts and publications carriage requirements. This amendment brings carrying requirements for public vessels operating in the Lower Chesapeake Bay RNA in alignment with the requirements for all other U.S. waters.

DATES: This rule is effective April 29, 2002, unless an adverse comment, or notice of intent to submit an adverse comment reaches the Commander, Fifth Coast Guard District (Aow), on or before March 29, 2002. If an adverse comment, or notice of intent to submit an adverse comment is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: Comments should be submitted to the address in this paragraph. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-01-046 and are available for inspection or copying at Commander (Aoww), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA, 23704-5004, between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg Anne Grabins, Fifth Coast Guard District Aids to Navigation Office, (757) 398-6559.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD05-01-046] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the address under **ADDRESSES**. You may submit your comments and material by mail, hand delivery or fax to the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which appear in 33 CFR 1.05-55, because it anticipates no adverse comment. If no

adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule.

If an adverse comment applies to only part of this rule and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change.

Background and Purpose

On May 2, 2001, in Volume 66 of **Federal Register** Number 85, pages 21862-21865, the Coast Guard published a direct final rule that changed 33 CFR part 164, section 164.01 (a) and (c), a change that exempts public vessels equipped with electronic charting and navigation systems from paper chart carriage requirements. This geographically broad rule, which became effective July 31, 2001 (66 FR 42573, August 15, 2001), applies to public vessels operating in the navigable waters of the United States.

A separate part of the CFR, however, still requires public vessels operating in the Lower Chesapeake Bay RNA to carry paper charts, 33 CFR 165.501(d)(7). We are amending the Chesapeake Bay RNA regulation to bring its navigation requirements for public vessels operating in this area in alignment with the requirements for all other U.S. waters.

This rule excludes public vessels from the corrected paper chart requirements contained in 33 CFR 165.501(d)(7),

when operating in the Chesapeake Bay entrance and Hampton Roads, VA, and adjacent waters—regulated navigation area. This exclusion only applies to public vessels equipped with an electronic charting and navigation systems that meet the standards approved by the Federal agency exercising operational control of the vessel.

Discussion of Rule

The intent of the rule is to enable Federal agencies to utilize electronic charting and navigation systems as an alternative to requiring corrected paper charts, when the public vessel is equipped with an electronic system and backup. In addition, this rule is congruent with the direct final rule published May 2, 2001, and makes the requirements for public vessels in the Lower Chesapeake Bay RNA consistent in U.S. waters.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is not necessary.

This direct final rule excludes public vessels from certain requirements that are found in the Regulated Navigation Area regulations in 33 CFR 165.501. Agencies will be allowed the flexibility of using either electronic charts or the currently required corrected paper charts. Consequently, this rule does not impose mandatory costs on the agencies involved.

This direct final rule would apply only to public vessels owned, operated, or leased by the United States Government that are equipped with an approved electronic system.

The Coast Guard does not expect that using electronic charts and navigation systems in place of corrected paper charts will adversely impact maritime safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The Coast Guard believes this rule will not have any significant effect on the environment. This rule is a change to an established Regulated Navigation Area, meeting the categorical exclusion requirements outlined in paragraph (34)(g) of the above instruction. A “Categorical Exclusion Determination” is available in the docket for inspection

or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.501, revise paragraph (d)(7)(i) to read as follows:

§ 165.501. Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters-regulated navigation area.

* * * * *

(d) * * *

(7) * * *

(i) Corrected charts of the Regulated Navigation Area. Instead of corrected paper charts, warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

* * * * *

Dated: January 15, 2002.

T.W Allen,

Commander, Fifth Coast Guard District.

[FR Doc. 02–1871 Filed 1–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–002]

RIN 2115–AA97

Security Zones; San Pedro Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established moving and fixed security zones around any liquefied hazardous gas (LHG) tank vessel while the vessel is anchored, moored, or underway within the Los Angeles-Long Beach,

California, port area. These security zones will take effect upon the entry of any LHG vessel into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the LHG vessel departs the three nautical mile limit. These security zones are needed for national security reasons to protect the LHG vessel, the public, and the surrounding area from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach, or his designated representative.

DATES: The rule is effective from 7 p.m. PST on January 14, 2002 to 11:59 p.m. PDT on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–002 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the potentially explosive nature of the LHG vessel cargo, which includes liquefied petroleum gas (LPG) and liquefied natural gas (LNG), this rulemaking is urgently required to prevent possible terrorist strikes against an LHG vessel in the ports of Los Angeles-Long Beach,

California. The delay inherent in the NPRM process is contrary to the public interest insofar as it would render a LHG vessel vulnerable to subversive activity, sabotage or terrorist attack, and immediate action is necessary to protect persons, vessels and others in the maritime community from the hazards associated with the transport and loading operations of this dangerous cargo. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that further subversive activity may be launched against the United States. In response to these terrorist acts, to prevent similar occurrences, and to protect the ports of Los Angeles-Long Beach, the Coast Guard has established these security zones around any LHG tank vessel while the vessel is anchored, moored, or underway within the Los Angeles-Long Beach, California, port area. Title 33 CFR 165.1151 currently provides for safety zones for LHG tank vessels while at anchor in designated anchorage areas in San Pedro Bay, while transiting San Pedro Bay, and while LHG tank vessels are moored at any berth within the Los Angeles or Long Beach port area. However, in light of the current terrorist threats to national security, these zones are insufficient to protect LHG tank vessels while anchored in San Pedro Bay, or while a LHG vessel is transiting or moored in the port of Los Angeles or Long Beach. This rulemaking will temporarily suspend 33 CFR 165.1151 and will temporarily add the security zones provided for hereunder as 33 CFR 165.T11–062. These security zones are needed to protect LHG tank vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature.

LHG tank vessels periodically transit and moor in the Los Angeles-Long Beach port areas to load butane, propane, and similar gas products. These security zones will take effect upon the entry of any LHG vessel into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the LHG vessel departs the three nautical mile limit. The following areas have been established as security zones:

(1) The waters within a 500 yard radius around a LHG tank vessel, while

the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorages within three nautical miles of the breakwaters;

(2) The waters within 500 yards of a LHG tank vessel, while the vessel is moored at any berth within the Los Angeles or Long Beach, California, port area, inside the Federal breakwaters bounding San Pedro Bay;

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG tank vessel, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three nautical miles outward from the Federal breakwaters.

These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States in the ports of Los Angeles-Long Beach, California. Entry into these moving or fixed security zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, or his designated representative.

These security zones are established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel, a monetary penalty of not more than \$10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway and will be in place for only a few days while LHG tank vessels conduct loading operations, which does not occur very frequently. During calendar year 2001, the safety zones established by section

165.1151 (formerly 165.1101, redesignated June 25, 2001, 66 FR 33637, 33642) were triggered only three times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct

cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34), of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. From January 14, 2002 through June 15, 2002, suspend § 165.1151.

3. From January 14, 2002 through June 15, 2002, add new temporary § 165.T11-062 to read as follows:

§ 165.T11-062 Security Zones: San Pedro Bay, California.

(a) *Location.* The following areas are established as security zones during the specified conditions:

(1) The waters within a 500-yard radius around a liquefied hazardous gas (LHG) tank vessel, while the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorages within three nautical miles of the breakwaters;

(2) The waters within 500 yards of a LHG tank vessel, while the vessel is moored at any berth within the Los Angeles or Long Beach, California, port area, inside the Federal breakwaters bounding San Pedro Bay; and

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG tank vessel, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three nautical miles outward from the Federal breakwaters.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, the following rule applies to the security zones established by this section: No person or vessel may enter or remain in these security zones without the permission of the Captain of the Port Los Angeles-Long Beach, CA.

(2) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(3) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, or his authorized representatives.

(c) *Dates.* This section becomes effective at 7 p.m. PST on January 14, 2002, and will terminate at 11:59 p.m. PDT on June 15, 2002.

Dated: January 14, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02-2039 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122-2; FRL-7133-6]

Approval and Promulgation of Implementation Plans; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule revising Indiana's opacity rules (326 IAC Article 5). In the direct final rule published on November 30, 2001 (66 FR 59708), we stated that if we receive adverse comment by December 31, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on November 30, 2001 (66 FR 59757). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The direct final rule is withdrawn as of January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, Telephone: (312) 886-6524.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

William E. Munro,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

§ 52.770 [Amended]

Accordingly, the addition of 40 CFR 52.770(c)(146) is withdrawn as of January 28, 2002.

[FR Doc. 02-2010 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 254-0318a; FRL-7131-9]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern control oxides of nitrogen (NO_x) emissions from stationary internal combustion engines. We are approving the local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 29, 2002, without further notice, unless EPA receives adverse comments by February 27, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105.
 California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.
 Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

FOR FURTHER INFORMATION CONTACT:
 Charnjit Bhullar, Rulemaking Office

(AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 972-3960.

SUPPLEMENTARY INFORMATION:
 Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. The State's Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. EPA's Evaluation and Action
 - A. How is EPA evaluating the rule?

- B. Does this rule meet the evaluation criteria?
- C. Public comment and final action.
- III. Background Information
 - Why was this rule submitted?
- IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
YSAQMD	2.32	Stationary Internal Combustion Engines	10/10/01	11/28/01

On December 6, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

On January 13, 2000, EPA published a limited approval and limited disapproval of a version of rule 2.32 that was submitted to EPA on September 28, 1994.

C. What Is the Purpose of the Submitted Rule?

YSAQMD Rule 2.32 applies to stationary internal combustion engines within the Federal ozone non-attainment area regulated by the YSAQMD. This rule controls emission of oxides of nitrogen (NO_x) from these engines.

On January 13, 2000, the EPA published a limited approval and limited disapproval of this rule, because some rule provisions conflicted with section 110 and part D of the Clean Air Act.

Those provisions included the following:

- 1. Emissions limits were significantly higher than the emissions limits established as RACT by CARB.
- 2. Annual emission testing of all engines was not required.
- 3. The rule did not require nonresettable fuel meter or nonresettable hour meter.

The revisions are designed primarily to correct these deficiencies. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The YSAQMD regulates ozone nonattainment areas (see 40 CFR part 81), so Rule 2.32 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.

2. Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. *Alternative Control Techniques (ACT) Document—No_x Emission from Stationary Reciprocating Internal Combustion Engines* (EPA-453 / R-93-032).

4. *State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards*, Section 110 of the Clean Air Act (CAA), and Plan Requirements for Nonattainment Areas, Title I, Part D of the CAA.

5. *Requirement for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

6. *CAPCOA / ARB Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines* State of California Air Resources Board, December, 1997.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule corrects the deficiencies identified in our January 13, 2000 action and is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by February 27, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 29, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_x rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 14, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves the state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not

subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(289) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(289) New and amended regulation for the following AQMD were submitted on November 28, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(1) Rule 2.32 adopted on October 10, 2001.

* * * * *

[FR Doc. 02-2007 Filed 1-25-02; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 254-0318c; FRL-7132-1]

Interim Final Determination That State Has Corrected the Deficiencies in California, Yolo-Solano Air Quality Management District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32. EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposal, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on January 13, 2000. This action will stay the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This document is effective January 28, 2002. Comments must be received by February 27, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972-3960.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 28, 1994, the State submitted YSAQMD Rule 2.32, for which EPA published a limited disapproval in the **Federal Register** on January 13, 2000. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of YSAQMD rule 2.32 on November 28, 2001. EPA is taking direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of Rule 2.32. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposal set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on January 13, 2000. However, this action will stay the imposition of the offset and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be stayed until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Reporting and recordkeeping, Ozone.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

[FR Doc. 02-2006 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309-1309-01; I.D. 121301A]

RIN 0648-AO69

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

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

ACTION: Corrections to the emergency rule; January through February 2002

Pacific Coast groundfish fishery management measures.

SUMMARY: This document contains corrections to the emergency rule for the January through February 2002 Pacific Coast groundfish fishery management measures published on January 11, 2002.

DATES: Effective January 28, 2002 through February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, NMFS, (206)-526-6140.

SUPPLEMENTARY INFORMATION:

Background

The emergency rule for the January through February 2002 management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 11, 2002 (67 FR 1540). This emergency rule contained a number of errors that require correction.

Corrections

In the rule FR Doc. 01-32261, in the issue of Friday, January 11, 2002 (67 FR 1540) make the following corrections:

1. On page 1541, in the second column, paragraph A.(1)(c), the first sentence is corrected to read as follows:

"(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday."

2. On page 1542, in the third column, paragraph A.(11), the third and fourth sentences are corrected to read as follows:

"If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear."

3. On page 1543, in the second column, paragraph A.(13)(a)(i) is corrected to read as follows:

"(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, other flatfish, lingcod, sablefish, and Pacific whiting;"

4. On page 1543, in the third column, paragraph A.(14)(a)(iii), the first sentence is corrected to read as follows:

“(iii) Midwater trawl gear is pelagic trawl gear, as specified at 50 CFR 660.302 and 660.322 (b)(5).”

5. On page 1544, in the first column, paragraph A.(14)(b)(v), the heading is corrected to read as follows:

“(iv) More than one type of trawl gear on board.”

6. On page 1544, in the third column, paragraph A.(19)(h)(ii) is corrected to read as follows:

“(ii) Columbia—47°30' to 43°00' N. lat.”

7. On pages 1548 and 1549, Table 2 and 3, respectively, and their footnotes are corrected to read as follows:

* * * * *

BILLING CODE 3510-22-S

**Table 2. Trip Limits ^{1/} and Gear Requirements ^{2/} for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		
2	North	1,800 lb/ 2 months	
3	South	50,000 lb/ 2 months	
4	Splitnose - South ^{6/}	25,000 lb/ 2 months	
5	Pacific ocean perch - North ^{6/}	2,000 lb/ month	
6	Chilipepper - South ^{6/}		
7	mid-water trawl	25,000 lb/ 2 months	
8	small footrope trawl	7,500 lb/ 2 months	
9	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year.	
10	DTS complex - North		
11	Sablefish	6,000 lb/ 2 months	
12	Longspine thornyhead	10,000 lb/ 2 months	
13	Shortspine thornyhead	2,600 lb/ 2 months	
14	Dover sole	30,000 lb/ 2 months	
15	DTS complex - South		
16	Sablefish	4,500 lb/ 2 months	
17	Longspine thornyhead	10,000 lb/ 2 months	
18	Shortspine thornyhead	2,600 lb/ 2 months	
19	Dover sole	22,000 lb/ 2 months	
20	Flatfish - North		
21	All other flatfish ^{3/}	Small footrope required; 15,000 lb/ month	
22	Petrals sole	Not limited	
23	Rex sole	Not limited	
24	Arrowtooth flounder	30,000 lb/ trip	
25	Flatfish - South		
26	All other flatfish ^{3/}	Small footrope: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs	
27	Petrals sole	Not limited	
28	Rex sole	Not limited	
29	Arrowtooth flounder	30,000 lb/ trip	
30	All other flatfish ^{3/} - North and South	Large footrope: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits at any time during the year.	
31	Whiting shoreside ^{4/}	20,000 lb/ trip	
32	USE OF SMALL FOOTROPE BOTTOM TRAWL ^{5/} OR MIDWATER TRAWL REQUIRED FOR LANDING ALL OF THE FOLLOWING SPECIES:		
33	Minor shelf rockfish		
34	North	300 lb/ month	
35	South	500 lb/ month	
36	Canary rockfish	200 lb/ 2 months	
37	Widow rockfish		
38	mid-water trawl	CLOSED ^{7/}	
39	small footrope trawl	1,000 lb/ month	
40	Yellowtail - North ^{6/}		
41	mid-water trawl	CLOSED ^{7/}	
42	small footrope trawl	Without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 30,000 lb/ 2 months.	
43	Bocaccio - South ^{6/}	600 lb/ 2 months	
44	Cowcod	CLOSED ^{7/}	
45	Minor nearshore rockfish		
46	North	300 lb/ month	
47	South	300 lb/ month	
48	Lingcod ^{8/}	800 lb/ 2 months	

Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.

^{1/} Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

^{2/} Gear requirements and prohibitions are explained above.

^{3/} "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 2 with species specific management measures, including trip limits.

^{4/} The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.

Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.

^{5/} Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

Midwater gear also may be used; the footrope must be bare. See above.

^{6/} Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.

^{7/} Closed means that it is prohibited to take and retain, possess, or land the designated species

in the time or area indicated. See IV.A.(7).

^{8/} The minimum size limit for lingcod is 24 inches (61 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 3. Trip Limits^{1/} for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		
2	North	1,000 lb/ month	
3	South	25,000 lb/ 2 months	
4	Splitnose - South ^{5/}	25,000 lb/ 2 months	
5	Pacific ocean perch - North ^{5/}	2,000 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Longspine thornyhead	9,000 lb/ 2 months	
10	Shortspine thornyhead	2,000 lb/ 2 months	
11	Dover sole		
12	Arrowtooth flounder		
13	Petrale sole	5,000 lb/ month (all flatfish)	
14	Rex sole		
15	All other flatfish ^{2/}		
16	Whiting ^{3/}	20,000 lb/ trip	
17	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish ^{5/}		
18	North	200 lb/ month	
19	South		
20	40°10' - 34°27' N. lat.	200 lb/ month	
21	South of 34°27' N. lat.	CLOSED ^{4/}	
22	Canary rockfish	CLOSED ^{4/}	
23	Yelloweye rockfish	CLOSED ^{4/}	
24	Cowcod	CLOSED ^{4/}	
25	Bocaccio - South ^{5/}		
26	40°10' - 34°27' N. lat.	200 lb/ month	
27	South of 34°27' N. lat.	CLOSED ^{4/}	
28	Chilipepper - South ^{5/}		
29	40°10' - 34°27' N. lat.	500 lb/ month	
30	South of 34°27' N. lat.	CLOSED ^{4/}	
31	Minor nearshore rockfish		
32	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish ^{6/}	
33	South		
34	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	
35	South of 34°27' N. lat.	CLOSED ^{4/}	
36	Lingcod ^{7/}		
37	North	CLOSED ^{4/}	
38	South		
39	40°10' - 34°27' N. lat.	CLOSED ^{4/}	
40	South of 34°27' N. lat.	CLOSED ^{4/}	

Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
 2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
 3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.
 4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
 5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.
 6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
 7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
 To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

8. On page 1550, in the third column, paragraph B.(4), the last sentence is corrected to read as follows:
 "The crossover provisions at paragraphs A.(12) do not apply to the black rockfish per-trip limits."

9. On page 1550, in the third column, paragraph C.(1), the second to last sentence is corrected to read as follows:
 "The trip limit at 50 CFR 660.323 (a)(1) for black rockfish caught with hook-and-line gear also applies."

10. On page 1551, Table 4 and its footnotes are corrected to read as follows:
 * * * * *

Table 4. Trip Limits^{1/} for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 were proposed on January 11, 2002 at 67 FR 1555.
2	North	Per trip, no more than 25% of weight of the sablefish landed	
3	South	10,000 lb/ 2 months	
4	Splitnose - South ^{4/}	200 lb/ month	
5	Pacific ocean perch - North ^{5/}	100 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Thornyheads		
10	North of 34° 27' N. lat.	CLOSED ^{3/}	
11	South of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months	
12	Dover sole	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs	
13	Arrowtooth flounder		
14	Petrale sole		
15	Rex sole		
16	All other flatfish ^{2/}		
17	Whiting	300 lb/ month	
18	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish ^{5/}		
19	North	200 lb/ month	
20	South		
21	40°10' - 34°27' N. lat.	200 lb/ month	
22	South of 34°27' N. lat.	CLOSED ^{3/}	
23	Canary rockfish	CLOSED ^{3/}	
24	Yelloweye rockfish	CLOSED ^{3/}	
25	Cowcod	CLOSED ^{3/}	
26	Bocaccio - South ^{5/}		
27	40°10' - 34°27' N. lat.	200 lb/ month	
	South of 34°27' N. lat.	CLOSED ^{3/}	
28	Chilipepper - South ^{5/}		
29	40°10' - 34°27' N. lat.	500 lb/ month	
30	South of 34°27' N. lat.	CLOSED ^{3/}	
31	Minor nearshore rockfish		
32	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{5/}	
33	South		
34	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	
35	South of 34°27' N. lat.	CLOSED ^{3/}	
36	Lingcod ^{6/}		
37	North	CLOSED ^{3/}	
38	South		
39	40°10' - 34°27' N. lat.	CLOSED ^{3/}	
40	South of 34°27' N. lat.	CLOSED ^{3/}	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
 2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
 3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7). in the time or area indicated.
 4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish.
 5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
 6/ The size limit for lingcod is 24 inches (61 cm) total length.
 To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

11. On page 1552, in the third column, paragraph D.(1), the first sentence is corrected to read as follows:
 "(1) California. (Note: California law provides that, in times and areas when

the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person.)"

Dated: January 21, 2002.
William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
 [FR Doc. 02-1999 Filed 1-25-02; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 011218304-1304-01; I.D. 012202D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2002, until 1200 hrs, A.l.t., March 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the pollock TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,716 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-1996 Filed 1-23-02; 1:05 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125 and 126

RIN 3245-AE 66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration proposes to amend its regulations for the Historically Underutilized Business Zone Program (HUBZone Program). On December 21, 2000, the Small Business Reauthorization Act of 2000 made several changes to the HUBZone Program, including changes to the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. This proposed rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to website addresses.

In addition, SBA proposes to amend its regulations, which address subcontracting limitations. Specifically, SBA proposes consolidating all of the subcontracting limitations requirements into one regulation, rather than have them scattered throughout SBA's chapter of the Code of Federal Regulations. In addition, SBA proposes language explaining how to petition for changes in the subcontracting limitations requirements.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product

of any manufacturer, including a large business, and still be considered small.

DATES: Comments must be received on or before February 27, 2002.

ADDRESSES: Send your comments to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program (AA/HUB), 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, AA/HUB, (202) 205-8885 or hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: The HUBZone Program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Public Law 105-135, enacted December 2, 1997. The purpose of the HUBZone Program is "to provide for Federal contracting assistance to qualified HUBZone small business concerns." 15 U.S.C. 657a(a). The HUBZone Act authorizes the Administrator of the U.S. Small Business Administration (SBA or Agency) to publish regulations implementing the program. Public Law 105-135, section 605. On April 2, 1998, SBA published its proposed rules for the HUBZone Program. 63 FR 16148. After the close of the public comment period and review of the comments, SBA published its final regulations. 63 FR 31896 (June 11, 1998). These regulations amended parts 121 and 125 of title 13 of the Code of Federal Regulations (CFR), and added part 126. On October 3, 2000, SBA published a proposed rule amending the definition of principal office, the affiliation requirement, the non-manufacturer eligibility requirement, and the non-manufacturer contract performance requirement. 65 FR 58963. SBA published this rule as final on January 18, 2001. 66 FR 4643.

Since that time, SBA has received more applications for certification, has certified over four thousand concerns into the program, and has become aware of additional amendments that should be made to the program's regulations. Many of these amendments are technical, while others are proposed to clarify existing regulations. Some amendments, such as the amendment to the definition of "employee," propose to ease program eligibility requirements perceived to be burdensome on concerns and streamline the operation of the HUBZone Program. SBA has also

proposed to remove any regulatory provisions that it deems duplicative.

In addition, the proposed regulations address the recent amendments made to the HUBZone Act by the Small Business Reauthorization Act of 2000, Public Law 106-554. Specifically, Congress amended the eligibility requirements for small business concerns (SBCs) owned by Tribal Governments or Community Development Corporations (CDCs). Further, Congress amended the definition of HUBZone to include "redesignated areas," and added definitions for the terms Indian Reservation and Alaska Native Corporation. This regulation addresses those amendments.

SBA also proposes to amend part 125 of its regulations to add language that addresses requests for changes in subcontracting percentages for small business set-asides and for SBA's various programs. In order to be awarded a small business set-aside or partial small business set-aside contract, an 8(a) contract, a HUBZone contract, a woman-owned small business (WOB) contract, or a contract awarded pursuant to an unrestricted procurement where a concern claims a 10 percent price evaluation preference/adjustment, the concern must agree that it will perform a certain percentage of the contract itself. In other words, there is a limit on the percentage of work that the concern can subcontract. Currently, § 125.6 sets forth these limitations on subcontracting percentages for SBCs, 8(a) concerns, and small and disadvantaged business concerns. Current § 126.700 addresses the subcontracting limitations for qualified HUBZone SBCs.

SBA does not propose changing these percentages; rather, SBA proposes adding language in § 125.6 explaining how such percentages may be changed through requests from interested parties. In addition, SBA proposes adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, to § 125.6 so that all such subcontracting limitations will be located in one place and, thus, be easy for SBCs and contracting officials to locate.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone

contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product of any manufacturer, including a large business, and still be considered small.

SBA invites comments on the proposed rule and on any additional ways to improve the HUBZone Program.

Section-by-Section Analysis

SBA proposes to amend § 121.406(b) of SBA's size regulations pertaining to the application of the nonmanufacturer rule. Proposed § 121.406(b)(6) would permit a nonmanufacturer to supply the product of any domestic business, small or large, and be considered small with respect to any contract below the simplified acquisition threshold. This change corresponds to a similar change made in this rule for the HUBZone program in proposed § 126.601(e)(2). SBA believes that procurements below the simplified acquisition threshold were intended to be quick and easy, and that small business nonmanufacturers should not be restricted in this limited contracting arena. In addition, SBA proposes to remove current paragraph (d) because it would be superceded by the above amendment.

The proposed rule also revises § 121.1001 to permit the AA/HUB to protest the size status of a concern in connection with a HUBZone contract, and authorizes the AA/HUB to request a formal size determination in connection with a HUBZone application or continued HUBZone eligibility.

SBA proposes to amend 13 CFR 125.6 by adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, so that all such subcontracting limitations will be located in one place and thus easy for SBCs and contracting officials to locate. In addition, SBA proposes language explaining when it may use different percentages. According to the proposed rule, SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by the six digit industry codes in the North American Industry Classification System (NAICS). The proposed rule sets forth the procedures by which an interested party may request a change (in writing, with information supporting its request). If SBA determines that there is an adequate preliminary showing, it will publish a notice in the **Federal**

Register of its receipt of a request to consider a change in the subcontracting percentage requirements for a particular industry. The notice will identify the party making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

SBA proposes several amendments to 13 CFR part 126.

SBA proposes to amend § 126.101, which addresses the government departments and agencies subject to the HUBZone Program. Prior to September 30, 2000, the HUBZone Program applied to the procurements of only ten agencies and departments. These agencies and departments are currently set forth in the regulations. The HUBZone Program now applies to more than those ten agencies and departments. Thus, SBA proposes to remove the names of those agencies and departments and simply state that the HUBZone Program applies to all agencies and departments that employ one or more contracting officers.

SBA proposes several amendments to the definitions contained in § 126.103. This rule would amend the definitions of the Associate Administrator for 8(a) Business Development (AA/8(a)BD) and Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD). The rule would also change the name of the AA/8(a)BD to the Associate Administrator for Business Development and change the name of the ADA/GC&8(a)BD to the Associate Deputy Administrator for Government Contracting and Business Development. In addition, SBA is amending the definition of the term AA/HUB to mean the Associate Administrator for the HUBZone Empowerment Contracting Program. SBA proposes these changes in response to a re-organization within SBA's Office of Government Contracting and Business Development.

SBA proposes to define the term "Agricultural Commodity," because Congress recently amended the HUBZone Act's application of the price evaluation preference in procurements involving agricultural commodities. This definition appearing in this rule is the same as the one mandated by Congress in Public Law 106-554.

SBA proposes to define the terms "Alaska Native Corporation (ANC)" and "Alaska Native Village" as those terms are defined in Public Law 106-554. Currently, the HUBZone regulations define the term "Alaska Native Corporation" under its definition of "person." SBA proposes to define the terms "ANC" and "person" separately, to avoid confusion.

SBA proposes moving the definition of "attempt to maintain," which is currently found in two places in the HUBZone regulations, to the definition section so that it is easier to find. The proposed rule would not change the substance of this definition, but would merely move it to the definition section for ease of use.

The proposed rule adds a definition for the term "Community Development Corporation (CDC)." Public Law 106-554 defines CDC and adds an eligibility criterion for SBCs owned by CDCs so that such concerns can participate in the HUBZone Program. The proposed definition is the same as the one enacted by Congress—a CDC is a corporation that receives financial assistance under 42 U.S.C. 9805.

SBA proposes to add a definition for the term "Contracting Officer (CO)." According to the HUBZone Act, a CO has the meaning given that term in 41 U.S.C. 423(f)(5). That statute defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

SBA proposes to amend the definition of the term "employee." Currently, the regulations provide that an "employee" of a concern includes "full-time equivalents." SBA proposes to remove the provision concerning "full-time equivalents" because SBA believes it is confusing. SBA proposes a definition that allows persons employed on a full-time or part-time basis to be considered employees of the concern. This proposed definition is similar to the one used for size, set forth in part 121 of SBA's regulations.

In addition, SBA proposes to allow leased or temporary employees to be counted as employees of the concern. It is believed that such employees comprise approximately 2-5% of the work force in the U.S. economy. In addition, small businesses account for the employment of about 40% of such employees. SBA believes that counting leased, temporary and part-time employees will fulfill the statutory purpose and intent of the HUBZone Act by providing more job opportunities for HUBZone residents, albeit temporary or part-time.

Finally, the proposed definition of the term "employee" specifically states that volunteers are not to be counted. The rule would define a volunteer as a person who receives no compensation for work performed. SBA intends the term compensation to be read broadly and to be more than wages. Thus, a

person who receives food, housing, or other non-monetary compensation in exchange for work performed would not be considered a volunteer under this regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act—job creation and economic growth in underutilized communities.

The proposed rule would amend the definition of the term “HUBZone” to include redesignated areas. As part of the Small Business Administration Reauthorization Act of 2000, Congress made “redesignated areas” qualified HUBZones because governmental data, which determines whether census tracts and non-metropolitan counties are qualified HUBZones, changes periodically. Non-metropolitan counties that qualify based upon unemployment level, may, as a result of updated U.S. Department of Labor, Bureau of Labor Statistics data, shift in and out of eligibility year after year. Also, individual census tracts and non-metropolitan counties that qualify based upon certain income levels may lose their status as a result of data developed during the decennial census—the results of which are due shortly. As a result, SBCs that locate to a HUBZone may lose their eligibility in only one year due to changes in such data. Consequently, Congress sought to stabilize this situation and determined that “redesignated areas” should be HUBZones. A “redesignated area” is a qualified census tract or qualified non-metropolitan county that ceases to be qualified as a result of a change in official government data. This “redesignated” status lasts for a period of 3 years following the date of the census tract’s or non-metropolitan county’s disqualification. It is important to note that the redesignated status applies to concerns currently in the program and concerns seeking certification to the program. Thus, because a redesignated area is a HUBZone, concerns may seek certification to the program if their principal office is located in and the required percentage of their employees reside in such an area. SBA has also proposed defining the term “redesignated area,” as set forth below.

SBA proposes to amend the term “HUBZone SBC.” The current definition is redundant of the eligibility criteria set forth in § 126.200 and does not set forth the new eligibility criteria for SBCs owned by Tribal governments or CDCs. The proposed definition would state that a “HUBZone SBC” is: (1) One that is owned and controlled by 1 or more persons, each of whom is a United

States citizen; (2) an ANC owned and controlled by Natives (determined pursuant to the Alaskan Native Claims Settlement Act (ANCSA), 43 U.S.C. 1626(e)(1)); (3) a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant ANCSA); (4) one that is wholly-owned by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments; (5) one that is owned in part by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or (6) one that is wholly owned by a CDC; or, (7) one that is owned in part by 1 or more CDCs, if all other owners are either United States citizens or SBCs. This proposed definition is the same as the one set forth in the HUBZone Act.

SBA proposes to amend its definition of “Indian reservation” to conform to Public Law 106–554. According to that law, the term “Indian reservation” has the same meaning as the term “Indian country” in 18 U.S.C. 1151, with certain exceptions. According to 18 U.S.C. 1151, the term “Indian country” means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. The amendments to the HUBZone Act, however, excepted the following land from being treated as an “Indian reservation” for purposes of the HUBZone Program: (a) lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of the date of enactment (December 21, 2000), unless that tribe is recognized after that date of enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and (b) lands taken into trust or acquired by an Indian tribe after the date of enactment of this paragraph if such

lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of enactment.

In addition, Congress provided that for the state of Oklahoma, the term “Indian reservation” will include lands within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of Interior) and lands that are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151 (as in effect as of December 21, 2000).

Essentially, the statutory definition of “Indian Reservation,” for HUBZone Program purposes, includes federally-recognized Indian reservations, Indian communities dependent on the Federal Government, and certain federal Indian allotments (parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians). The new statutory definition of “Indian Reservation” does not include lands transferred to Alaskan Natives pursuant to the Alaskan Native Claims Settlement Act. *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). In the state of Oklahoma, an “Indian Reservation” includes a federally recognized Indian reservation and trust land. SBA has been and intends to keep working with the U.S. Department of the Interior to appropriately identify these areas.

The proposed rule defines for the first time the term “Indian Tribal Government.” The recent amendments to the HUBZone Program set forth specific eligibility criteria for concerns owned by “Indian Tribal Governments.” The statutory amendments, however, do not define that term. Thus, SBA proposes to define the term “Indian Tribal Government” to mean “the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” The Bureau of Indian Affairs of the U. S. Department of the Interior (BIA) publishes in the **Federal Register** a list of tribes that it recognizes as eligible for special Federal programs. *See* 65 FR 13298 (March 13, 2000). An Indian Tribal Government is essentially the governing body of one of the tribes or entities set forth on that list. This definition does not include ANCs because the recent amendments to the HUBZone Program establish specific eligibility criteria solely for ANCs and concerns owned by ANCs.

SBA proposes to amend the definition of "person" by removing the provision relating to ANCs. ANCs and their subsidiaries were made eligible by Public Law 106-554 and therefore the discussion on ANCs in this definition is unnecessary.

SBA proposes to amend the terms "qualified census tract" and "qualified non-metropolitan county" to address non-technical changes made by Public Law 106-554. The changes to the definitions are based entirely on the changes made by Public Law 106-554.

SBA proposes defining the term "redesignated area," discussed above, to mean any census tract and any non-metropolitan county that ceases to be a qualified HUBZone, except that a census tract or a non-metropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or non-metropolitan county ceased to be so qualified. This is the same definition that is set forth in the HUBZone Act, as recently amended. In addition, SBA proposes to use the public release date of the official government data, which affects the eligibility of the HUBZone, as the date on which the census tract or non-metropolitan county ceases to be qualified. It is important to note that it is the formerly qualified census tract or qualified non-metropolitan county that is designated as a HUBZone area (as a "redesignated area") for three years from the date that it ceases to be qualified. As such, a concern that applies for and receives HUBZone certification based on its location in a redesignated area would not receive three years of HUBZone participation unless the tract or county again becomes qualified as a HUBZone based on new data. Such a firm would remain eligible as a qualified HUBZone concern until three years from the date that the tract or county became a redesignated area, regardless of the amount of time it had participated in the HUBZone Program.

SBA proposes a definition for the term "small business concern (SBC)." The recent amendments to the HUBZone Act allow a HUBZone SBC to be owned in part by a SBC, with certain restrictions. SBA proposes defining the term SBC to mean a concern that, with its affiliates, meets the size standard for its primary industry.

SBA proposes to amend the definition of "small disadvantaged business" to clarify that such a concern is one that is certified by SBA pursuant to subpart B, part 124, of this chapter.

SBA proposes to remove the definition of woman-owned business because that term is no longer

referenced in this part of the regulations.

SBA proposes to amend § 126.200, which sets forth the eligibility requirements for the program, because Congress recently changed these requirements in Public Law 106-554. To be eligible, all applicants must (together with all their affiliates) be small. In addition, according to Public Law 106-554, concerns owned by Indian Tribal Governments or tribal corporations must certify: (1) That they are owned by an Indian Tribal Government, by a wholly-owned tribal corporation, or owned in part by a Indian Tribal Government or tribal corporation and in part by another SBC or U.S. citizens, and (2) when the concern obtains a HUBZone contract, at least 35 percent of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation. When enacting this legislation, Congress believed that no firm should be made eligible solely by virtue of who owns the concern. Thus, for example, concerns owned by Indian Tribal Governments will not be eligible solely because they are tribally-owned. Instead, such concerns will be eligible only if they agree to advance the goals of the HUBZone Program—job creation and economic development in the areas that need it most. See S. Rpt. 422, 106th Cong., 2d Sess. 21 (2000).

As discussed above, the statutory amendments provide that an Indian Tribal Government or tribal corporation may own a HUBZone SBC "in part" with a SBC or U.S. citizens. For example, an SBC in which a Tribal Government or tribal corporation owned 1% or less could claim that it qualified for the program if the other owners were SBCs or U.S. citizens. Further, there is no principal office eligibility requirement for such applicants. Thus, SBA is considering whether or not to require a Tribal Government or tribal corporation to own at least 51 percent of the HUBZone SBC. SBA is specifically requesting comments on this issue, and whether or not the Agency should require the Tribal Government or tribal corporation own a certain percentage (e.g., 51% or more) of the HUBZone SBC. SBA believes Congress intended the HUBZone benefits to assist Native American Indian Tribes, their Indian Reservations, and the HUBZone communities adjoining those reservations. If a Tribal Government or tribal corporation were able to own an inconsequential amount of a HUBZone SBC, the intended

benefits may not reach that community or those people.

It must be noted that SBA is not considering such a limitation on ownership for HUBZone SBC owned by CDCs. As discussed below, a HUBZone SBC may be owned in part by a CDC and in part by U.S. citizens or SBCs. SBA is not considering a limit on how much or little of the applicant the CDC must own because the qualified HUBZone SBC that is owned "in part" by a CDC must also have its principal office located in a HUBZone and must meet the 35% HUBZone residence requirement. Therefore, the benefits of the program must necessarily flow to a HUBZone community, regardless of the percentage of ownership by a CDC.

Finally, proposed § 126.200(a)(3) defines the term "adjoining." When tribally-owned concerns obtain a HUBZone contract, at least 35 percent of the qualified HUBZone SBC's employees engaged in performing that contract must reside within any Indian reservation governed by one or more of the qualified HUBZone SBC's Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation. The common meaning of the term "adjoining" is "to be next to" or "to be in contact." SBA believes that tribal members often may not reside on the reservation, but may still live next to the reservation. Thus, SBA believes the common meaning of the term is in harmony with the purpose of this amendment, the HUBZone Act and the employee residency requirement. Thus, this rule proposes that a HUBZone and Indian reservation are "adjoining" when the two areas are right next to and in contact with each other.

SBA also proposes to address the eligibility requirements for all other SBCs in § 126.200. According to the HUBZone statute, an applicant that is not tribally-owned must: be small; have a principal office located in a HUBZone; have at least 35% of its employees residing in a HUBZone; represent that it will attempt to maintain this percentage during the performance of any HUBZone contract; and represent that it will ensure compliance with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700. The recent amendments to the HUBZone Act provide that an applicant may be owned by a CDC or owned in part by a CDC and the rest by U.S. citizens or SBCs.

SBA also proposes to amend § 126.201 concerning who owns a HUBZone SBC. The proposed rule would clarify Example 1 to § 126.201,

addressing ownership of stock options. In addition, the proposed rule would move Example 2 from § 126.201 to § 126.200 because it provides a better example of the U.S. citizen ownership requirement set forth in that section. In addition, SBA has proposed addressing who it considers to own a concern owned by an Employee Stock Option Plan (ESOP). According to the proposed rule, SBA will deem the employees that participate in the ESOP and the ESOP's trustees to be owners because these persons have legal and equitable ownership in the ESOP. Likewise, SBA proposes addressing who it considers to own a concern owned by a trust. SBA believes that where the ownership interest in a HUBZone SBC is held under a trust, all of the trustees and trust beneficiaries must be deemed owners.

SBA proposes to amend § 126.202 to add "managing member" to the list of persons who share control of a concern because such persons share control of limited liability companies.

In § 126.203, SBA proposes a technical correction in paragraph (b). SBA recently amended its size regulations and established a new table of small business size standards based upon the NAICS rather than the Standard Industrial Classification (SIC) code. Thus, SBA proposes changing the reference in paragraph (b) from SIC codes to NAICS codes.

SBA proposes to amend § 126.205 to clarify that all SBCs, and not just 8(a) Participants, WOBs, and small disadvantaged businesses (SDBs), may be qualified HUBZone SBCs, if they meet the HUBZone Program's eligibility requirements.

SBA proposes amending § 126.207 to state that HUBZone SBCs may have offices located outside of a HUBZone, so long as the concern's principal office is located in a HUBZone (when required by § 126.200 to have a principal office located in a HUBZone). As noted above, Congress recently amended the HUBZone Act to no longer require certain tribally-owned concerns to have a principal office in a HUBZone.

SBA proposes to remove parts of § 126.300 that are duplicative of § 126.304. In addition, SBA has proposed language that allows SBA to draw an adverse inference from the failure of a HUBZone SBC to cooperate or submit additional information.

SBA proposes amendments to § 126.303 to address how the electronic HUBZone application may be submitted to SBA online.

SBA proposes to amend §§ 126.304(a)-(b) and move the certification requirement currently set

forth in § 126.501 to this section. Currently, paragraph (a) reiterates all of the eligibility requirements set forth in § 126.200. SBA proposes to amend paragraph (a) to state that to be certified, concerns must submit a completed application (paper or electronic) and represent that they meet the eligibility requirements of § 126.200. In addition, paragraph (b) currently requires all concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation to submit official documentation from the appropriate BIA Land Titles and Records Office confirming that it is located within such an area. When SBA first promulgated the HUBZone regulations, it did not have available electronic data for lands within the external boundaries of an Indian reservation, as it did for qualified census tracts and qualified nonmetropolitan counties. SBA now has this data available electronically. However, SBA understands that there may be rare instances when a concern believes a certain location is within the external boundaries of an Indian reservation, but the HUBZone maps indicate otherwise. Thus, the proposed regulation provides that upon such an occurrence, the concern may obtain certification from the appropriate BIA Land Titles and Record Offices confirming that the location is within the external boundaries of an Indian Reservation, as defined by the HUBZone Act and regulations.

Finally, SBA proposes adding a new paragraph (c) to § 126.304 stating that if the concern was decertified for failure to notify SBA of a material change affecting its eligibility, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern. This requirement is currently set forth in § 126.501, which addresses a qualified HUBZone SBC's ongoing obligations. SBA believes it would be appropriate to place this requirement in this section, which addresses application requirements.

SBA proposes amending § 126.306 by deleting part of paragraph (b). Currently, the first sentence of paragraph (b) states that SBA will base its certification on facts existing on the date of submission. However, SBA can only certify a concern into the program that meets all of the eligibility requirements. If circumstances change from the date of submission of the application that affect the concern's eligibility, then SBA can not certify the concern into the program.

Section 126.307 would be amended to reflect the change in the Internet website where SBA maintains its List of qualified HUBZone SBCs and the change in SBA's HUBZone e-mail address. SBA believes that in addition to having a separate List of qualified HUBZone SBCs, Pro-Net may also be used as the List. Pro-Net is a database containing profiles of over 200,000 SBCs. The information in the Pro-Net system includes data from SBA's files and other available databases. Pro-Net is designed to be used as a search engine for COs and a marketing tool for SBCs.

Section 126.308 would be amended to reflect the change in SBA's HUBZone e-mail address.

Section 126.401, addressing program examinations, would be amended to clarify that examiners will verify that the concern currently meets the HUBZone eligibility requirements, and that it met such requirements at the time of its initial certification or most recent recertification. This provision would also permit an examination of a HUBZone certification in connection with a HUBZone contract. In addition, paragraph (b) would be amended to clarify how the examiners will conduct the review. SBA proposes to add a sentence explaining that the review, or parts of the review, may be conducted at one or all of the concern's offices. SBA also proposes an amendment that specifically allows the examiners to determine the location of the examination.

SBA proposes to amend § 126.403 to provide that SBA may draw an adverse inference from the failure of a concern to cooperate with a program examination or provide requested information. This provision should discourage firms from being unresponsive to SBA's request for more information. SBA also does not want firms to be able to purposely delay the examination process. SBA should be allowed to draw an adverse inference to make the process more efficient.

SBA proposes to remove § 126.405. This regulation currently provides that if SBA verifies that a concern is eligible after conducting a program examination or a protest, then SBA will amend the date of certification on the List to reflect the date of verification. Protests and program examinations do not always cover all of the program's eligibility requirements. Therefore, the List should not be amended to reflect a new "eligibility" date. In addition, even if a protest or program examination does cover all of the eligibility requirements, SBA believes that amending the List will be confusing to the SBC as to when

its next recertification submission is due.

SBA proposes to amend § 126.500 concerning continued eligibility in the program. Currently, a qualified HUBZone SBC must recertify annually that it continues to be eligible for the program. SBA believes that such an annual recertification is burdensome to SBCs, and proposes that qualified HUBZone SBCs recertify every three years that they continue to meet all of the program eligibility requirements. SBA believes that the program examination process and protest mechanism will effectively eliminate concerns that are not eligible, and, therefore, annual recertification is unnecessary. SBA also believes that three years is a reasonable period of time to give effect to a HUBZone certification. SBA notes that a small disadvantaged business (SDB) certification generally lasts for three years. See 13 CFR 124.1014. In addition, under the new statutory language identified above, three years will correspond with the amount of time an area losing its HUBZone status is classified as a redesignated area.

SBA proposes amending § 126.501 to state that failure to notify SBA of a material change in the circumstances of a qualified HUBZone SBC's eligibility may result in decertification. In addition, SBA proposes moving the last sentence of this section, which requires the concern to submit with any new application for HUBZone certification a statement explaining why it failed to notify SBA of a material change, to § 126.304, which addresses what a concern must submit to SBA to be certified into the program.

SBA proposes combining the substance of current § 126.404, concerning what happens if SBA is unable to verify a concern's eligibility, with § 126.503, regarding decertification. In addition, SBA proposes to revise § 126.503 to clarify the procedures by which SBA decertifies a concern. These procedures ensure that due process is followed before any firm is decertified from the program. Under these procedures, SBA must generally first propose to decertify the concern and allow the concern to respond to all allegations that it is ineligible. The current regulations require a concern to respond within 10 business days from the date that it receives notification of SBA's intent to decertify. This rule changes the amount of time a concern has to respond to SBA's notification of intent to decertify from 10 business days to 30 calendar days. SBA believes that it is important to give a HUBZone SBC ample

opportunity to respond to SBA's notification of its intent to decertify the concern. This is particularly true in the context of the 35% HUBZone residency requirement. Where a HUBZone SBC is experiencing economic hardships, it may be required to temporarily reduce its number of employees, and may fall below the 35% requirement. SBA would give the concern the opportunity to explain its situation and meet the 35% requirement. Although the firm would not be able to certify itself to be a qualified HUBZone SBC in connection with a HUBZone contract during the time that it did not meet the 35% requirement, if SBA believes that the firm will come into compliance, it may determine not to decertify the firm. The AA/HUB will review any responses submitted by a concern receiving a notification of SBA's intent to decertify and will make a written determination, which is the final agency decision. Where decertification emanates from an adverse finding in the resolution of a HUBZone protest, SBA need not propose the firm for decertification. The same due process rights afforded a concern through proposing a concern for decertification are available in the protest context. In both cases, the firm is apprised of allegations against it, and has the opportunity to rebut those allegations and prove its eligibility.

SBA proposes to amend § 126.601 to change the reference in paragraph (a) from SIC to NAICS, in light of SBA's change to the NAICS system. In addition, SBA proposes to add a new paragraph (b) that would specify that a firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract. Further, SBA proposes to amend § 126.601 to clarify that a qualified HUBZone SBC must make certain representations to a CO at the time it submits its *initial and final* offers for a HUBZone contract. A concern that is not a qualified HUBZone SBC at the time it submits its initial offer can not submit an offer on a HUBZone sole source or set-aside contract, or receive the benefits of the HUBZone price evaluation preference. Similarly, a concern that is not qualified at the time of award can not receive a HUBZone contract. The proposed rule would also require SBCs owned by Indian Tribal Governments (as set forth in § 126.200(a)) to certify on a HUBZone contract that at least 35 percent of its employees engaged in performing the HUBZone contract will reside within any Indian reservation governed by one or more of the HUBZone SBC's tribal

government owners or within any HUBZone adjoining any such Indian reservation. This is a statutory requirement for such concerns, added by Public Law 106-554.

Finally, SBA proposes to amend paragraph (e) to address confusion regarding the nonmanufacturer rule. The statutory nonmanufacturer rule generally requires a small business nonmanufacturer to supply the product of a small business in connection with an 8(a) or small business set aside contract. The SBA Administrator may waive that requirement in certain cases. The nonmanufacturer rule that applies to HUBZone contracts requires a HUBZone nonmanufacturer to supply the product of a manufacturer, which is a qualified HUBZone SBC. This rule would clarify that for purposes of a HUBZone contract, there are no waivers of the nonmanufacturer rule. The program is designed to assist HUBZones by assuring that individuals residing in those areas are employed generally by a qualified HUBZone SBC and specifically in connection with the performance of a HUBZone contract. SBA believes that allowing a non-HUBZone manufacturer to be the firm ultimately supplying the product for a HUBZone contract would be contrary to the intent of the program. The proposed rule would provide, however, that for HUBZone contracts at or below the simplified acquisition threshold (currently \$100,000), a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

SBA proposes to amend § 126.602 to address the employee residency requirements for qualified HUBZone SBCs performing HUBZone contracts. The requirements are different, depending on the ownership of the qualified HUBZone SBC, as mandated by Public Law 106-554. In addition, SBA proposes deleting the definition for "attempt to maintain" currently set forth in this regulation and moving it to the definition section of the regulations.

SBA proposes to replace the term "procuring agencies" in § 126.603 with "contracting activities" for consistency in the regulations and conformance with the Federal Acquisition Regulations (FAR).

SBA proposes to amend § 126.605 by deleting paragraph (c) to allow HUBZone contracts for micropurchases. SBA believes this will open up the market to the program's participants. In addition, SBA proposes to amend § 126.608 to explain that HUBZone contracts at or below the micropurchase threshold are not mandatory. Further, SBA proposes to clarify § 126.608 and

allow HUBZone contract opportunities "at or below" the simplified acquisition threshold, as opposed to just below the simplified acquisition threshold. This change will conform the regulation to FAR part 13.

SBA proposes to amend § 126.606 to change the reference of "AA/8(a)BD" to "AA/BD," as a result of a reorganization in SBA's Office of Government Contracting and Business Development that occurred more than a year ago, and to clarify that the AA/BD will consult with the AA/HUB before determining whether to release an 8(a) requirement to the HUBZone Program.

In response to several inquiries, SBA proposes to amend § 126.607 to clarify the interaction between the HUBZone and 8(a) Programs. The proposed rule would provide for parity between the two programs. A CO must look first to the HUBZone and 8(a) Programs in determining how to fulfill a particular procurement requirement. In deciding which contracting vehicle to use, a CO must consider where the contracting activity is in fulfilling its HUBZone and 8(a) goals, as well as other pertinent factors. The CO is directed to exercise his/her discretion on whether to offer the requirement to the 8(a) or HUBZone Program. For example, if the contracting activity has met 0% of its HUBZone goals and has met its 8(a) goals, then the CO should restrict the requirement for competition among HUBZone SBCs, if all other criteria are met. If the activity has met half of its HUBZone and half of its 8(a) goals, then the CO has the discretion to offer the requirement to the 8(a) Program or restrict the requirement for competition among HUBZone SBCs. At this point, other factors, including knowledge of a particular HUBZone or 8(a) SBC that is capable of performing the requirement, become more important. SBA believes that this determination should be made by the contracting activity, based upon the activity's needs at that time. Further, the regulation restates the position in the FAR that HUBZone set-asides procurements take priority over small business set-asides. A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

SBA proposes amending § 126.611 to clarify that SBA may appeal a CO's decision to not use a HUBZone contract for a certain requirement to the Secretary of the department or the head of the agency, rather than the head of the contracting activity. This proposed change conforms with the statute.

SBA proposes amending § 126.612 to address the conversion from the SIC to

NAICS code. In addition, SBA has proposed adding language in paragraph (e), addressing when a CO may issue a sole source award to a qualified HUBZone SBC, to state that it is the CO's determination (not SBA's) that the contract can be made at a fair and reasonable price. This language is the same as set forth in the HUBZone Act.

SBA proposes amending § 126.613 to conform to the recent statutory amendments made by Public Law 106-554. According to that statute, for purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences is 10 percent for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation; 5 percent for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and zero for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation. HUBZone contracts awarded pursuant to this preference may not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

In addition, SBA proposes to add other examples to § 126.613, regarding the price evaluation preference for a qualified HUBZone SBC in full and open competition, to clarify that only qualified HUBZone SBCs should benefit from the preference. SBA also proposes to amend the current example by correcting a mathematical error. According to the current example, if the qualified HUBZone SBC's offer was \$101 and the large business' offer was \$93, the award would go to the large business. This is inaccurate because at \$101, the HUBZone SBC's offer is not more than 10% higher than the large business' offer. SBA has amended the example to state that if the qualified HUBZone SBC's offer was \$103 and the large business' offer was \$93, the award would go to the large business because the qualified HUBZone SBC's offer would be more than 10% higher than the lowest, responsive, responsible offeror.

SBA proposes to correct a typographical error in § 126.614. That regulation currently refers to the price evaluation preference described in "126.614." The regulation should refer to the price evaluation preference described in "126.613." In addition, SBA proposes to amend the regulation by providing examples of how to apply

the HUBZone and SDB price evaluation preferences when a CO receives offers from two such concerns and must apply both preferences, and when a CO receives an offer from a concern that qualifies for both preferences. SBA had proposed similar examples when it issued its first proposed regulations for the HUBZone Program. See 63 FR 16148, 16152 (April 2, 1998). SBA did not provide these examples in the final rule because the Agency decided to leave the mechanics for implementation in the FAR. 63 FR 31896, 31904 (June 11, 1998). Although the FAR has addressed these issues, SBA has received numerous requests for further clarification. Therefore, SBA proposes to provide examples explaining clearly how this process works.

SBA proposes to amend § 126.616 to allow for joint ventures comprised of only qualified HUBZone SBCs and not 8(a) concerns or women-owned businesses. SBA believes the proposed eligibility requirements allowing qualified HUBZone SBCs to be owned in part by SBCs, makes joint ventures with other SBCs and large businesses unnecessary. Allowing HUBZone contracts to go to qualified HUBZone SBCs that are owned in part by a non-qualified HUBZone SBC, and which joint venture with another non-qualified HUBZone SBC, will dilute the benefits intended to go to the HUBZone area and residents. In addition, SBA proposes clarifying that the joint venture, which is comprised of two or more qualified HUBZone SBCs, does not itself have to be certified as a qualified HUBZone SBC, because joint ventures are limited entities that are formed for the purpose of performing on a specific contract. In addition, SBA proposes to amend the reference of SIC to NAICS.

SBA proposes to add § 126.617 to address disputes arising under a HUBZone contract. Oftentimes, qualified HUBZone SBCs request SBA's assistance with contract disputes between the procuring activity and the concern. However, it is not within SBA's authority to decide disputes arising under a HUBZone contract. Therefore, SBA proposes a regulation specifically stating that for purposes of the Disputes Clause of a HUBZone contract, the procuring activity will decide disputes arising between a qualified HUBZone SBC and the procuring activity.

SBA proposes to add a new § 126.618, which would explain how the participation of an applicant to the HUBZone Program or a HUBZone SBC in a Mentor-Protégé relationship affects its participation in the HUBZone Program. This section would provide

that qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements. For example, SBA may approve mentor-protégé agreements for purposes of its 8(a) BD program in which the mentor owns up to 40% of the 8(a) protégé firm. See 13 CFR 124.520(d)(2). Because such a relationship would violate the statutory requirement that a HUBZone SBC be 100% owned and controlled by persons who are United States citizens, a protégé firm in such a relationship would not be eligible for the HUBZone Program. For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small, proposed § 126.618(b) would exempt a protégé firm from being considered affiliated with its mentor based on its mentor-protégé agreement. SBA could still find affiliation on other grounds. Proposed § 126.618(c) would permit a qualified HUBZone SBC to team with and subcontract work under a HUBZone contract to its mentor, but would not permit a joint venture between a protégé and its mentor on a HUBZone contract unless the mentor was also a qualified HUBZone SBC.

SBA proposes to amend § 126.700 to state that the performance of work requirements for qualified HUBZone SBCs are set forth in 13 CFR 125.6. SBA proposes adding the performance of work requirements for qualified HUBZone SBCs to § 125.6 so that all of the performance of work requirements will be located in one place and thus easy to locate.

In addition, SBA is considering adding a new paragraph to § 126.700, which would add an additional contract performance requirement for construction HUBZone contracts. Specifically, in the case of a HUBZone construction contract (either general construction or specialty trade construction), SBA is considering requiring qualified HUBZone SBCs to perform at least 50 percent of the contract, either at the prime or subcontracting level. Such a provision would not affect the prime performance of work requirements set forth in § 125.6 (i.e., 15% for general construction and 25% for specialty trade construction); rather, the Agency is considering a new overall performance of work requirement for HUBZone construction contracts. Thus, for general construction, if a prime contractor will perform 15% of the contract, it would be required to subcontract at least 35% of the contract to one or more other qualified HUBZone SBCs. For a

specialty trade construction contract, if a prime contractor will perform 25% of the contract, it would be required to subcontract at least 25% of the contract to one or more other qualified HUBZone SBCs.

The HUBZone Program is intended to stimulate historically underutilized business zones through job creation and capital investment. Where a qualified HUBZone SBC is able to subcontract up to 85% of a general construction contract or up to 75% of a specialty trade construction contract to non-HUBZone SBCs (which may in fact be large businesses), SBA is concerned that it would not be adequately meeting the underlying Congressional purpose of the program. At the same time, however, SBA is not seeking to impose a barrier that could dissuade COs from using the HUBZone Program. If such a requirement in any way would cause a CO to use a contracting vehicle other than a HUBZone set-aside because he or she believes that there are not at least two qualified HUBZone SBCs that could meet it, then the requirement would have the opposite effect of what is intended. In such a case, instead of causing more work to be done by one or more qualified HUBZone SBCs, and hopefully increasing jobs in a HUBZone, the requirement would have caused 15% (or 25% for specialty trade construction) of the work that would have been performed by a qualified HUBZone SBC to be taken away from the Program and go elsewhere.

Thus, SBA is also considering several alternatives that would attempt to encourage increased performance by qualified HUBZone SBCs, but that would not adversely affect the HUBZone Program. One alternative that SBA is considering is requiring that HUBZone SBCs perform at least 50% of a construction contract through prime or subcontracting arrangements, but allow the CO to waive this requirement where he or she believes it cannot be met for a particular procurement. Where a CO believes that the 50% requirement can be met, it would continue to apply. Where a CO waives the 50% requirement, the solicitation would have to specify that the 50% requirement does not apply to the HUBZone procurement. The 15% or 25% prime contractor performance of work requirement would continue to apply. As another alternative, SBA is also considering imposing an evaluation factor in the award of negotiated HUBZone set-asides relating to overall performance by qualified HUBZone SBCs. SBA specifically requests comments on these proposals, including whether the 50% requirement is one

that can be met by the affected concerns, and whether and to what extent the CO waiver and evaluation factor can be used to make the requirement acceptable to COs and the procurement community.

In addition, SBA proposes to amend § 126.702 to state that the procedures for requesting changes in the subcontracting percentages are set forth in 13 CFR 125.6. As noted above, SBA has proposed a regulation amending § 125.6, which outlines the procedures for requesting changes in subcontracting percentages for all of SBA's program, including the HUBZone Program. Because it is redundant and unnecessary to have these procedures listed twice in the regulations, SBA proposes to remove § 126.703.

SBA proposes to amend paragraph (b) of § 126.800 to clarify that SBA and the CO may protest the apparent successful offeror's qualified HUBZone SBC status.

SBA proposes amending § 126.801 to clarify that SBA does not review protest issues concerning the conduct or administration of a HUBZone contract. In addition, SBA proposes amending paragraphs (d) to state that any protest received after the time limits is untimely, unless it is from SBA or the CO. This is similar to SBA's size protest procedures and will allow SBA or the CO to file HUBZone status protests any time either obtains information that a qualified HUBZone SBC may not be eligible. Further, SBA proposes amending paragraph (e) to state the information a CO should include in his or her protest referral letter to SBA. The CO's protest referral letter, in which he or she refers a HUBZone protest, should include certain information about the procurement so that SBA can determine issues of standing and timeliness.

SBA proposes amending paragraph (d) of § 126.803. Currently, that paragraph states that if SBA denies a protest, it will amend the date of certification on the List of qualified HUBZone SBCs to reflect the date of the protest decision. SBA believes that because protests often do not decide all eligibility issues, the Agency should not change the date of certification for the concern.

SBA proposes to change the references in § 126.805 of the ADA/GC&8(a)BD to ADA/GC&BD, to conform to SBA's recent re-organization and change in title of this position.

SBA proposes a technical change to § 126.900(b). SBA proposes to replace the term "civil remedies" with "civil penalties," in accordance with the statute.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866. A copy of the Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis—HUBZone Empowerment Contracting Program

A. General Considerations

1. Is There a Need for the Regulatory Actions?

Yes. The U.S. Small Business Administration (SBA) is statutorily authorized to administer the HUBZone Empowerment Contracting Program (HUBZone Program). In addition, the SBA is required to implement and administer all statutory changes to the program. The HUBZone Act has been amended by the 2000 Reauthorization Act. These amendments must be implemented pursuant to regulations. There are no practical alternatives to the implementation of the proposed regulatory changes. In addition, the SBA believes these changes are necessary and appropriate to better service the needs of small business concerns (SBCs) and the statutory goals of the HUBZone Program.

2. What Is the Baseline?

There are several baselines being considered in the formulation of this proposed rule change. These include the present set of HUBZone Program regulations and definitions that would be modified by this proposal, the estimated universe of potential HUBZone SBCs, the existing statutory requirements, the achievement of HUBZone contracting goals by Federal agencies, and current procurement practices of Federal agencies. The SBA estimates that over 30,000 small businesses may be eligible and may be certified for the HUBZone Program. As of the end of fiscal year 2001, there were 4000 firms participating in the HUBZone Program. There are, at present, approximately 8000 designated HUBZone areas and approximately one HUBZone certified firm for every two designated HUBZone areas. As of the end of fiscal year 2000, Federal agencies (according to the Federal Procurement Data Center—FPDC) are, on average, achieving only 22% of their statutorily mandated goals for HUBZone contracting. This means that agencies are well below the required HUBZone

goal of 2–3 percent of the total contracting dollars.

It is difficult to obtain precise quantitative estimates of the impact these changes might have on these baseline criteria. However, we estimate that adoption of this proposed regulation will significantly increase the number of HUBZone SBCs, increase the number of HUBZone procurement actions by Federal agencies, and result in better and more efficient administration of the program. Ultimately, the program would move closer to meeting its statutory objectives of creating jobs and infusing capital into distressed communities.

3. Alternatives

There are no alternatives to implementing or changing the statutorily mandated items detailed in the proposed rule. Issuance of policy notices, for example, which are not published material like regulations, would hinder a SBC’s access to this needed information. However, SBA did consider proposing that no regulatory changes, other than those required by the amendments to the HUBZone Act, be made to the HUBZone Program. We also considered the proposal of less stringent and more stringent regulatory changes that were either well-short of or well-beyond what is included in this proposal. Those alternatives were disregarded on the basis of market, economic and administrative considerations. The utilization of HUBZone SBCs, while growing, lags far behind congressional goals. The SBA has observed and investigated this phenomenon and has concluded that our current rules are insufficient to propel the program to the legislatively established levels. The alternatives to propose less or more stringent regulatory changes were abandoned by the SBA as they precluded the Agency from striking a balance between the competing considerations of program integrity, program viability and program resources.

In addition, the “program achievement costs” of implementing less stringent regulations or not changing the regulations are unacceptably high. At the other end of the spectrum, the potential increases in program achievement to be gained by writing more stringent rules are far outweighed by the exponential increase in administrative and operating costs necessary to enforce regulations of that nature.

Our proposal maintains the legislative intent of the HUBZone Program. It facilitates the growth of the program to congressionally established levels, and

provides balanced give and take among the needs to manage the program, maintain program integrity, service the program’s small business participants and meet the procurement needs of other Federal agencies.

B. Benefit Estimates

The three most significant benefits to implementing the changes included in this proposal are:

1. *Improved efficiency of the HUBZone Program and its added benefits to both small businesses and Federal agencies.* SBA believes that the changes in this proposal will increase the base number of small businesses in the HUBZone Program and increase the viability and practicability of using the HUBZone Program by Federal agencies. We consider these to be mutually dependent in that the more firms that are in the program, the more Federal agencies will use the program, and when more Federal agencies use the program, more concerns will want to be able to take advantage of the benefits (contracts) available in the program. According to FPDC data, in fiscal year 2000 Federal agencies executed 3500 HUBZone actions worth over \$650,000,000. We estimate that these changes in the rule have the potential to triple the number of participating concerns and the number of contract actions directed to the HUBZone Program.

2. *Greater administrative efficiency and program integrity.* SBA believes that this proposal will allow the program to be run more effectively with existing resources relative to program activity while simultaneously permitting SBA to more precisely focus the benefits of the program on the businesses and those areas of low income or high unemployment.

3. *Greater contracting efficiency for Federal agencies.* SBA believes that by increasing the level of activity and participation in the HUBZone Program, it will increase economic savings to the Federal government on HUBZone awards. By having more HUBZone eligible concerns, procuring agencies will have a larger base of HUBZone vendors, which will ultimately reduce the cost of HUBZone contracts through increased competition among HUBZone SBCs.

C. Cost Estimates

Pursuant to this proposed rule, SBA expects significant increases in the number of concerns participating in the HUBZone Program and in the number of contract dollars spent in the program by Federal agencies. To the extent that this materializes, there may be attendant

cost increases to the government in terms of the costs of goods and services and slightly increased administrative costs. However, existing provisions of the Federal Acquisition Regulations concerning the determination of "fair and reasonable" pricing will mitigate any significant monetary costs to the government of this proposal.

The SBA does not believe these changes will result in significantly higher increased costs to HUBZone SBCs because SBA is attempting to streamline the program and ease burdensome restrictions on SBCs.

D. Other Considerations Including Distributional Effects, Equity Considerations and Uncertainty

SBA anticipates that the distribution of contracts among different procurement vehicles will change. Non-HUBZone concerns currently participating in the Federal marketplace will be affected economically as a result of their not being eligible to compete for the contracts that are restricted to the HUBZone Program. These costs will vary based on the goods and services provided by newly eligible HUBZone SBCs. In some industries there may be very little impact, while in other industries there may be substantial impact.

Large Federal prime contractors will see some decrease in contract opportunities as Federal agencies begin to utilize the HUBZone Program. However, these changes are insignificant in light of the magnitude of Federal procurement versus HUBZone procurement. The Federal government annually spends about \$200 billion on goods and services. However, in fiscal year 2000, the HUBZone Program accounted for only \$650 million of that amount (less than half of one percent). This is significantly less than the estimated \$1–6 billion goal set by Congress for the program.

Current and future HUBZone participants will see a tightening of definitions concerning contract performance. However, additional contracting opportunities and clearer regulations should offset these additional restrictions.

Most of the benefits of this proposal will accrue to HUBZone communities. Expanded eligibility for designated areas, increased HUBZone contracting and a refocusing of HUBZone subcontracting should result in more Federal contract dollars going to distressed communities.

Overall, projecting winners and losers from regulatory changes in the HUBZone Program cannot be done with certainty. SBA believes that increasing

the efficiency and access to the HUBZone Program to both Federal agencies and small businesses will, over time, result in increased use of the program and a higher probability that the HUBZone Program will meet its original objectives to create jobs and increase capital investment in HUBZone communities. The HUBZone Act of 1997 increased the small business goal from 20% to 23%, to include the HUBZone contracting goal (maximum level 3%), and ensure that small business contracting would not be impacted. In every case, the mix of winners and losers will be affected by the decisions of contracting agencies to use or not to use the HUBZone Program.

SBA has determined that this rule, if adopted in final form, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The amendments proposed in this rule involve revising several definitions, including the definition of "HUBZone" and "employee." These amendments may affect a large percentage of the over 30,000 SBCs that SBA believes are eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program. Thus, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) and has submitted a complete copy of the IRFA to the Chief Counsel for Advocacy of the SBA. The IRFA explains that this proposed rule will affect those SBCs that participate in Federal procurements, that hire leased or temporary employees, or are owned by Indian Tribal Governments or tribal corporations. The proposed rule will make it easier for such entities to apply to and become eligible for the program. For a complete copy of the IRFA, please contact Michael McHale at (202) 205–8885.

SBA has determined that this proposed rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. The rule authorizes SBA to request that a HUBZone SBC submit updated financial information and information relating to the number of its employees. This information is needed to comply with the statutory requirement that SBA report to Congress "the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones." Pub. L. 105–135, Title VI, § 606, 111 Stat. 2635. As noted in the Supplementary Information above, SBA has certified over four thousand concerns into the HUBZone Program.

Each of these concerns could be subject to this request for information. SBA estimates the burden of this collection of information as follows: SBA may request updated financial information and information relating to the number of employees from a qualified HUBZone SBC annually. SBA estimates that the time needed to complete this collection will average less than one-half hour. SBA estimates that the cost to complete this collection will be approximately \$30 per hour. Thus, the estimated aggregated burden for each qualified HUBZone SBC is 0.5 hours per annum costing an estimated \$15 for the year. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 and to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth above, SBA proposes to amend 13 CFR parts 121, 125 and 126, as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. Revise the authority citation for 13 CFR part 121 to read as follows:

Authority: Pub. L. 105-135 sec. 601 et seq., 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5); and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. Amend § 121.406 by revising the section heading, by adding a new paragraph (b)(6) to read as follows, and by removing paragraph (d):

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) Nonmanufacturers. (1) * * *

(6) With respect to any contract under the simplified acquisition threshold, a small business nonmanufacturer may supply the end item of any manufacturer made in the United States, including a large business.

* * * * *

3. Amend § 121.1001 by revising paragraph (a)(6)(iv), and by adding new paragraph (b)(7) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) Size status protests. * * *

(6) * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

* * * * *

(b) * * *

(7) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

4. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

5. In § 125.6, redesignate paragraphs (b), (c), (d), (e), (f), and (g) as paragraphs (d), (e), (f), (g), (h), and (i) respectively, and add new paragraphs (b) and (c) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(b) A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract (as defined in § 126.600) provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(4) In the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement; and

(5) In the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, the qualified HUBZone SBC may not purchase from a subcontractor any of the commodity if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(c) SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry

codes in the North American Industry Classification System (NAICS) pursuant to the following procedures.

(1) Format of request. Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Associate Administrator of the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDB, woman-owned business, or HUBZone programs.

(2) Notice to public. Upon an adequate preliminary showing to SBA, SBA will publish in the Federal Register a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) Comments. SBA will provide a period of not less than 30 days for public comment in response to the Federal Register notice.

(4) Decision. SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the Federal Register. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

* * * * *

PART 126—HUBZONE PROGRAM

6. Revise the authority citation for 13 CFR part 126 to read as follows:

Authority: 15 U.S.C. 632, and 15 U.S.C. 657a.

7-8. Amend § 126.101 by revising paragraph (a), removing paragraph (b), and redesignating current paragraph (c) as paragraph (b) to read as follows:

§ 126.101 Which government departments or agencies are affected directly by the HUBZone Program?

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

* * * * *

9. Amend § 126.103 to remove the terms and definitions for "HUBZone 8(a) concern," and "Woman-owned business (WOB);" revise the terms and definitions of "AA/8(a)BD", "AA/HUB," "ADA/GC&8(a)BD", "employee," "HUBZone," "HUDZone small business concern (HUBZone SBC)," "Indian reservation," "Lands within the external boundaries of an Indian reservation", "Person," "Qualified census tract," "Qualified non-metropolitan county," and "Small disadvantaged business (SDB);" add the terms "Agricultural Commodity," "Alaska Native Corporation (ANC)," "Alaska Native Village," "Attempt to Maintain," "Community Development Corporation," "Contracting Officer," "Indian Tribal Government," "Redesignated area," and "Small business concern (SBC)" to read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

* * * * *

AA/BD means SBA's Associate Administrator for the Office of Business Development.

AA/HUB means SBA's Associate Administrator for the HUBZone Empowerment Contracting Program.

ADA/GC&BD means SBA's Associate Deputy Administrator for Government Contracting and Business Development.

Agricultural Commodity has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

Alaska Native Corporation (ANC) has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

Alaska Native Village has the same meaning as the term "Native village" in section 3 of the ANCSA, 43 U.S.C. 1602.

Attempt to maintain means making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs.

* * * * *

Community Development Corporation (CDC) means a corporation that has

received financial assistance under 42 U.S.C. 9805 *et seq.*

* * * * *

Contracting Officer (CO) has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

* * * * *

Employee means a person (or persons) employed by a concern on a full-time, part-time, temporary, leased or other basis. SBA will consider the totality of circumstances, including factors relevant for tax purposes, when determining whether individuals are employees of a concern. Volunteers (*i.e.*, persons who receive no compensation for work performed) are not considered employees. To determine the size of a HUBZone concern, SBA uses the calculation of "employee" set forth in § 121.106 of this chapter.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, or redesignated areas.

HUBZone SBC means:

(1) An SBC that is owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) An SBC that is wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) An SBC that is 51% owned by one or more Indian Tribal Governments or 51% owned by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or,

(6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs.

* * * * *

Indian reservation has the same meaning as the term "Indian country" in 18 U.S.C. 1151, except that such term does not include—

(1) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(2) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000. However, in the State of Oklahoma, "*Indian reservation*" means lands that—are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151, as in effect on December 21, 2000.

Indian Tribal Government means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

Lands within the external boundaries of an Indian reservation includes all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that located outside the perimeter of an Indian reservation is not "lands within the external boundaries of an Indian reservation."

* * * * *

Person means a natural person.

* * * * *

Qualified census tract has the meaning given that term in § 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

* * * * *

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under § 42(d)(5)(C)(ii) of the

Internal Revenue Code of 1986, and in which:

(1) The median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(2) The unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

Redesignated area means any census tract or any nonmetropolitan county that ceases to be a qualified HUBZone, except that such census tracts or nonmetropolitan counties may be "redesignated areas" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified. The date on which the census tract or nonmetropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

* * * * *

Small business concern (SBC) means a concern that, with its affiliates, meets the size standard for its primary industry, pursuant to part 121 of this chapter.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this chapter, is owned and controlled by one or more socially and economically disadvantaged individuals, tribes, ANCs, Native Hawaiian Organizations, or CDCs and has been certified pursuant to subpart B, part 124 of this chapter.

* * * * *

10. Revise § 126.200 to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) *Concerns owned by Indian Tribal Governments.*

(1) *Ownership.* (i) The concern must be wholly owned by one or more Indian Tribal Governments;

(ii) The concern must be wholly-owned by a corporation that is wholly owned by one or more Indian Tribal Governments;

(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or

(iv) The concern must be owned in part by a corporation, which is wholly-owned by one or more Indian Tribal

Governments, and all other owners are either United States citizens or SBCs.

(2) *Size.* The concern, with its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Employees.* The concern must certify that when performing a HUBZone contract, at least 35 percent of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other.

(b) *Concerns owned by U.S. citizens or CDCs.*

(1) *Ownership.* (i) The concern must be 100 percent owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The concern is not eligible because it is not 100 percent owned by U.S. citizens;

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to § 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to § 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to § 29(e)(2)) of the ANCSA); or

(iii) The concern must be wholly-owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

(2) *Size.* The concern, together with its affiliates, must qualify as a small business under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Principal office.* The concern's principal office must be located in a HUBZone.

(4) *Employees.* At least 35 percent of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number;

Example 1: A concern has 25 employees, 35 percent or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35 percent or 33.25 employees must reside in

a HUBZone. Thus, 34 employees must reside in a HUBZone.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will attempt to maintain having 35 percent of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

11. Revise § 126.201 to read as follows:

§ 126.201 Who does SBA consider to own a HUBZone SBC?

An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC. If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner. In addition:

(a) *Corporations.* SBA considers any person who owns stock, whether voting or non-voting, to be an owner. SBA considers options to purchase stock and the right to convert debentures into voting stock to have been exercised.

Example: U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Thus, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not 100 percent owned and controlled by persons who are United States citizens.

(b) *Partnerships.* SBA considers all partners, whether general or limited, to be owners in a partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA considers each member to be an owner of a limited liability company.

12. Revise § 126.202 to read as follows:

§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decisionmaking authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions:

officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

13. Revise § 126.203(b) to read as follows:

§ 126.203 What size standards apply to HUBZone SBCs?

* * * * *

(b) *At time of initial contract offer.* A HUBZone SBC must be small within the size standard corresponding to the NAICS code assigned to the contract.

14. Revise § 126.205 to read as follows:

§ 126.205 May participants in other SBA programs be certified as qualified HUBZone SBCs?

Participants in other SBA programs may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in this part.

15. Revise § 126.207 to read as follows:

§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to be certified as a qualified HUBZone SBC and if required by § 126.200, the concern's principal office must be located in a HUBZone.

16. Revise § 126.300 to read as follows:

§ 126.300 How may a concern be certified as a qualified HUBZone SBC and what information will SBA consider?

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

17. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application and certification?

A concern seeking certification as a HUBZone SBC must submit its electronic application to SBA via <https://eweb1.sba.gov/hubzone/internet/> and its written application to the AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Certification pages must be signed by a person authorized to represent the concern.

18. Revise § 126.304 to read as follows:

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must submit a completed application and represent to SBA that it meets the requirements set forth in § 126.200. The concern must also submit any additional information required by SBA.

(b) Concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation must use SBA's maps to verify that the location is within the external boundaries of an Indian reservation. If, however, SBA's maps indicate that the location is not within the external boundaries of an Indian reservation and the concern disagrees, then the concern must submit official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 126.501, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

19. Revise § 126.306(b) to read as follows:

§ 126.306 How will SBA process the certification?

* * * * *

(b) SBA may request additional information or clarification of information contained in an application submission at any time.

* * * * *

20. Revise § 126.307 to read as follows:

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified on Pro-Net at <http://pro-net.sba.gov> and on the HUBZone Web page at <https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm>. In addition, requesters may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

21. Revise § 126.308 to read as follows:

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter, should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or via e-mail at hubzone@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

22. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification no sooner than one year from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. See § 126.304(c).

23. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination and what will SBA examine?

(a) *General.* A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process or in connection with a HUBZone contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.

(b) *Scope of review.* Examiners may conduct the review, or parts of the review, at one or all of the concern's offices. SBA will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the location and ownership of the concern, the

employee percentage requirements, and the concern's attempt to maintain this percentage. The concern must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission of the application and any recertifications issued to SBA.

24. Revise § 126.402 to read as follows:

§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is certified as a qualified HUBZone SBC.

25. Revise § 126.403 to read as follows:

§ 126.403 May SBA require additional information from a HUBZone SBC?

(a) At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a HUBZone SBC to cooperate with a program examination or provide requested information.

(b) In order to gauge the success of the program, SBA may request that a HUBZone SBC submit updated financial information and information relating to the number of its employees.

§ 126.404 [Removed]

26. Remove § 126.404.

§ 126.405 [Removed]

27. Remove § 126.405.

28. Revise § 126.500 to read as follows:

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone status?

Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC. Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309.

The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements.

29. Revise § 126.501 to read as follows:

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

A qualified HUBZone SBC must immediately notify SBA of any material change that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or principal office of the concern, or a failure to meet the 35% HUBZone residency requirement. The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change may result in decertification and removal from the List pursuant to § 126.504. In addition, SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, it must apply for certification pursuant to §§ 126.300 through 126.306.

§ 126.503 [Redesignated as § 126.504]

30. Redesignate current § 126.503 as § 126.504.

31. Add new § 126.503 to read as follows:

§ 126.503 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility or determines that the concern is no longer eligible for the program?

If SBA is unable to verify a qualified HUBZone SBC's eligibility or determines it is not eligible for the program, SBA may propose decertification of the concern.

(a) *Proposing Decertification.* Except as set forth in paragraph (c) of this section, the Deputy AA/HUB or designee will first notify the qualified HUBZone SBC in writing of the reasons why decertification is being proposed. The qualified HUBZone SBC will have 30 calendar days from the date that it receives SBA's notification to respond, in writing, to the AA/HUB or designee.

(b) *SBA's Decision.* The AA/HUB or designee will consider the reasons for proposed decertification and the qualified HUBZone SBC's response before making a written decision whether to decertify. The AA/HUB may draw an adverse inference where a qualified HUBZone SBC fails to cooperate with SBA or provide the information requested. The AA/HUB's decision is the final agency decision.

(c) *Decertifying Pursuant to a Protest.* SBA may decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

32. Revise § 126.601 to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(b) A firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract.

(c) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

(1) It is a qualified HUBZone SBC that appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List that could affect its HUBZone eligibility;

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will attempt to maintain the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a) of this title, then it must represent that at least 35 percent of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(d) If bidding as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(e) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406(b)(1) of this chapter, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) For HUBZone contracts at or below the simplified acquisition threshold in total value, a qualified HUBZone SBC may supply the end item of any manufacturer made in the United States, including a large business.

33. Revise § 126.602 to read as follows:

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status.

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35 percent of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

34. Revise § 126.603 to read as follows:

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase their prospects of having a requirement set aside for HUBZone contract award.

35. Amend § 126.605 by removing the semicolon and "or" at the end of paragraph (b), adding a period in its place, and removing paragraph (c).

36. Revise § 126.606 to read as follows:

§ 126.606 May a CO request that SBA release an 8(a) requirement for award as a HUBZone contract?

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made

to the AA/BD, who will make a determination after consulting with the AA/HUB.

37. Revise § 126.607 to read as follows:

§ 126.607 When must a CO set aside a requirement for qualified HUBZone SBCs?

(a) The CO first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) After determining that paragraph (a) of this section does not apply, the CO must next determine whether the requirement should be set aside for competition restricted to qualified HUBZone SBCs or offered to the 8(a) program. In making this determination, the CO must consider the contracting activity's achievement of its HUBZone and 8(a) goals, and other relevant factors.

(c) A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

(d) If the CO decides to set-aside the requirement for competition restricted to qualified HUBZone SBCs, the CO must:

- (1) Review SBA's List of Qualified HUBZone SBCs and have a reasonable expectation that at least two qualified HUBZone SBCs will submit offers; and
- (2) Determine that award can be made at a fair market price.

38. Revise § 126.608 to read as follows:

§ 126.608 Are there HUBZone contract opportunities at or below the simplified acquisition threshold or micropurchase threshold?

A CO may make a requirement available as a HUBZone set-aside if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a qualified HUBZone SBC at or below the micropurchase threshold.

39. Revise § 126.610 to read as follows:

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the AA/HUB, his or her designee, or other interested parties.

40. Revise § 126.611(c) to read as follows:

§ 126.611 What is the process for such an appeal?

* * * * *

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

* * * * *

41. Revise paragraphs (b)(1), (b)(2), and (e) of § 126.612 to read as follows:

§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

* * * * *

(b) * * *

(1) \$5,000,000 for a requirement within the NAICS codes for manufacturing; or

(2) \$3,000,000 for a requirement within all other NAICS codes;

* * * * *

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

42. Revise § 126.613 to read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98, a non-HUBZone SBC submits an offer of \$95, and a large business submits an offer of

§93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of \$103, a non-HUBZone SBC submits an offer of \$100, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be that from a large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at \$100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98 and a non-HUBZone SBC submits an offer of \$93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single IFB.

(2) The 10 percent and 5 percent price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25 percent and 40 percent volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example. There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is \$1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is \$1.05/pound for 20,000 pounds of wheat. Bid 3

(from a HUBZone SBC) is \$1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from \$20,000 for the first 20,000 pounds to \$22,000. Bid 3's price of \$20,800 ($\$1.04 \times 20,000$) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from \$5,000 to \$5,500. Bid 2's price of \$5,250 ($\$1.05 \times 5,000$) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (i.e., 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from \$15,000 to \$15,750. Bid 2's price for that 15,000 pounds is also \$15,750 ($\$1.05 \times 15,000$). Because the evaluation price for Bid 2 is *not more than* 10 percent higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

43. Revise § 126.614 to read as follows:

§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.613 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the

Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103-355, in a full and open competition.

Example 1: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of \$102; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; and a large business submits an offer of \$93. The CO first applies the SDB price evaluation preference and adds 10 percent to the qualified HUBZone SBC's offer thereby making that offer \$112.2, and to the large business's offer thereby making that offer \$102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

Example 2: A qualified HUBZone SBC (but not an SDB) submits an offer of \$102; a qualified HUBZone SBC that is also an SDB submits an offer of \$105; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of \$100; and a large business submits an offer of \$93. The CO must first apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes \$112.2; the qualified HUBZone SBC/SDB's offer remains \$105; the SDB's offer remains \$107; the small business concern's offer becomes \$110; and the large business's offer becomes \$102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of \$112.2 is not more than 10 percent higher than the large business's price, however, the qualified HUBZone/SDB's price of \$105 is also not more than 10 percent higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

44. Revise § 126.616 to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of performing a specific HUBZone contract. The joint venture itself need

not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; and

(ii) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by 13 CFR 125.6.

45. Add new § 126.617 to read as follows:

§ 126.617 Who decides contract disputes arising between a qualified HUBZone SBC and a contracting activity after the award of a HUBZone contract?

For purposes of the Disputes Clause of a specific HUBZone contract, the contracting activity will decide disputes arising between a qualified HUBZone SBC and the contracting activity.

46. Add new § 126.618 to read as follows:

§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) Qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or HUBZone SBC and the firm that is its mentor in a Federally-approved mentor-protégé relationship on the basis of the mentor-protégé agreement.

(c)(1) A qualified HUBZone SBC that is a prime contractor on a HUBZone

contract may team with and subcontract work to its mentor.

(i) The HUBZone SBC must meet the applicable performance of work requirement set forth in § 125.6(b) of this chapter.

(ii) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. *See* § 121.103(f)(4) of this chapter.

(2) A qualified HUBZone SBC may not joint venture with its mentor on a HUBZone contract unless the mentor is also a qualified HUBZone SBC.

47. Revise § 126.700 to read as follows:

§ 126.700 What are the performance of work requirements for HUBZone contracts?

A prime contractor receiving an award as a HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

48. Revise § 126.702 to read as follows:

§ 126.702 How can the subcontracting percentage requirements be changed?

SBA may change the required subcontracting percentage for a specific industry if the Administrator determines that such action is necessary to reflect conventional industry practices among SBCs that are below the numerical size standard for businesses in that industry group. The procedures for requesting changes in subcontracting percentages are set forth in § 125.6 of this chapter.

§ 126.703 [Removed]

49. Remove § 126.703, "What are the procedures for requesting changes in subcontracting percentages."

50. Revise § 126.800(b) to read as follows:

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

* * * * *

(b) *For all other procurements.* SBA, the CO, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

51. Revise paragraphs (a), (d)(2) and (e) of § 126.801 to read as follows:

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests

both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does review protest issues concerning the conduct or administration of a HUBZone contract.

* * * * *

(d) *Timeliness.*

(1) * * *

(2) Any protest received after the time limits is untimely, unless it is from SBA or the CO.

* * * * *

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

52. Revise § 126.803(d) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&BD, pursuant to § 126.805. If SBA upholds the protest, SBA will decertify the concern.

53. Revise paragraphs (a), (b), and (h) of § 126.805 to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the CO

may file appeals of protest determinations with the ADA/GC&BD.

(b) *Timeliness of appeal.* The ADA/GC&BD must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

* * * * *

(h) *Decision.* The ADA/GC&BD will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the CO, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&BD's decision is the final agency decision.

54. Revise paragraph (b) of § 126.900 to read as follows:

§ 126.900 What penalties may be imposed under this part?

* * * * *

(b) *Civil penalties.* Persons or concerns are subject to civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

* * * * *

Dated: January 16, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02–1834 Filed 1–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell, Inc., Part Number HG1075AB05 and HG1075GB05 Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 inertial reference units (IRU) that are installed on aircraft. This proposed AD would require you to inspect the affected IRU's

for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection. This proposed AD is the result of a report that these IRU's may not function when using backup battery power in certain installations. The actions specified by this proposed AD are intended to ensure the correct transition of the IRU to backup battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 29, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Honeywell, Inc., Commercial Aviation Products, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

A ground test for proper inertial reference unit (IRU) function revealed a wiring defect that is attributed to a manufacturing error on certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 IRU's. This wiring defect disables the IRU's capability to detect a loss of primary input power and transition to backup battery input power in some installations.

The affected IRU's incorporate the following:

- P/N HG1075AB05: any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659) that incorporates modification status 3; and
- P/N HG1075GB05: serial number (last four digits) 0652 or 0659 that incorporates modification status 2.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Is There Service Information That Applies to This Subject?

Honeywell, Inc. has issued the following:

- Alert Service Bulletin HG1075AB–34–A0013, dated May 21, 2001; and
- Alert Service Bulletin HG1075GB–34–A0005, dated May 21, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for inspecting the affected IRU's for proper function. It also

specifies having the IRU returned to Honeywell and modified.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on any type design aircraft that incorporates one of the affected IRU's;

- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect any affected IRU for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 80 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection and modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at \$60 per hour = \$120	Honeywell to provide at no cost	\$120	\$9,600

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would 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. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Honeywell, Inc.: Docket No. 2001-CE-28-AD.

(a) *What aircraft are affected by this AD?* This AD affects any aircraft, certificated in any category, that incorporates one of the following:

- (1) Inertial Reference Unit (IRU) part number (P/N) HG1075AB05, any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659), that incorporates modification status 3; or
- (2) IRU P/N HG1075GB05, serial number (last four digits) 0652 or 0659, that incorporates modification status 2.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft with any of the equipment identified in paragraph (a) of this AD installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to ensure the correct transition of the IRU to battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect any affected IRU for proper function	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB-34-A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB-34-A0005, dated May 21, 2001, as applicable.
(2) Remove any affected IRU from the airplane	If found to not function properly during the inspection required by paragraph (d)(1) of this AD, remove prior to further flight after the inspection. If found to function properly, remove within 200 hours time-in-service (TIS) after the inspection required by paragraph (d)(1) of this AD.	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB-34-A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB-34-A0005, dated May 21, 2001, as applicable.

Actions	Compliance	Procedures
<p>(3) Do not install, on any aircraft, one of the IRU's identified in paragraphs (a)(1) and (a)(2) of this AD, unless it has been modified at Honeywell, Inc. and updated to one of the following:</p> <p>(i) IRU P/N HG1075AB05 IRU Mod 7; or</p> <p>(ii) IRU P/N HG1075GB05 IRU Mod 6</p>	<p>As of the effective date of this AD</p>	<p>Not Applicable.</p>

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Chicago Aircraft Certification Office, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: This AD applies to any aircraft with an inertial reference unit (IRU) installed as identified in paragraphs (a)(1) and (a)(2) of this AD, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294-8113; facsimile: (847) 294-7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Honeywell, Inc., Commercial Aviation Products, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433-6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 18, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-1967 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 292

RIN 1076-AD93

Gaming on Trust Lands Acquired After October 17, 1988; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule: Reopening of comment period; correction.

SUMMARY: This document corrects a discrepancy in the reopening of the comment period on a proposed rule concerning gaming on trust lands acquired after October 17, 1988, published in the **Federal Register** on December 27, 2001.

DATES: Comments must be received on or before March 27, 2002.

ADDRESSES: Mail comments to George Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street, NW., MS2070-MIB, Washington, DC 20240. Comments may be hand delivered to the same address from 9 a.m. to 4 p.m. Monday through Friday or sent by facsimile to 202-273-3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Indian Gaming Management Staff Office, at 202-219-4066.

SUPPLEMENTARY INFORMATION: On Thursday, December 27, 2001, the Bureau of Indian Affairs published a document reopening the comment period on a proposed rule, 66 FR 66847, concerning Gaming on Trust Lands Acquired After October 17, 1988. The document published on December 27 incorrectly stated in the **EFFECTIVE DATE** section of the preamble that the deadline for receipt of comments was February 25, 2002. In addition, the caption **EFFECTIVE DATE** should have read **DATES**. Accordingly, on page 66847, in the third column, the **EFFECTIVE DATE** section is corrected to read "**DATES:** Comments must be received on or before March 27, 2002."

Dated: January 8, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02-1284 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-4N-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG-142686-01]

RIN 1545-BA26

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing; extension of time to submit outlines of oral comments.

SUMMARY: This document changes the date of the public hearing on the proposed regulations that relate to incentive stock options and options granted under employee stock purchase plans. It also extends the time to submit outlines of oral comments for the hearing.

DATES: The public hearing will be held May 14, 2002, beginning at 10 a.m. Additional outlines of oral comments must be received by April 23, 2002.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:ITA:RU (REG-142686-01), Room 5226, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-142686-01), Courier's Desk, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting

comments directly to the IRS Internet site at <http://www.irs.ustreas.gov/tax—regs/regslst.html>.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622-6040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001, (66 FR 57023), announced that a public hearing on the proposed regulations relating to incentive stock options and options granted under employee stock purchase plans would be held on March 7, 2002, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has changed to May 14, 2002, at 10 a.m. in the IRS Auditorium. Outlines of oral comments must be received by April 23, 2002.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).
[FR Doc. 02-2047 Filed 1-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-231-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the proposed removal of a required amendment to the Kentucky regulatory program (the "Kentucky program") at 30 CFR 917.16(f) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This document gives the times and locations that the Kentucky program and proposed

amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t. February 27, 2002. If requested, we will hold a public hearing on the amendment on February 22, 2002. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on February 12, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-8400. e-mail: bkovacic@osmre.gov.
Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Telephone: (859) 260-8400. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these

criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

30 CFR 917.16(f) required a program change to 405 KAR 8:010 sections 5(1)(c) and (d) to require that information required by sections 2 and 3 of 405 KAR 8:030 and 8:040 be submitted on any format prescribed by OSM, as well as any format prescribed by the Cabinet. On December 19, 2000 (65 FR 79582), we removed the requirement that states must submit information on forms approved by OSM.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. KY-231-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260-8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. February 12, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of

Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02-1944 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 254-0318b; FRL-7132-2]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (Nox) emissions from stationary internal combustion engines. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by February 27, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at

our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 1001 "I" Street,
Sacramento, CA 95812
Yolo-Solano Air Quality Management
District, 1947 Galileo Court, Suite
103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 972-3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the local rule: YSAQMD Rule 2.32. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rules and address the comments in subsequent action based on these proposed rules. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

[FR Doc. 02-2008 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH95

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Newcomb's Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Newcomb's snail (*Erinna newcombi*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of nine stream segments and associated tributaries, springs and seeps on the

island of Kauai, Hawaii, totaling approximately 26.29 kilometers (16.35 miles).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat for the survival and recovery of the species.

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 data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries described in this proposal after taking into consideration the comments or any new information received during the comment period, and such information may lead to a final regulation that differs from this proposal.

DATES: We will consider comments from all interested parties received by March 29, 2002. Requests for public hearing must be received by March 14, 2002.

ADDRESSES: Submit comments and requests for public hearing to Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Ongoing erosion has formed steep-walled valleys with well-developed soils and stream systems throughout the chain. Kauai, geologically the oldest and most northwesterly of the eight main islands, is characterized by deep valleys, high rainfall, abundant vegetation, and numerous streams and springs.

The island of Kauai is 1,430 square kilometers (km²) (552 square miles (mi²)) in size, the fourth largest of the main Hawaiian islands. Most of the land mass of Kauai was formed between 5.6 and 3.6 million years ago from one or more large shield volcanoes. More recent, secondary eruptions occurred over the eastern portion of the island as

recently as the Pleistocene epoch, approximately 0.6 million years ago. Due to the age and climate of the island, Kauai is heavily eroded, with numerous steep, water-carved valleys and gulches.

The prevailing northeasterly trade winds are typically laden with moisture in the central Pacific latitudes where Kauai is located. Substantial precipitation is brought to the windward and interior portions of the island as a result of uplift and cooling of the warm, moist surface airmass as it flows over the steep topography of the island. The high elevation areas in the vicinity of the Alakai Plateau such as Mt. Waialeale (1,600 meters (m), 5,248 feet (ft)), are among the rainiest places on earth, receiving an average of 11.3 m (444 inches (in)) of precipitation annually (Juvik and Juvik 1998). This large volume of rainwater flows to perennial and intermittent streams and wetlands, and infiltrates into the island's aquifers. The west and southwest coastal areas of the island lie in the rain shadow of the Alakai Plateau and interior uplands, and these areas receive considerably less rain.

Kauai has at least 61 streams that are considered perennial, and a similarly large number of intermittent streams (Hawaii Stream Assessment (HSA) 1990). The Hanalei River, for example, is 27 km (17 mi) in length and is the largest stream system in the State by volume, with a long-term mean discharge of 216 cubic feet per second (34-year average calculated from 1964 to 1997). The headwaters of the Hanalei River are near the summit of Mt. Waialeale and the river flows towards Hanalei Bay on the island's north shore. The basalts that form the bulk of the main Hawaiian islands are porous and permeable, which facilitates infiltration and storage of groundwater. A lens-shaped body of groundwater (the basal lens) exists within these porous basalts at lower elevations. In some areas, the basal lens is partially confined by lower-permeability coastal alluvial and calcareous deposits ("caprock"). Recent groundwater investigations in the southern Lihue basin indicate that permeabilities of both the basalt and the younger rock from secondary eruptions are low, which allows the basal groundwater lens to thicken and thereby reach greater elevations than on the other Hawaiian islands (Izuka and Gingerich 1998). This causes basal groundwater to enter and support stream and spring flow up to relatively high elevations. Because the basal lens groundwater reserve is very large in size, streams, springs, and rock seeps (rheocrenes) fed by basal groundwater exhibit highly permanent, stable flows.

In addition to the basal lens, smaller, perched groundwater systems form at higher-elevations above dense geologic features of low permeability such as those formed by layers of ash. Groundwater bodies may also form within higher elevation geologic formations as a result of confinement by dikes, which are vertical sheets of low-permeability rock that cut through more permeable basalt in some places. Groundwater bodies that form behind these perched and dike-confined aquifers contribute water to streams and springs at higher elevations, although these aquifers are smaller in volume than basal systems and their contribution to surface water would be expected to be reduced during prolonged drought (MacDonald *et al.* 1960).

Human-caused modifications to surface and ground water systems on Kauai and throughout Hawaii have profoundly altered natural hydrologic regimes. Plantation irrigation systems, built to support the cultivation of sugar cane over a century ago, transfer large volumes of water out of natural watercourses and into extensive systems of ditches, tunnels, flumes, reservoirs, and ultimately to fields. Historically, stream water diversion structures were typically built to be highly efficient in their ability to entrain water. These dams usually divert all flowing stream water at moderate to low flows, leaving the stream channel below the dam dry. At least one third of all Kauai's streams are significantly dewatered for agricultural and industrial water supplies (HSA 1990); in 1994, a total of 224.17 million gallons per day (mgd) was used island-wide for irrigation, and 93.72 mgd was used for generation of hydroelectric power (Wilcox 1996).

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968, Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kauai. Newcomb's snail is unique among the Hawaiian lymnaeids in that the shell spire typically associated with lymnaeids has been substantially reduced. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 in.) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell

morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well-defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. & A. Adams (see Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea*. Morrison (1968) contradicted Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna*. Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie *et al.* (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi*. This is the currently accepted scientific name for Newcomb's snail.

The Newcomb's snail is restricted to freshwater. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation and there are no widely dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Very little is known about the biological or environmental factors that affect population size in Newcomb's snails. Important factors may include annual, multi-year or decadal changes in streams flows, severe-weather high-flow channel-scouring events, or periods of severe or prolonged drought. Dispersal of the snails in both upstream and downstream directions within a stream system probably plays an important function in gene flow and in colonizing or recolonizing suitable habitat, especially microhabitat that is protected from channel scour. Dispersal of Newcomb's snail between stream systems is likely very infrequent due to their freshwater habitat requirements, and historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. It should be noted that this life history differs greatly from the freshwater Hawaiian neritid snails (*Neritina* spp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). It is likely that larvae of these neritid snails can disperse across

the oceanic expanses that separate the Hawaiian Islands and colonize streams on any or all of these islands. This dispersal capacity is not available to the Newcomb's snail.

Based on past and recent field observations, the specific habitat requirements of the Newcomb's snail include fast-flowing perennial streams and associated springs, seeps, and vertical-to-overhanging waterfalls (Stephen Miller, U.S. Fish and Wildlife Service *in litt.* 1994a, 1994b; Polhemus *et al.* 1992; Burch 1968; and Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kauai indicate that the Newcomb's snail is found only in protected areas within main stream channels (Michael Kido, University of Hawaii, *in litt.* 1994). The limited occurrence of this snail in main stream channels is likely due to periodic channel scouring by sediment, rocks, and boulders that are moved downstream during runoff events due to the frequent heavy rains. Consequently, suitable habitat is generally associated with overhanging waterfalls located in the main channel of perennial streams supported by stable groundwater input, or with small, spring-fed tributaries. Another common element among the sites harboring snail populations is that the water source appears to be consistent and permanent, even during severe drought.

Five populations of Newcomb's snail were identified prior to 1925. These include populations from sites located in Waipahee Stream (a tributary to Kealia Stream), Wainiha River, Hanakapiai Stream, Hanakoa Stream, and Kalalau Stream. Three of these populations (Wainiha River, Hanakapiai Stream, and Hanakoa Stream) are now thought to be extirpated. Of the two remaining pre-1925 populations, one (Waipahee Stream) is small and the other (Kalalau Stream) is relatively large (see below). Since about 1993, surveys of approximately 50 sites located along numerous streams and their associated tributaries and springs on Kauai have located four previously unknown populations of Newcomb's snail (M. Kido, *in litt.* 1994). The current known range of Newcomb's snail is limited to very small sites located within six stream systems in north- and east-facing drainages on Kauai. They are: Kalalau Stream; Lumahai River; Hanalei River (four subpopulations); Waipahee Stream (a tributary to Kealia Stream); two subpopulations in Makaleha Stream (a tributary to Kapaa Stream); and the North Fork Wailua River.

No historic information is available on the population size of Newcomb's snail. However, recent reports indicate

that two of the six known populations of Newcomb's snail are relatively large: the Kalalau Stream and Lumahai River populations. The Kalalau Stream population is found in the northeastern fork of Kalalau Stream on two permanent waterfalls and in the stream reach between the waterfalls. The high density of individuals in this population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller, *in litt.* 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Habitat used by these snails may be limited to the lower section of the waterfall that receives a high amount of spray from the falling water. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido, *in litt.* 1995a).

The population in Makaleha Stream is divided into two subpopulations. The subpopulation at the waterfall that forms the head of the main channel of Makaleha Stream is estimated at 30 snails/ m^2 (2 to 3 snails/ ft^2) distributed over 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994; M. Kido, pers. comm. 1995b). This is considerably smaller than the population in Kalalau Stream described above. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non-native predators and biocontrol agents that feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs (which forms a series of very small tributaries to Makaleha Stream) covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller, *in litt.* 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/ m^2 (1 to 3 snails/ ft^2) (S. Miller, *in litt.* 1994a).

The sizes of three other populations of Newcomb's snail have been characterized as small. The population in the Waipahee tributary of Kealia Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/ m^2 (4 to 8 snails/ ft^2) (Adam Asquith, U.S. Fish and Wildlife Service, *in litt.* 1994). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations in the upper reach of this river (M. Kido, *in litt.* 1994, 1995a). One subpopulation has approximately

10 to 20 snails/ m^2 (1 to 2 snails/ ft^2) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations in the Hanalei River are reported to be small with very few snails (M. Kido, *in litt.* 1995a). The population found in the upper reaches of the North Fork of the Wailua River just upstream of a concrete agricultural water diversion intake, appears to vary over time but was made up of just a few scattered individuals during surveys in 1996 and 1997 (M. Kido, pers. comm. 1995b; M. Kido, pers. comm. 2000).

Based on these data, we estimate that the six known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the populations found in Kalalau Stream and the Lumahai River.

Previous Federal Action

The February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We published a proposed rule on July 21, 1997 (62 FR 38953), to list this species as threatened. On January 26, 2000 (65 FR 4162), we published a final rule determining Newcomb's snail to be a threatened species.

In the final listing rule we determined that designation of critical habitat for the Newcomb's snail would be prudent because such a designation could benefit the species beyond listing as threatened by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits. Despite the prudency determination, we also indicated that we were not able to develop a proposed critical habitat designation for the Newcomb's snail at that time due to budgetary and workload constraints. However, on June 2, 2000, the U.S. Fish and Wildlife Service was ordered by U.S. District Court (*Conservation Council for Hawaii vs. Bruce Babbitt and Jamie Rappaport Clark*, Civil No. 99-00603 SCM/BMK) to publish the critical habitat designation for Newcomb's snail by February 1, 2002. The plaintiffs and the Service have entered into a consent decree

stating that we will jointly seek an extension of this deadline to August 10, 2002 (*Center for Biological Diversity, et al. vs. Norton*, Civil No. 01-2063 (JR) (D.D.C.); October 2, 2001). This proposed rule responds to the court's order.

On March 5, 2001, we mailed letters to 104 potentially interested parties informing them that the Service was in the process of designating critical habitat for the Newcomb's snail and requesting from them information concerning the range of the Newcomb's snail, observational life history accounts, current threats, and management activities on lands where Newcomb's snail currently occurs or occurred in the past. The letters contained a fact sheet describing the Newcomb's snail and included a map depicting the current range of the Newcomb's snail. Recipients of these letters included land owners and managers that own and manage land at the two sites where Newcomb's snails are found on private lands, and the various State agencies responsible for managing State of Hawaii lands and water resources at the other locations where the Newcomb's snail are known to occur. We received seven responses to our written request for information: four from various State agencies within the Hawaii Department of Land and Natural Resources (State Historic Preservation Office, Commission on Water Resource Management, Land Division, and the Office of the Chairperson of the Board of Land and Natural Resources), one from the Office of Hawaiian Affairs, one from the Office of the Mayor of Kauai County, and one from a Museum-affiliated researcher. The information provided in the responses was considered and incorporated into this proposed rule. In addition, on March 15, 2001, a public informational meeting was held on Kauai to provide an opportunity for the general public, non-governmental organizations, and representatives from government agencies to meet with Service personnel and discuss the critical habitat designation process.

Critical Habitat

Critical habitat is defined in section 3(5)(A) 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 a determination that such areas are essential for the conservation of the species.

In order for occupied habitat to be included in a critical habitat designation, the habitat features must be "essential to the conservation of the species." Such critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection may be provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Newcomb's snail and do not require special management or protection, they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposal.

In order for unoccupied habitat to be included in a critical habitat designation, it must be "essential to the conservation of the species." Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is defined as the direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or

biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not afford any additional regulatory protection under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

When we designate critical habitat at the time of listing, as required under Section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs

of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take 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 the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of

designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods and Criteria Used To Identify Critical Habitat

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Newcomb's snail. This information included: Peer-reviewed scientific publications (Hubendick 1952, Morrison 1968, Patterson and Burch 1978, and Cowie *et al.* 1995); unpublished reports, field notes and correspondence by Service personnel, State agency biologists, and university researchers (M. Kido, *in litt.* 1994, 1995a, 1995b; S. Miller, *in litt.* 1994a, 1994b; A. Asquith, *in litt.* 1994; Donald Heacock, Hawaii Department of Land and Natural Resources Division of Aquatic Resources, pers. comm. 1994, D. Heacock pers. comm. 2001); and responses to the Newcomb's snail critical habitat outreach material mailed to Federal, State, and private land managers and land owners.

Most of the currently occupied Newcomb's snail sites are located in close proximity to one another. For example, the Hanalei river population is located just 3.2 km (1.9 mi) from the North Fork Wailua River population, and the Makaleha Springs population is just 2.5 km (1.6 mi) from the Waipahee Stream population. The exception is the population found in Kalalau Stream, which is located 11 km (6.3 mi) from the Lumahai River population, its nearest neighbor. Despite the relatively short distances between snail populations, the steep, rugged terrain and circular shape of the island creates conditions that allow the sites to be exposed to severe weather and other natural phenomena from markedly different directions. For example, the Hanalei River valley is aligned in a south-to-north direction, while the North Fork Wailua River valley extends from north-to-south. The two Newcomb's snail populations in these drainages are separated by a distance of a few km, but the ridge between them is over 900 m (2953 ft) in elevation. Because the terrain where Newcomb's snail is found is remote and extremely rugged, three of the six known populations (located in Kalalau Stream, Lumahai River and Waipahee Stream) have not been resurveyed since their initial discovery or rediscovery.

Growth rates, life span, reproductive potential, age at first reproduction, dietary needs, and microhabitat preferences are not known. As noted above, accurate population estimates and the natural variability of populations over time are also not available. We are in the process of developing a draft recovery plan for this species. We anticipate the draft being available for public review and comment by the spring of 2002.

Because of the topography of the island and the prevalent weather patterns, torrential rains that may cause flooding, channel scour, and landslides are usually restricted to one or two quadrants of the island during any single storm event. Recent examples of such recurring natural phenomena include Hurricane Iniki (a category 4 hurricane which devastated Kauai on September 11, 1992), Hurricane Iwa (November 23, 1982), and the huge upper Olokele Valley landslide of October 31, 1981 (Fitzsimons *et al.* 1993, Jones *et al.* 1984). Each of these events markedly degraded or entirely eliminated large areas of potential Newcomb's snail habitat which had never been surveyed to locate snail populations. These physical conditions indicate that recovery through protection of the existing populations, plus reestablishment of populations in suitable areas of historical range that provide a wide geographical separation, is necessary for the ensured survival of the species. We therefore find that inclusion of three currently unoccupied areas identified as containing the primary constituent elements is essential to the conservation of the Newcomb's snail. These three sites are located in the northwest quadrant of the island, in drainages between the Lumahai River and Kalalau Stream populations. These three locations are identified as priority recovery units for translocation efforts in the draft Newcomb's snail Recovery Plan currently under preparation by the Service.

Complete recovery will require restoration of Newcomb's snails to areas of historically occupied habitat either through natural dispersal or translocation. Mere stabilization of Newcomb's snail populations within its currently occupied habitat will not achieve recovery of the species. The locations currently occupied by known Newcomb's snail populations are not sufficiently dispersed to consider the species safe from extinction. Existing known populations are found in remarkably small areas of only a few square meters of aquatic habitat, each of which is at risk from even a small,

localized landslide or high flow event. Recovery actions are likely to include: Maintaining existing populations through regulatory mechanisms that protect water resources, watershed protection and stabilization efforts; control of non-native predators; and translocation of snails for the purpose of reestablishing additional self-sustaining populations in the wild. Recovery criteria will require persistence of populations of snails that are geographically separated in natural habitats to reduce the threat of total elimination of entire populations through catastrophic events such as hurricanes, landslides, fire, drought, and predator invasions.

We used several criteria to identify and select locations proposed for designation as critical habitat: (1) We began with all locations that are currently occupied by Newcomb's snail; (2) we then added three locations where Newcomb's snail was found historically but is now thought to be extirpated in the northwest extent of its range. In

deciding which unoccupied areas to propose for designation as critical habitat, we gave preference to sites that (a) were most recently known to be occupied, or (b) provided the greatest geographic diversity to the array of locations under consideration for critical habitat. Two of these sites are on lands that are publicly owned (Na Pali Coast State Park and Hono O Na Pali Natural Area Reserve) and one site is on private land. These areas are in the northwest quadrant of the island and would presumably be most exposed to severe weather events such as hurricanes from the north and northwest. With the exception of the Kalalau Stream population, all other populations of Newcomb's snails are located in the northeast or southeast quadrants of the island, and these sites would be exposed to severe weather events such as hurricanes primarily from the east and northeast.

Nine critical habitat units are proposed, and these units are located within three stream complexes that

share similar characteristics (Table 1). The stream complexes share common topography, watershed characteristics, population characteristics, and exposure to natural disasters. Each stream complex and the proposed critical habitat units within them are discussed below.

Within the proposed critical habitat unit boundaries, only waterbodies containing one or more of the primary constituent elements are proposed as critical habitat. Existing features and structures within the boundaries of the mapped units, such as dams, ditches, tunnels, flumes, and other human-made water features that do not contain the primary constituent elements, are not proposed as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat.

TABLE 1.—PROPOSED CRITICAL HABITAT UNITS FOR THE NEWCOMB'S SNAIL BY LOWER AND UPPER BOUNDARY ELEVATIONS IN METERS (M) (FEET (FT)) AND THE LENGTH OF THE STREAM SEGMENTS IN KILOMETERS (KM) (MILES (MI))

Stream complex	Critical habitat units	Ownership	Lower boundary elevation	Upper boundary elevation	Stream segment length*
I. Na Pali Coast Streams.	(a) Kalalau Stream	State—Na Pali Coast State Park.	183 m (600 Ft)	488 m (1,600 ft)	1.38 km (0.86 mi)
	(b) Hanakoa Stream	State—Na Pali Coast State Park.	122 m (400 ft)	457 m (1,500 ft)	
	(c) hanakapiai Stream	State—Na Pali Coast State Park.	183 m (600 ft)	457 m (1,500 ft) ....		0.56 km (0.35 mi).
II. Central Rivers ..	(a) Wainiha River	Private—Alexander and Baldwin, Inc..	244 m (800 ft)	457 m (1,500 ft)	5.26 km (3.27 mi)
	(b) Lumahai River	Private—Kamehameha Schools.	183 m (600 ft)	457 m (1,500 ft)	
	(c) Hanalei River	State—Halela Forest Reserve.	122 m (400 ft)	457 m (1,500 ft) ....		7.58 km (4.71 mi).
III. Eastside Mountain Streams.	(a) Waipahee Stream	Private—Cornerstone Hawaii Holdings, LCC.	244 m (800 ft)	366 m (1,200 ft)	2.41 km (1.50 mi)
	(b) Makaleha Stream	State—Kealia Forest Reserve.	183 m (600 ft)	457 m (1,500 ft)	
	(c) North Fork Wailua River	State—Lihue-Koloa Forest Reserve.	305 m (1000 ft)	427 m (1,400 ft) ....		1.71 km (1.06 mi)
TOTAL .....	.....	.....	.....	.....	26.29 km (16.35 mi)

* Length of main stream channel, does not include tributaries or springs.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required 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 features are termed Primary Constituent Elements, and include but are not limited to: space for individual and

population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; space for breeding and reproduction; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

The primary constituent elements for the Newcomb's snail are those habitat components that are essential for the primary biological needs of foraging,

sheltering, reproduction, and dispersal. These primary constituent elements are found in locations that, as a result of their geologic and hydrologic setting in the landscape, support permanently flowing streams, springs and seeps in mid-elevation locations in valleys on the island of Kauai. The primary constituent elements are: cool, clean, moderate-to fast-flowing water in streams, springs and seeps; the associated watersheds and hydrogeologic features that capture and

direct water flow to these spring and stream systems; a hydrologic regime that supports perennial flow throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar areas. All proposed critical habitat areas contain one or more of the primary constituent elements for the Newcomb's snail.

Proposed Critical Habitat Designation

Locations proposed as critical habitat provide the full range of primary constituent elements needed by the Newcomb's snail, including foraging, sheltering, reproduction, and dispersal. Proposed critical habitat is limited to segments of perennial streams, their tributaries, and associated springs. Critical habitat boundaries were derived using topographical characteristics of the valley and nearby drainages immediately adjacent to locations where Newcomb's snails occur or occurred historically. The upper and lower elevations of critical habitat boundaries were chosen based upon the elevational distribution from each recorded population, or nearby watersheds where Newcomb's snails are found or were found historically. An area of upland riparian habitat adjacent to the actual aquatic sites is included in the designation of critical habitat. The size of the riparian area was determined based on the steepness of the adjacent valley walls, the number and size of adjacent small drainages, and the distance and elevation gain to adjacent ridge lines. The riparian areas are included in this critical habitat designation because the stream and spring systems that contain or may contain Newcomb's snails are dependent upon riparian areas for shade, moderating water flow, sediment retention, and nutrient inputs.

Areas proposed as critical habitat for the Newcomb's snail occur in nine separate watersheds and may include the main channel of a named stream, contiguous named and unnamed tributaries, and springs and seeps. Proposed critical habitat includes locations under State and private ownership and includes six sites currently known to be occupied and, in addition, includes three locations where the species was known to occur in the early 1900s, but where it is now thought to be extirpated.

Stream reaches are identified using elevations of the stream or tributary channels as upstream and downstream boundaries; these elevations were derived separately for each of the nine

reaches and were delineated by recognizing unique physiographic features within each watershed such as waterfalls, small tributaries, and springs. A brief description of each stream reach and reasons for proposing it as critical habitat are presented below.

Unit I: Na Pali Coast Streams

Streams of the Na Pali Coast are small, short, and flow over steep terrain. These streams are located in the northwest quadrant of the island, and, because they are located in smaller watersheds, they are directly exposed to coastal weather conditions. Rainfall in this area is lower than in the other watersheds proposed for critical habitat. The vegetation of the Na Pali Coast Stream Complex consists primarily of mixed-species mesic forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. One of the three locations currently has snails present. The other two locations were known to harbor Newcomb's snail populations relatively recently but the species is now thought to be extirpated at those sites.

Unit I(a): Kalalau Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the east fork of Kalalau Stream and its tributaries, including springs and seeps, from an elevation of 183 to 488 m (600 to 1,600 ft). This reach contains one of the two largest known populations of Newcomb's snails, and it contains the largest population of snails documented on public lands. At least two large, vertical or overhanging waterfalls in this reach appear to provide important refuge from high, channel-scouring flows (S. Miller, in litt. 1994b). This population is currently the most isolated of the Newcomb's snail populations, and it is separated from the nearest neighboring population, located in Lumahai River, by 11.8 km (7.3 mi). It is the only remaining population in the northwest quadrant of the island.

This unit is essential to the conservation of Newcomb's snail because it has the most robust population of snails ever recorded, as documented in Service surveys conducted in 1994. This unit is required to maintain one of the six known populations of snails. This stream segment is located within the Na Pali Coast State Park. Kalalau Stream has no water diversions.

Unit I(b): Hanakoa Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Hanakoa Stream and its tributaries, including springs and seeps, from an elevation of 122 to 457 m (400 to 1,500 ft). Historical records from the early 1900s indicate that Newcomb's snails were found in this stream; however, a recent survey failed to locate any snails (S. Miller in litt. 1994b). This reach is located on the northwest side of the island and is exposed to severe weather approaching from the northwest. Hanakoa Stream was heavily impacted by Hurricane Iniki in 1992 (Fitzsimons *et al.* 1993), prior to surveys intended to locate populations of Newcomb's snail.

This unit is essential to the conservation of Newcomb's snail because it was occupied until recently and is therefore one of only nine locations known with certainty to contain suitable habitat conditions for Newcomb's snails. For the reasons discussed above, it is essential to the conservation of the species to have stream sites in the northwest part of its range available for repopulation by Newcomb's snails either by natural dispersal or through experimental translocation. This stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve. Hanakoa Stream has no water diversions.

Unit I(c): Hanakapiai Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Hanakapiai Stream and its tributaries, including springs and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). Historical records indicate that Newcomb's snail occurred in this reach; however, no recent surveys have located snails (M. Kido, in litt. 1994, A. Asquith pers. comm. 2001). This reach, like those in Kalalau and Hanakoa streams, is located in the northwest portion of the island and is exposed to severe weather from the north and northwest (Fitzsimons *et al.* 1993).

This unit is essential to the conservation of Newcomb's snail because it was occupied until recently and is therefore one of only nine locations known with suitable habitat conditions for Newcomb's snails. Because it is located in the northwest part of its range and has exhibited habitat conditions known to support Newcomb's snail in the recent past it should continue to be available for repopulation by Newcomb's snails either by natural dispersal or through

experimental translocation. This stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve. Hanakapiai Stream has no water diversions.

Unit II: Central Rivers

The central rivers of Kauai are large relative to other streams in the State, and flow through relatively low-gradient watersheds. These rivers are located in the northern half of the island and, because their headwaters are located well inland and in large valleys, are exposed to weather conditions that are greatly influenced by the surrounding landmass. Rainfall in this area is higher than in the other watersheds proposed for critical habitat. The vegetation of the Central Rivers Complex watersheds consists primarily of mixed-species wet and mesic forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. Two of the three locations currently have Newcomb's snail populations present, and the remaining location was known to harbor Newcomb's snail populations historically, but the species is now thought to be extirpated there.

Unit II(a): Wainiha River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the Wainiha River and its tributaries, including springs and seeps, from an elevation of 244 to 457 m (800 to 1,500 ft). Historical records indicate that Newcomb's snail occurred in this stream, which is one of the largest stream systems in the State. Surveys have failed to locate snails (M. Kido, *in litt.* 1994). This site is located well inland in a steep-walled valley that is in the northwest portion of the island. The potential exposure to severe weather at this site is primarily from the north, but this exposure is greatly influenced by the precipitous valley walls, which rise some 975 m (3,200 ft) above the stream channel.

This stream segment is located on private land. A major water diversion structure is located at the 213 m (700 ft) elevation of Wainiha River below which the river channel is frequently dry. The dam is located approximately one kilometer downstream of the lower boundary of the area proposed for designation as critical habitat. This diversion removes an average of 50 million gallons per day (2.19 cubic meters per second) of water from the river at the 213 m (700 ft) elevation; this water is transported in ditches, tunnels,

and flumes approximately 5.3 km (3.3 m) downstream to a powerhouse. This facility is the largest hydroelectric power producer in the State.

This unit is essential to the conservation of Newcomb's snail because it was historically occupied and is therefore one of only nine locations known with certainty to contain suitable habitat conditions for Newcomb's snails. This location should be considered for experimental repopulation by Newcomb's snails through translocation efforts.

Unit II(b): Lumahai River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Lumahai River and its tributaries, including springs and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). One of the largest populations of Newcomb's snails ever documented occurs in this reach of Lumahai River and its tributaries. This stream segment is located on private land. Lumahai River has no water diversions.

This unit is essential to the conservation of Newcomb's snail because it has one of the most robust population of snails ever discovered, as recorded at the time of the discovery of the population by Hawaii Department of Land and Natural Resources division of Aquatic Resources personnel in 1994. This unit is required as critical habitat to maintain and recover one of the six known populations of Newcomb's snails.

Unit II(c): Hanalei River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the Hanalei River and its tributaries, including springs and seeps, from an elevation of 122 to 457 m (400 to 1,500 ft), excluding ditches and flumes. The four sub-populations found within this stream system represent the largest number of Newcomb's snail sub-populations occurring within a single watershed. Segments of several named tributaries to the Hanalei River are included in this designation, and these include Kaapoko, Kaiwa, and Waipunaea Streams. This stream segment is located within the Halela Forest Reserve on State lands. The proposed critical habitat that contains the Hanalei River subpopulations of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing known populations of snails.

A complex of stream diversion works that includes dams, ditches and tunnels, is found at the 378 m (1,240 ft) elevation

of the Hanalei River, in the vicinity of the upper two main-channel Hanalei River sub-populations and upstream of the Kaapoko tributary sub-population at an elevation of 396 m (1,300 ft). These dams and associated ditches and tunnels historically diverted large volumes of water out of Kaapoko tributary and the Hanalei River to watersheds in the southeast portion of the island for irrigation use. Typical diversion structures in Hawaiian streams completely divert all of a streams flowing water during moderate-to low-flow periods, leaving the stream channel below the dam completely dry. The water diversion structures and associated ditches and tunnels in the upper Hanalei River and its tributaries are currently in disrepair and, although they locally alter flow characteristics, no water is diverted out of the Hanalei watershed at this time.

Unit III: Eastside Mountain Streams

The streams proposed for critical habitat designation that flow towards the east and southeast portions of the island are intermediate in size. Rainfall is moderate in comparison to the other locations proposed as critical habitat. All three of the locations included in this stream complex are known to be occupied by extant populations of snails. The vegetation of the Eastside Mountain Stream watersheds consists primarily of mixed-species wet forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species.

Unit III(a): Waipahee Stream (tributary to Kealia Stream)

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Waipahee Stream and its tributaries, including springs and seeps, from an elevation of 244 to 366 m (800 to 1,200 ft). Newcomb's snail was historically known to occur in Waipahee Stream, and a recent survey has confirmed the presence of Newcomb's snails within this reach. The proposed critical habitat that contains the Waipahee Stream population of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Waipahee Stream is located on private land that, in the lower elevation areas, is undergoing a transition in use from commercial plantation-style sugarcane agriculture to pasture, forestry, diversified crops, and "ecotourism" use. Higher elevation areas of these private

lands, such as where Newcomb's snails are found, are not used for agriculture and are relatively undisturbed. Water is diverted from Kealia Stream at several locations at lower elevations.

Unit III(b): Makaleha Stream (tributary to Kapaa Stream)

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Makaleha Stream and its tributaries, including Makaleha Springs, other springs, and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). The Makaleha Stream and Makaleha Springs Newcomb's snail populations have been surveyed several times in recent years. Two subpopulations are known to occur within this reach: Newcomb's snails are found within the complex of small tributary streams originating from Makaleha Springs, and a small number of snails are found upstream of the springs at a waterfall located in the Makaleha Stream main channel. This stream segment is located within the Kealia Forest Reserve on State lands. Water is diverted from Makaleha Stream and Kapaa Stream at several locations at lower elevations. The proposed critical habitat that contains the Makaleha Stream population of Newcomb's snail are essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Unit III(c): North Fork Wailua River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the North Fork of the Wailua River and its tributaries, including springs and seeps, from an elevation of 305 to 427 m (1,000 to 1,400 ft), excluding ditches and flumes. This population was the most recent to be discovered and is apparently small. This is the only population located in the southwest quadrant of the island and is found in a watershed that flows to the west. This stream segment is located within the Lihue-Koloa Forest Reserve on State lands. Water is diverted from the North Fork Wailua River at an elevation of 326 m (1,070 ft), within the area proposed as critical habitat. This diversion removes approximately 13 mgd from the stream. The proposed critical habitat that contains the North Fork Wailua River population of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. 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, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) 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. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species nor 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 (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project 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 the Director believes would avoid 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 with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Newcomb's snail or its critical habitat would require section 7 consultation; however, no populations of Newcomb's snail are known to exist on Federal land. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be

affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of the Newcomb's snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Destroying or degrading Newcomb's snail habitat (as defined in the primary constituent elements discussion) through activities adjacent to or upstream of Newcomb's snail habitat. Such activities may include reduction or redirection of stream or spring water flow, dam construction, channel alteration or realignment, substrate alteration, or other direct means (e.g., pesticide or herbicide application, waste discharge, groundwater withdrawal, groundwater contamination, reduction of groundwater recharge, etc.).

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential predators, diseases or disease vectors, vertebrate or invertebrate food competitors, invasive plant species, watershed degradation through overgrazing, augmentation of feral ungulate populations, an altered fire regime, or other activities that degrade water quality or quantity to an extent that it detrimentally affects stream structure and function).

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 conservation of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the

species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, there is a potential benefit from critical habitat designation in unoccupied areas, and consultation under section 7 of the Act would be triggered in these areas if they were designated as critical habitat.

Federal agencies already must consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

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

(3) Development on private or State lands requiring permits from other Federal agencies, such as Department of Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense on their lands or lands under their jurisdiction;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

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

(8) Other activities such as those funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Transportation, Department of Energy, Department of the Interior (U.S. Geological Survey, National Park Service, Bureau of Reclamation), Department of Commerce (National Oceanic and Atmospheric Administration), Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Newcomb's snail and do not require special management or protection, they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and so would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider: (1) Whether a current plan specifies the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) the plan includes a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) the plan includes provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Based on information provided to us by land owners and managers to date, we will need to work with the land owners and managers to adequately

manage to address the threats to the Newcomb's snail. Several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the Newcomb's snail, but we find that the management does not adequately reduce the primary threats to this species.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not 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**.

Currently, no habitat conservation plans (HCPs) include the Newcomb's snail as a covered species. However, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat.

We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the Newcomb's snail and appropriate management for those areas. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Public Comments Solicited

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

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and distribution of Newcomb's snail and what habitat is essential to the conservation of this species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the Newcomb's snail;

(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) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and

(7) Economic and other values associated with designating critical habitat for the Newcomb's snail, such as those derived from non-consumptive uses (e.g., hiking, camping, wildlife-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If we receive information that any of the areas proposed as critical habitat are currently being managed to address the conservation needs of the Newcomb's snail and provide adequate management and protection, we may exclude such areas from the final rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act. We may also exclude areas pursuant to section 4(b)(2) of the Act if information on impacts received during the public comment period or developed as part of the economic analysis indicates that the benefits of exclusion outweighs the benefits of inclusion, provided it will not result in extinction of the species. If

you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**):

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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. To the extent consistent with applicable law, 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 Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

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 copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of

those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) 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 notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified 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. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to 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. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the "Exclusions Under Section 4(b)(2)" section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Newcomb's snail since its listing in January of 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation 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 proposed rule, if made final, will not significantly impact 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 incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a small number of small entities. However, should the economic analysis prepared pursuant to section 4(b)(2) of the ESA indicate otherwise, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than

100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect Newcomb's snail. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. An action that appreciably diminishes habitat for the conservation of the species may also jeopardize the continued existence of the species by

reducing population numbers, decreasing reproductive success, or altering species distribution because of negative impacts to such habitats.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since Newcomb's snail has only been listed since January 2000, and there are no consultations involving the species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because Newcomb's snail has been listed only a relatively short time and there have been no activities with Federal involvement in these areas during this time, there is no history of consultations based on the listing of this species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

None of the proposed designation is on Federal lands. Six of the nine sites are on lands owned and managed by the State of Hawaii, which is not a small entity for purposes of this analysis. This includes units within the Na Pali Coast State Park, Hono O Na Pali Natural Area Reserve, the Halela Forest Reserve and the Lihue-Koloa Forest Reserve. All of these land areas are primarily managed for conservation of natural resources, including threatened and endangered species. In state lands, activities with no Federal involvement would not be affected by the critical habitat designation.

Three of the nine units of the proposed designation are on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. No activities of an economic nature currently occur on the private lands in the area encompassed by this proposed designation. These areas are in the State Conservation District and have a very limited range of allowable activities that could occur there under the State Conservation District Use permitting program. Because of the Conservation District zoning, and because the sites are so remote and inaccessible that helicopter

transport is normally required for access, even small-scale commercial or agricultural development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects, is unlikely to be involved in projects in these areas. On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy, and the U.S. Army Corps of Engineers (ACOE). In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve permits for discharge of fill material in wetlands or waterways and occur due to the presence of threatened or endangered species (primarily the five endangered Hawaiian waterbirds) that spend at least part of their life in aquatic habitats. Because the stream channels proposed for Newcomb's snail critical habitat are so remote, no consultations due to ACOE permits are anticipated for activities such as road construction. Construction of new diversion structures in the stream segments proposed for critical habitat, or rehabilitation of the abandoned water diversion structures in the proposed Hanalei critical habitat unit, is unlikely because agriculture practices have changed and irrigation demands have greatly diminished, but if such activities do occur and involve discharge of fill, ACOE permitting and section 7 consultation would be required.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing

the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for Newcomb's snail, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with the listed terrestrial snails in Hawaii. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species and predators, restoration of degraded habitat, construction of protective fencing, and regular monitoring. As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of

small entities. The entire designation involves six sites on state lands and three sites on privately owned land; all of which are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, the private lands are within the state Conservation District and no commercial activities are undertaken at those locations and, therefore, are not likely to require any Federal authorization. In these areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement would be through some unforeseen activity within a stream channel that would call for a permit or authorization from the ACOE. Because of the rugged terrain and extreme remoteness of the island interior, we anticipate that projects involving the ACOE and other Federal agencies will be infrequent within the proposed designation. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for Newcomb's snail will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this proposed rule indicate that there may be significant economic impacts on a substantial number of small entities, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is 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 August 25, 2000 *et seq.*):

(a) This rule, as proposed, 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 programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the Newcomb's snail in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from appropriate State resource agencies in Hawaii. The designation of critical habitat for Newcomb's snail would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this

definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The proposed 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 Newcomb's snail.

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. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not have 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 Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat for the Newcomb's snail does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon

request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Gordon Smith, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

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. In § 17.11(h) revise the entry for "Snail, Newcomb's" under "SNAILS" 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						
		*	*	*		*	*
SNAILS							
Snail, Newcomb's	<i>Erinna newcombi</i>	U.S.A. (HI),	N/A	T	680	17.95(f)	*
		*	*	*		*	*

3. Amend § 17.95 (f) by adding critical habitat for the Newcomb's snail (*Erinna newcombi*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(f) Clams and snails.
* * * * *

Newcomb's snail (*Erinna newcombi*)

(1) Critical Habitat Units are depicted for the County of Kauai, Hawaii, on the maps below.

(2) Within these areas, the primary constituent elements required by the Newcomb's snail are those habitat components that are essential for the biological needs of foraging, sheltering, reproduction, and dispersal. These primary constituent elements are found in locations that support permanently flowing streams, springs, and seeps in mid-elevation locations in valleys on the island of Kauai. The primary constituent elements are: cool, clean,

moderate- to fast-flowing water in streams, springs, and seeps; the associated watersheds and hydrogeologic features that capture and direct water flow to these spring and stream systems; a hydrologic regime that supports perennial flow throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar refugia.

(3) Existing features and structures, such as dams, ditches, tunnels, flumes, and other human-made aquatic habitat features that do not contain one or more of the primary

constituent elements, are not proposed as critical habitat.

(4) Critical Habitat Unit I—Na Pali Coast Streams.

(i) Unit I(a): Kalalau Stream (149 ha; 368 ac)

The Kalalau Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 63 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435010, 2450871; 434991, 2450828; 435008, 2450782; 435112, 2450715; 435107, 2450681; 435044, 2450591; 435058, 2450537; 435120, 2450441; 435078, 2450308; 435048, 2450279; 435017, 2450341; 434968, 2450375; 434678, 2450406; 434682, 2450441; 434678, 2450551; 434618, 2450603; 434578, 2450602; 434518, 2450564; 434418, 2450540; 434444, 2450711; 434428, 2450733; 434388, 2450657; 434338, 2450612; 434278, 2450596; 434228, 2450621; 434188, 2450596; 434166, 2450621; 434159, 2450691; 434148, 2450691; 434058, 2450599; 433995, 2450571; 433968, 2450540; 433878, 2450559;

433825, 2450544; 433767, 2450451; 433738, 2450478; 433700, 2450581; 433670, 2450611; 433670, 2450671; 433633, 2450738; 433715, 2450996; 433732, 2451168; 433740, 2451380; 433642, 2451551; 433633, 2451598; 433688, 2451664; 433842, 2451694; 434206, 2451592; 434680, 2451547; 435053, 2451609; 435129, 2451611; 435147, 2451590; 435114, 2451460; 435048, 2451400; 434973, 2451360; 435041, 2451320; 435043, 2451250; 435134, 2451170; 435126, 2451120; 435089, 2451069; 435075, 2451013; 435018, 2450933; 435010, 2450871;

(ii) Unit I(b): Hanakoa Stream (63 ha; 156 ac)

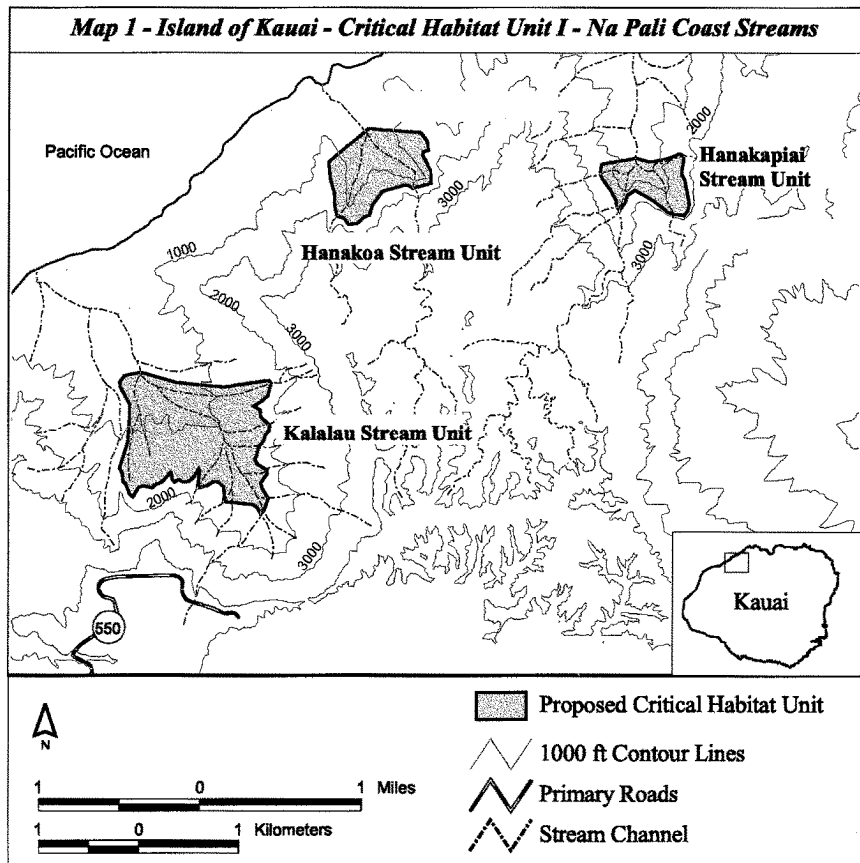
The Hanakoa Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 24 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435729, 2453628; 435717, 2453789; 436111, 2454127; 436637, 2454087; 436700, 2454008; 436719, 2453907; 436658, 2453889; 436654, 2453857; 436735, 2453697; 436744, 2453577; 436558, 2453527; 436518, 2453555; 436478, 2453559;

436250, 2453496; 436152, 2453358; 436123, 2453263; 436068, 2453238; 435998, 2453171; 435918, 2453168; 435869, 2453229; 435799, 2453248; 435780, 2453320; 435770, 2453490; 435729, 2453628.

(iii) Unit I(c): Hanakapiai Stream (35 ha; 86 ac)

The Hanakapiai Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 25 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 438438, 2453772; 438785, 2453827; 438899, 2453794; 438961, 2453796; 439113, 2453829; 439216, 2453871; 439257, 2453846; 439234, 2453666; 439263, 2453606; 439310, 2453377; 439299, 2453306; 439258, 2453253; 439158, 2453265; 439098, 2453290; 438949, 2453407; 438769, 2453508; 438692, 2453457; 438674, 2453387; 438618, 2453307; 438591, 2453347; 438578, 2453417; 438525, 2453507; 438443, 2453622; 438429, 2453677; 438438, 2453772.

(iv) Map 1—Unit I—Na Pali Coast Streams—follows:



(5) Critical Habitat Unit II—Central Rivers
(i) Unit II(a): Wainiha River (229 ha; 566 ac)

The Wainiha River Newcomb's snail critical habitat location consists of all flowing surface waters within 97 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 442795, 2446794; 442920, 2446901; 442806, 2446971;

442788, 2447024; 442714, 2447047; 442714, 2447111; 442595, 2447098; 442621, 2447201; 442708, 2447313; 442348, 2447194; 442331, 2447221; 442451, 2447358; 442418, 2447470; 442243, 2447470; 442368, 2447704; 442088, 2447660; 442149, 2447860; 442108, 2447916; 441936, 2447898; 441979, 2448161; 441686, 2448150; 441684, 2448250; 441799, 2448430; 441655, 2448417; 441686, 2448587; 441884, 2448882; 442498, 2449142; 442608, 2449108;

442607, 2448878; 442728, 2448926; 442797, 2448769; 442572, 2448540; 442605, 2448467; 442519, 2448310; 442521, 2448210; 442618, 2448118; 442768, 2448120; 442780, 2447942; 442967, 2447939; 442876, 2447700; 443058, 2447588; 443075, 2447517; 443239, 2447510; 443207, 2447420; 443222, 2447360; 443111, 2447280; 443229, 2447111; 443274, 2446940; 443358, 2446898; 443560, 2446922; 443608, 2446854; 443678, 2446875; 443708, 2446811;

443764, 2446846; 443780, 2446780; 443823, 2446750; 443757, 2446661; 443768, 2446624; 444168, 2446355; 444308, 2446345; 444278, 2446241; 444314, 2446077; 444508, 2445964; 444575, 2445968; 444575, 2445921; 444660, 2445851; 444723, 2445696; 444809, 2445671; 444941, 2445544; 444983, 2445431; 444918, 2445128; 444854, 2445447; 444688, 2445518; 444579, 2445642; 444532, 2445651; 444538, 2445724; 444487, 2445730; 444468, 2445801; 444348, 2445871; 444153, 2445926; 444153, 2446001; 444079, 2446172; 443964, 2446197; 443912, 2446265; 443718, 2446356; 443618, 2446334; 443613, 2446426; 443508, 2446587; 443388, 2446514; 443368, 2446613; 443208, 2446600; 443098, 2446552; 443073, 2446656; 442946, 2446651; 443000, 2446763; 442828, 2446711; 442795, 2446794.

(ii) Unit II(b): Lumahai River (492 ha; 1216 ac)

The Lumahai River Newcomb's snail critical habitat location consists of all flowing surface waters within 89 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 447598, 2445954; 447344, 2446136; 447298, 2446352; 447248, 2446290; 447178, 2446384; 447088, 2446327; 446972, 2446364; 446950, 2446572; 446787, 2446678; 446648, 2446627; 446648, 2446739; 446445, 2446836; 446409, 2447000; 446278, 2447034; 446208, 2447169; 446097, 2447178; 446141, 2447349; 446024, 2447449; 446014, 2447649; 445808, 2447618; 445809, 2447680; 445839, 2447840; 445616, 2447859; 445773, 2448009; 445589, 2448069; 445728, 2448189; 445531, 2448299; 445685, 2448359;

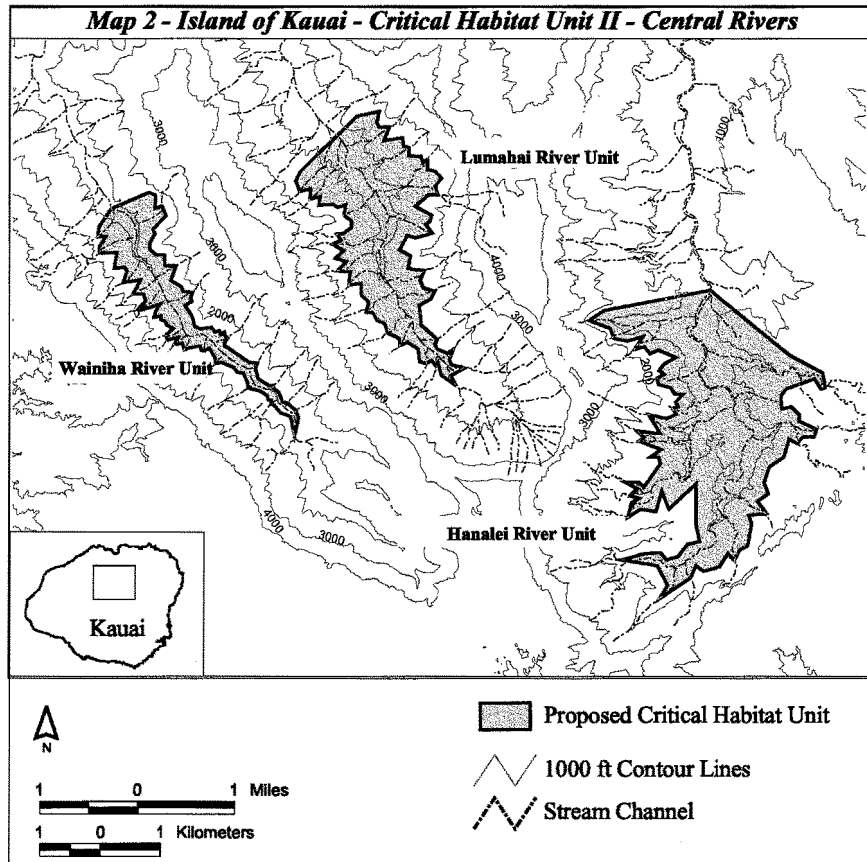
445605, 2448469; 445728, 2448478; 445854, 2448578; 445858, 2448680; 445728, 2448778; 445759, 2448939; 445618, 2448896; 445548, 2448954; 445318, 2448932; 445338, 2449080; 445164, 2449034; 445171, 2449211; 444998, 2449168; 444932, 2449348; 445008, 2449493; 445936, 2450417; 446309, 2450498; 446262, 2450317; 446309, 2450238; 446476, 2450245; 446385, 2450007; 446688, 2450060; 446714, 2449913; 446811, 2449890; 446799, 2449758; 446998, 2449747; 447028, 2449643; 447101, 2449690; 447098, 2449525; 447228, 2449509; 447343, 2449387; 447229, 2449247; 447298, 2449117; 447128, 2449116; 446901, 2448918; 447174, 2448778; 447144, 2448668; 447066, 2448628; 447190, 2448478; 446898, 2448400; 446778, 2448451; 446649, 2448198; 446831, 2448108; 446782, 2447899; 447064, 2447862; 446986, 2447707; 447038, 2447583; 447225, 2447529; 447162, 2447395; 446973, 2447289; 447008, 2446969; 447288, 2446719; 447234, 2446659; 447268, 2446571; 447448, 2446499; 447548, 2446559; 447484, 2446393; 447518, 2446304; 447739, 2446259; 447507, 2446131; 447598, 2445954;

(iii) Unit II(c): Hanalei River (876 ha; 2165 ac)

The Hanalei River Newcomb's snail critical habitat location consists of all flowing surface waters within 91 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450038, 2447210; 451786, 2447529; 453099, 2446469; 453648, 2446167; 453691, 2445925; 453614, 2445904; 453508, 2446074; 453044, 2445908; 452961, 2445785; 452974, 2445578; 453125,

2445605; 453267, 2445468; 453258, 2445377; 453550, 2445238; 453508, 2445111; 453318, 2445096; 453238, 2444991; 453098, 2445064; 453010, 2444769; 452768, 2444606; 452680, 2444349; 452760, 2444169; 452581, 2444039; 452723, 2443844; 452429, 2443810; 452486, 2443680; 452419, 2443309; 452280, 2443240; 452198, 2443073; 452088, 2443185; 451948, 2442960; 451678, 2442885; 451549, 2442979; 451471, 2442787; 450955, 2442448; 451082, 2442651; 450916, 2442988; 450337, 2443081; 450718, 2443188; 450968, 2443197; 451068, 2443077; 451255, 2443133; 451414, 2443330; 451612, 2443370; 451552, 2443666; 451549, 2444330; 451107, 2443911; 450988, 2444210; 450894, 2443874; 450638, 2443920; 450431, 2443773; 450492, 2444026; 450614, 2444100; 450468, 2444134; 450592, 2444250; 450389, 2444360; 450621, 2444363; 450698, 2444275; 450967, 2444669; 450939, 2444770; 450803, 2444769; 450978, 2444899; 450611, 2445032; 450698, 2445101; 450573, 2445219; 450969, 2445168; 450768, 2445479; 451068, 2445422; 451226, 2445489; 451158, 2445584; 451251, 2445606; 451216, 2445692; 451335, 2445819; 451188, 2445824; 451124, 2445925; 450928, 2445983; 450904, 2446088; 451017, 2446148; 450940, 2446208; 451031, 2446325; 451208, 2446428; 450928, 2446552; 450788, 2446490; 450688, 2446603; 450538, 2446560; 450668, 2446774; 450418, 2446700; 450199, 2446739; 450133, 2446913; 449784, 2447034; 450038, 2447210.

(iv) Map 2—Unit II—Central Rivers— follows:



(6) Critical Habitat Unit III—Eastside Mountain Streams

(i) Unit III(a): Waipahee Stream (106 ha; 262 ac)

The Waipahee Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 89 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 458928, 2447407; 458921, 2447414; 458943, 2447424; 458998, 2447420; 459102, 2447444; 459044, 2447534; 459104, 2447563; 459108, 2447613; 459085, 2447643; 459100, 2447671; 459118, 2447693; 459108, 2447714; 459078, 2447703; 459048, 2447661; 459028, 2447663; 459017, 2447694; 459045, 2447696; 459054, 2447727; 459118, 2447770; 459164, 2447749; 459191, 2447646; 459231, 2447596; 459309, 2447603; 459321, 2447623; 459306, 2447685; 459351, 2447663; 459398, 2447531; 459478, 2447584; 459518, 2447553; 459568, 2447656; 459586, 2447613; 459648, 2447556; 459738, 2447649; 459918, 2447569; 459998, 2447569; 460018, 2447584; 460048, 2447572; 460092, 2447599; 460188, 2447591; 460225, 2447606; 460592, 2447476; 460703, 2447365; 460814, 2447311; 460738, 2447092; 460451, 2446778; 460396, 2446632; 460318, 2446566; 460314, 2446634; 460270, 2446746; 460127, 2446673; 460168, 2446764; 460178, 2446877; 460058, 2446836; 459978, 2446834; 459906, 2446782; 459887, 2446803; 459902, 2446878; 459848, 2446946; 459818, 2446933; 459778, 2446940; 459694,

2446904; 459702, 2447004; 459648, 2447020; 459638, 2447098; 459608, 2447104; 459508, 2447031; 459502, 2447068; 459448, 2447061; 459500, 2447134; 459467, 2447203; 459445, 2447214; 459408, 2447183; 459388, 2447194; 459318, 2447163; 459268, 2447169; 459248, 2447139; 459218, 2447136; 459182, 2447074; 459148, 2447057; 459078, 2447076; 459083, 2447094; 459148, 2447124; 459185, 2447224; 459166, 2447274; 459178, 2447334; 459118, 2447345; 458948, 2447313; 459001, 2447384; 458928, 2447407.

(ii) Unit III(b): Makaleha Stream (95 ha; 235 ac)

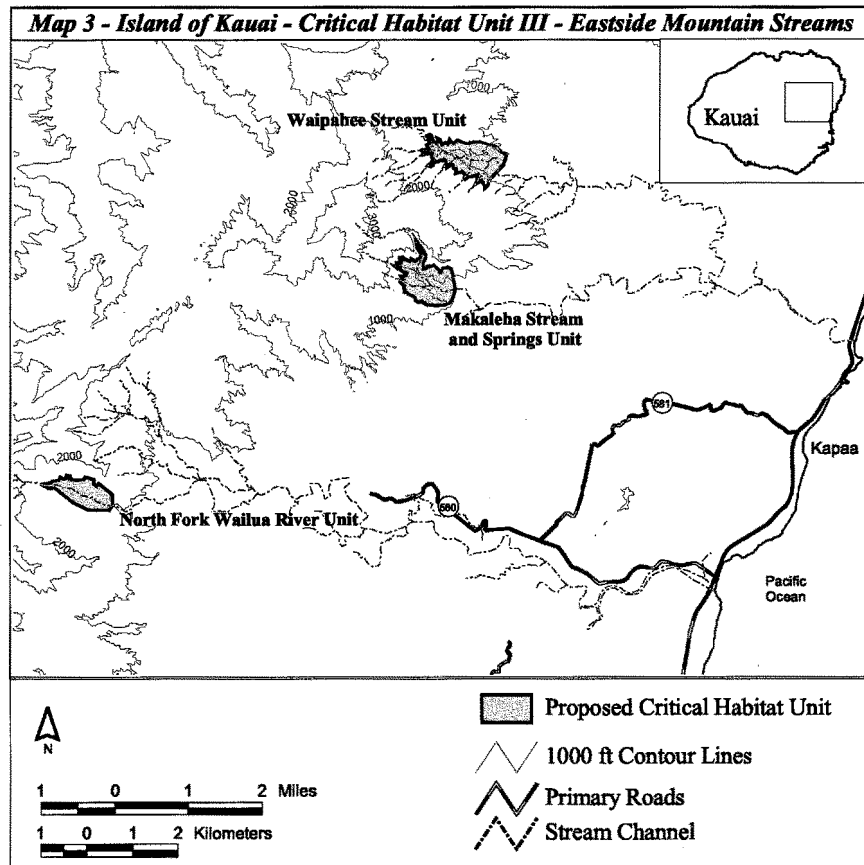
The Makaleha Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 68 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 459368, 2444730; 459372, 2444732; 459414, 2444830; 459438, 2444851; 459498, 2444854; 459528, 2444873; 459588, 2444828; 459601, 2444832; 459689, 2444388; 459662, 2444260; 459604, 2444112; 459455, 2444044; 459279, 2444030; 459064, 2444037; 459008, 2444069; 459002, 2444101; 458968, 2444099; 458944, 2444123; 458878, 2444096; 458808, 2444142; 458803, 2444197; 458748, 2444245; 458658, 2444279; 458633, 2444322; 458576, 2444325; 458582, 2444377; 458552, 2444407; 458568, 2444467; 458478, 2444527; 458474, 2444587; 458537, 2444607; 458492, 2444667; 458608, 2444684; 458633, 2444746; 458545, 2444763; 458495,

2444803; 458485, 2444833; 458418, 2444844; 458347, 2444897; 458418, 2444925; 458411, 2444963; 458504, 2444960; 458503, 2444991; 458458, 2445046; 458458, 2445076; 458528, 2445084; 458582, 2445036; 458678, 2444990; 458718, 2445049; 458798, 2444992; 458818, 2444992; 458868, 2445050; 458908, 2445056; 458933, 2445106; 458927, 2445176; 458854, 2445276; 458808, 2445463; 458960, 2445258; 459033, 2445116; 459033, 2445066; 458978, 2444969; 458983, 2444831; 459038, 2444842; 459088, 2444900; 459158, 2444877; 459218, 2444913; 459331, 2444816; 459368, 2444730.

(iii) Unit III(c): North Fork Wailua River (64 ha; 158 ac)

The North Fork Wailua River Newcomb's snail critical habitat location consists of all flowing surface waters within 97 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450656, 2440137; 450861, 2440154; 450920, 2440206; 450968, 2440196; 451045, 2440217; 451079, 2440286; 451145, 2440241; 451197, 2440262; 451211, 2440324; 451291, 2440314; 451291, 2440244; 451426, 2440217; 451589, 2440237; 451616, 2440286; 451811, 2440230; 451800, 2440137; 451873, 2440095; 451918, 2440151; 452209, 2439915; 452223, 2439665; 452140, 2439565; 451672, 2439575; 451343, 2439745; 450968, 2440043; 450840, 2440040; 450656, 2440137.

(iv) Map 3—Unit III—Eastside Mountain Streams—follows:



Dated: January 15, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-1770 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 011206293-1293-01; I.D. 101501A]

RIN 0648-AK17

Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement a guideline harvest level (GHL) and a system of harvest reduction measures for managing the harvest of Pacific halibut in the guided recreational fishery in International Pacific Halibut Commission (Commission) areas 2C and 3A off Alaska. The GHL would establish an estimated amount of halibut harvests that may be taken annually in the guided recreational fishery. The system of harvest reduction measures would provide for a number of management measures to take effect incrementally in the event that harvests exceed the GHL. This action is necessary to allow NMFS to manage more comprehensively the Pacific halibut stocks in waters off Alaska. It is intended to further the management and conservation goals of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Comments on the proposed rule must be received by February 27, 2002.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the North Pacific Fishery Management Council at 605 West 4th

Avenue, Suite 306, Anchorage, AK 99501-2252.

SUPPLEMENTARY INFORMATION:

Background

The Commission promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Commission's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary) (16 U.S.C. 773b). Additional management measures may be developed by the North Pacific Fishery Management Council (Council) to allocate harvesting privileges among U.S. fishermen. The Halibut Act provides NMFS with authority to implement such allocation measures through regulatory amendments approved by the Secretary in consultation with the Council. In addition to the IPhC regulations, the commercial halibut fishery off Alaska is managed under the halibut Individual Fishing Quota (IFQ) Program implemented in 1995.

Each year the Commission staff assesses the abundance and potential yield of Pacific halibut using all available data from the commercial fishery and scientific surveys. Harvest limits for 10 regulatory areas are determined by fitting a detailed population model to the data from each area. A biological target level for total removals in a given area is then calculated by multiplying a fixed harvest rate, presently 20 percent, to the estimate of exploitable biomass. This target level is called the "constant exploitation yield" (CEY) for that area in the coming year. Each CEY represents the total allowable harvest (in net pounds) for that area, which cannot be exceeded. The Commission then estimates the sport and personal use, subsistence harvests, wastage, and bycatch mortalities for each area. These are subtracted from the CEY and the remainder may be set as the catch quota for each area's directed commercial fixed gear fishery. Allocations to the guided recreational fishery are thus unrestricted within the CEY and represent an open-ended allocation to the guided recreational fishery from quota available to the commercial halibut fishery. Hence, as the guided recreational fishery expands, its harvests reduce the pounds available to

be fished in the commercial halibut fishery and, subsequently, the value of quota shares (QS) in the IFQ Program.

The Council has discussed the expansion of the halibut guided recreational fleet since 1993, when the rapid increase in guided recreational vessel effort in some small Alaskan communities, such as Sitka, gave rise to concerns about localized depletion of the halibut resource and the potential reallocation of greater percentages of the CEY from the IFQ fishery to the guided recreational vessel fishery. In 1995, the Council developed the following six-point problem statement to direct its analysis of issues attending the guided recreational halibut fishery:

The recent expansion of the halibut charter industry may make achievement of Magnuson-Stevens Act National Standards more difficult. Of concern is the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource. Specifically, the Council notes the following areas of concern with respect to the recent growth of halibut charter operations:

1. Pressure by charter operations may be contributing to localized depletion in several areas.
2. The recent growth of charter operations may be contributing to overcrowding of productive grounds and declining harvests for historic sport and subsistence fishermen in some areas.
3. As there is currently no limit on the annual harvest of halibut by charter operations, an open-ended reallocation from the commercial fishery to the charter industry is occurring. This reallocation may increase if the projected growth of the charter industry occurs. The economic and social impact on the commercial fleet of this open-ended reallocation may be substantial and could be magnified by the IFQ program.
4. In some areas, community stability may be affected as traditional sport, subsistence, and commercial fishermen are displaced by charter operators. The uncertainty associated with the present situation and the conflicts that are occurring between the various user groups may also be impacting community stability.
5. Information is lacking on the socioeconomic composition of the current charter industry. Information is needed that tracks: (1) the effort and harvest of individual charter operations; and (2) changes in business patterns.
6. The need for reliable harvest data will increase as the magnitude of harvest expands in the charter sector.

In September 1997, the Council took final action on two management actions affecting the halibut guided recreational fishery, culminating more than 4 years of discussion, debate, public testimony, and analysis. First, the Council

approved recording and reporting requirements for the halibut guided recreational fishery. To implement this requirement, the Alaska Department of Fish and Game (ADF&G) Sport Fish Division, under the authority of the Alaska Board of Fisheries, instituted a Saltwater Charter Vessel Logbook (Logbook) in 1998. Information collected under this program provides fishery scientists and managers with the number of fish landed and/or released, the date and primary location of fishing, the hours and number of lines fished, the number of clients and crew fishing, the ownership of the vessel, and the identity of the vessel operator.

The logbook collects such information as the Council and ADF&G determined at the time to be essential for managing the guided recreational fishery harvests of halibut. It complements additional sportfish data collected by the State of Alaska (State) through the Statewide Harvest Survey (Harvest Survey), conducted annually since 1977, and the on-site (creel and catch sampling) surveys conducted separately by ADF&G in Southeast and Southcentral Alaska.

For the second management action in September 1997, the Council recommended GHLS for the halibut guided recreational fishery in Commission regulatory areas 2C and 3A. The GHLS were based on the guided recreational sector receiving 125 percent of its 1995 harvest. This amount was equivalent to 12.76 percent and 15.61 percent of the combined commercial/guided recreational halibut quota in areas 2C and 3A, respectively. The Council stated its intent that guided recreational harvests in excess of the GHLS would not lead to a mid-season closure of the fishery, but instead would trigger other management measures to take effect in years following attainment of the GHLS. The overall intent was to maintain a stable guided recreational season of historical length, using area-specific harvest reduction measures. If end-of-season harvest data indicated that the guided recreational sector likely would have reached or exceeded its area-specific GHLS in the following season, NMFS would implement measures to slow down guided recreational halibut harvest. Given the 1-year lag between the end of the fishing season and the availability of that year's harvest data, management measures in response to the guided recreational fleet's meeting or exceeding the GHLS would take up to 2 years to become effective. However, the Council did not recommend specific management measures to be implemented by NMFS if the GHLS were reached.

In December 1997, the NMFS Alaska Regional Administrator informed the Council that the GHLS could not be published as a regulation without specific management measures to give it effect. Further, because the Council had not recommended specific management measures by which to limit harvests if the GHLS were reached, no formal approval decision by the Secretary was required for the Council's proposed GHLS policy, and it was not forwarded for review.

After being notified that its 1997 GHLS policy recommendation would not be submitted for review, the Council initiated a public process to identify GHLS management measures. The Council formed a GHLS Committee to recommend alternative management measures for analysis that would constrain guided recreational harvests below the GHLS. In April 1999, the Council identified the following for analysis: (1) a suite of GHLS management measure alternatives; (2) alternatives that would change the GHLS as approved in 1997; and (3) area-wide and local area management plan moratorium options under all alternatives. Several factors influenced the Council to recommend a program in which the implementation of harvest reduction measures would be triggered in fishing years subsequent to a year in which the GHLS was achieved or exceeded. Among these factors were (1) the unavailability of reliable in-season catch monitoring for the halibut guided recreational fishery; (2) the impracticality of making in-season adjustments to the commercial IFQ fishery; and (3) the undesirability of shortening the current guided recreational fishing season, which the Commission's annual halibut regulations have typically set between February 1 and December 31.

In February 2000, after 7 years of discussing the halibut guided recreational fishery, the Council took final action and voted 10-1 to recommend a redefined halibut guided recreational GHLS and a system of management measures, the essential design of which was forged by representatives of both the commercial halibut fishery and halibut guided recreational fleet. As part of this action, the Council also recommended expediting review of a proposal to integrate the halibut guided recreational fisheries in Commission Regulatory Areas 2C and 3A into the existing commercial IFQ Program. The Council reviewed the analysis for that proposal in February, 2001, and, at its meeting the following April, it took final action to recommend implementation of halibut guided recreational IFQs. If

approved by the Secretary, a halibut guided recreational IFQ program would supersede the management of the fishery under the GHLS proposed in this action.

The GHLS

The GHLS establishes a pre-season estimate of acceptable annual harvests for the halibut fishery in Commission areas 2C and 3A. To allow for limited growth of the guided recreational fleet while approximating historical harvest levels, the GHLSs would be based on 125 percent of the average of 1995-99 guided recreational harvest estimates as reported by the ADF&G's Harvest Survey. By weight, the GHLSs would equate to 13.05 percent of the combined guided recreational and commercial quota in area 2C or 1,432,000 lb (649.5 mt) net weight; and 14.11 percent of the combined guided recreational and commercial quota in area 3A or 3,650,000 lb (1,655.6 mt) net weight.

The GHLS would be responsive to annual reductions in stock abundance. In the event of a reduction in either area's halibut stocks, as determined by the Commission, the area GHLS would be reduced incrementally in proportion to the stock reduction. The reductions in the GHLS would be made using percentages based on the average harvests from 1999 to 2000, as a reflection of recent harvest levels.

For example, should the halibut stock in area 2C fall 15 percent or more below its 1999-2000 average, the area 2C GHLS would be reduced by 15 percent, from 1,432,000 lb (649.5 mt) to 1,217,200 lb (552.1 mt). Should the area stock abundance fall a further 10 percent or more, the GHLS would also be reduced by an additional 10 percent from 1,217,200 lb (552.1 mt) to 1,095,480 lb (496.9 mt), and so on with further 10 percent reductions in abundance. As abundance returns to its pre-reduction level (the 1999-2000 average), the GHLS would be increased by commensurate incremental percentage points to its initial level of 125 percent of the average of 1995-99 guided recreational harvest estimates.

In the case of increases in stock abundance, the GHLS would never exceed its initial level of 1,432,000 lb (649.5 mt) in Area 2C and 3,650,000 lb (1,655.6 mt) in Area 3A. Setting the GHLS at 125 percent of the 1995-1999 harvest estimates would allow for limited growth of the guided recreational fishery, but would effectively limit further growth at this level. NMFS invites public comment on this feature of the proposed action.

Harvest reduction measures

The GHL will not institute in-season actions to reduce guided recreational harvests. Instead, measures to reduce guided recreational harvests would be implemented by notification in following years. NMFS specifically requests that the public provide comments on this method of implementing management measures to reduce halibut harvest. The ADF&G typically publishes data on a given year's halibut guided recreational harvests from the ADF&G's Logbook program and Harvest Survey, respectively, in February and August of the following year. Given this delay between a given year's harvests and the issuance of logbook and harvest survey reports of the data from those harvests, measures to reduce guided recreational harvests would also be delayed to ensure the accuracy of data indicating that harvests exceeded the GHL.

NMFS would reduce harvests incrementally, based on the percentage at which the previous year's harvests exceeded the GHL. For example, a reduction in the daily "bag limit" or number of halibut a sport angler may harvest each day would be triggered and implemented only as the final tool when the GHL is exceeded by greater than 50 percent. This measure, like the others for harvests over 20 percent, would be implemented in the second year following the year of overharvest. For purposes of this limitation, daily bag limit means the amount of halibut that may be harvested per calendar day, or as specifically defined for waters in and off Alaska, the period from 0001 hours, A.l.t., until the following 2400 hours, A.l.t. (See 50 CFR 679.2 Definitions, Daily reporting period or day.)

In this system of harvest reduction measures, "harvest" means the catching and retaining of fish and, in the context of prohibiting harvests by a vessel's skipper and crew, is intended only to preclude retention by a vessel's skipper and crew and not to prevent a vessel's crew from assisting clients in fishing for and catching halibut.

The system recommended by the Council is as follows.

AREA 2C MANAGEMENT TOOLS

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
Less than 10 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.

**AREA 2C MANAGEMENT TOOLS—
Continued**

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
10-15 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut.
16-20 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
21-30 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
31-40 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.
41-50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year.

**AREA 2C MANAGEMENT TOOLS—
Continued**

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
More than 50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year; Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

AREA 3A MANAGEMENT TOOLS

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
Less than 10 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
10-20 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut.
21-30 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.

AREA 3A MANAGEMENT TOOLS—
Continued

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
31-40 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
41-50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.
More than 50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year; Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

How the System of Harvest Reduction Measures Would Work

No guided recreational halibut harvest reduction measures would be implemented if the total guided recreational harvest in the area (2C or 3A) remains at or below the GHL for that area. However, if the GHL is exceeded in a given year, appropriate harvest reduction measures would be imposed in following years to reduce harvests incrementally by the percentage at which the previous year's harvests exceeded the GHL. For

example, if harvests in Area 2C in 2002 exceeded the GHL by 15 percent, halibut guided recreational harvests in that area would be restricted in 2003 by prohibiting harvests by skipper and crew and by prohibiting a guided recreational vessel from concluding more than one fishing trip during which halibut are harvested during a single 24-hour period.

In years when harvests exceed the GHL by an amount greater than 20 percent of the GHL, harvest reduction measures would be implemented in two phases. First, measures designed to achieve a reduction of up to 20 percent in guided recreational harvests would be implemented for the fishing year following the overage. Second, measures designed to achieve greater than 20 percent reductions in harvest (e.g., annual limits and a one-fish bag limit in August) would be implemented 1 year later to allow for verification from the Harvest Survey of the percentage by which guided recreational harvests exceeded the GHL. For example, if guided recreational harvests in 3A were exceeded in 2002 by 35 percent, in 2003, harvests would be restrained by prohibiting harvests by skipper and crew and by prohibiting a guided recreational vessel from concluding more than one fishing trip during which halibut are harvested during a single 24-hour period. In the following year, 2004, once NMFS has data verifying that the GHL was exceeded by 35 percent, harvests would be further restrained by imposing an annual limit of six fish on each individual angler fishing from a guided recreational vessel.

The reason for the delay in implementing the harvest reduction measures is to not over-react to an overharvest until such time that NMFS has all data verifying the extent of overharvest, and so that, if necessary, either NMFS can institute greater or lesser reduction measures or the Council can recommend that measures currently in place be removed.

Once NMFS has preliminary data indicating that the level of harvests from a previous season exceeded the GHL, the appropriate harvest reduction measures would be triggered [to be in effect] for the following season. The Administrator, Alaska Region, NMFS (Regional Administrator) would announce such measures by notification in the **Federal Register** prior to the start of the annual sport halibut fishing season.

The proposed system of harvest reduction measures was developed by the Council using its best estimates of which measures would have the least effect and which the greatest effect. At

present, no single management measure can be accurately projected as reducing harvests by a certain percentage. For this reason, the measures more likely to reduce harvests substantially are reserved for curtailing harvests that greatly exceed the GHL. The experience of managing the guided recreational fishery under this system would likely give the Council and NMFS more certain data in the future by which to determine the extent of each particular management measure's ability to reduce harvests. Therefore, at the end of a sport halibut fishing season during which harvest reduction measures were in effect, the Council would review such measures to evaluate their efficacy in preventing further harvests in excess of the GHL or the appropriateness of lifting such management measures. This review accomplishes two goals: the first is to evaluate whether the overharvest is likely to continue in the subsequent years and the second is to evaluate whether any additional refinements are needed for any restrictions currently in place. If the Council, in consultation with NMFS, determines that restrictions should be lifted or refined, NMFS will undertake rulemaking to implement them, so long as the agency approves of such possible changes. Rulemaking will be undertaken in accordance with the requirements of applicable law.

Implementation Issues

NMFS is working with the Council and the ADF&G to resolve a number of recordkeeping and reporting issues essential to NMFS' ability to monitor compliance with the proposed harvest reduction measures. As noted above, in 1998 the ADF&G instituted its saltwater charter logbook program in response to the Council's initial recommendations for managing the halibut guided recreational fishery. The logbook provides one means by which NMFS may monitor compliance with harvest reduction measures in the field during the fishing season. However, NMFS' access to data derived from the logbook is limited by Alaska Statute 16.05.815 of the State's fish and game regulations, which requires that information provided to the State in compliance with its regulations be kept confidential and may not be released. This confidentiality provision prevents NMFS from accessing logbook data for enforcement purposes once logbooks have been submitted to the State and may prevent NMFS from accessing the information for such purposes prior to its submission to the State.

Moreover, the information collected by the logbook would not alone be sufficient to monitor compliance with

the harvest reduction measures. NMFS would require additional information on times and dates of the end of fishing trips, as well as information identifying each individual angler and his or her total harvests aboard guided recreational vessels.

The ADF&G sportfishing license currently requires an angler's up-to-date information on catches of species that are managed under annual limits. Adequate monitoring of an annual limit on halibut harvests would require that halibut harvested aboard guided recreational vessels be added to this list. The ADF&G sportfishing license would then provide an additional means of monitoring compliance with harvest reduction measures in the field. NMFS may also require post-season data collection on annual limits for enforcement purposes, in which case an additional collection-of-information requirement would need to be put in place either as part of the logbook or by an alternative means.

Adequate recordkeeping and reporting requirements and monitoring capabilities are imperative to the enforceability and, hence, the success of the proposed GHF program in managing harvests by the guided recreational fishery. As explained above, NMFS is working with the ADF&G and State to resolve these recordkeeping and reporting issues. The ability of NMFS to adequately monitor and enforce a program is an important consideration when NMFS decides whether to approve recommendations of the Council.

Currently, there are no new collections of information associated with this proposed rule. As detailed above, NMFS is working with the State of Alaska to obtain the information necessary to enforce this rule. Nevertheless, if such efforts fail or necessary information if otherwise unavailable, NMFS may implement future collections of information in accordance with applicable law if necessary to monitor compliance.

Classification

The Council prepared an IRFA for this action that assesses potential impacts on small entities for purposes of the Regulatory Flexibility Act (RFA). According to 1999 ADF&G logbook data, 397 guided recreational businesses operated in Area 2C, and 434 in Area 3A. All 831 guided recreational businesses could be considered small entities for purposes of the RFA. The proposed action also would impact an estimated 4,000 permit holders and 860 registered commercial halibut buyers participating in the commercial halibut

IFQ Program, many of which are small entities. Also classified as small entities under the RFA are the many small government jurisdictions with fewer than 50,000 residents that are home to commercial halibut fishermen and guided recreational vessel owners and operators.

The Council identified the following issues in its discussion of the expansion of the halibut guided recreational fleet: (1) possible localized depletion of halibut because of fishing pressure by charter operations; (2) overcrowding of productive grounds and declining harvests for historic sport and subsistence fishermen in some areas; (3) economic and social impact on the commercial fleet by an open-ended reallocation from the commercial fishery to the charter industry, if projected growth of the charter industry occurs; and (4) effect on community stability as traditional sport, subsistence, and commercial fishermen are displaced by charter operators.

The Council also considered a moratorium on the further entry in the charter fisheries. The moratorium alternatives and options included years of participation, owners versus vessels, evidence of participation, vessel upgrades, transfers, and duration for review. However, the Council rejected the moratorium because, based on the number of qualifying vessels under various options, it was unlikely that a moratorium would constrain the charter harvest. In addition to the moratorium and the no action alternative, the Council considered alternative GHF levels.

The GHF alternatives reviewed by the Council represent trade-offs between the commercial and guided recreational fisheries. The GHF is designed to limit the amount of halibut that may be taken in the guided recreational fishery. The Council also considered not regulating harvests in the guided recreational fishery. However, the Council rejected this as failure to regulate could erode the harvest share available to commercial halibut fishermen, many of whom are also small entities.

The proposed GHF, which allows the charter industry to grow, represents a balance between the status quo's impact on small commercial entities and the impact of more restrictive alternatives on small recreational entities.

As this is a new rule applicable to a previously unregulated group, there are no duplicative or overlapping rules associated with this proposed rule.

This action does not contain federalism implications, as that term is defined in E.O. 13132. This proposed rule has been determined to be not

significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 19, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

2. Section 300.61 is amended by adding "Guided recreational vessel", "Guideline harvest level", and "Harvest" in alphabetical order as follows:

§ 300.61 Definitions.

* * * * *

Guided recreational vessel means a vessel and operator used for hire by a recreational angler for harvesting halibut.

Guideline harvest level means a level of allowable fish harvest by the recreational halibut guided recreational vessel fishery.

Harvest means the catching and retaining of fish.

* * * * *

3. In § 300.63, paragraph (f) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(f) *Guideline harvest levels.* (1) The annual guideline harvest levels for areas 2C and 3A are as follows.

(i) *Area 2C.* (A) The guideline harvest level for area 2C will be 1,432,000 lb (649.5 mt).

(B) In years of low abundance of halibut stocks in area 2C, as determined by the Commission, the guideline harvest level will be reduced:

(1) By 15 percent when the halibut stock abundance falls at least 15 percent below its 1999-2000 average; and

(2) After the initial 15 percent reduction, by further 10 percent increments as stock abundance declines by additional 10 percent increments below its 1999-2000 average.

(C) *Area 2C harvest reduction measures.* The appropriate annual harvest reduction measures for area 2C, identified in the table below, will take

effect pursuant to paragraph (f)(3) of this section when the Administrator, Alaska Region, NMFS, determines that harvests from the previous year exceeded the GHL for that year by the corresponding percentage.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

Harvests will be restricted in following years by implementation of a restriction that:

- (1) Less than 10 percent
 - (2) 10-15 percent
 - (3) 16-20 percent
 - (4) 1-30 percent
 - (5) 31-40 percent
- No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
 - (iii) No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

- (6) 41-50 percent
- (7) More than 50 percent

Harvests will be restricted in following years by implementation of a restriction that:

- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year;
 - (iv) Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

(2) *Area 3A.* (i) *GHL.* The guideline harvest level for area 3A will be 3,650,000 lb (1,655.6 mt).

(ii) In years of low abundance of halibut stocks in area 3A, as determined by the Commission, the guideline harvest level will be reduced:

(A) By 15 percent when the halibut stock abundance falls at least 15 percent below its 1999-2000 average; and

(B) After the initial 15 percent reduction, by further 10 percent increments as stock abundance declines by additional 10 percent increments below its 1999-2000 average.

(C) *Area 3A harvest reduction measures.* The appropriate annual harvest reduction measures for area 3A, identified in the table below, will take effect pursuant to paragraph (f)(3) of this section when the Administrator, Alaska Region, NMFS, determines that harvests from the previous year exceeded the GHL for that year by the corresponding percentage.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

- (1) Less than 10 percent
- (2) 10-20 percent
- (3) 21-30 percent
- (4) 31-40 percent
- (5) 41-50 percent

Harvests will be restricted in following years by implementation of a restriction that:

- No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
 - (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.

When annual harvests in the halibut guided recreational fishery exceed GHF by:	Harvests will be restricted in following years by implementation of a restriction that:
(6) More than 50 percent	<p>(i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;</p> <p>(ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;</p> <p>(iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year;</p> <p>(iv) Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.</p>

(3) *Implementation.* (i) As soon as practicable after receiving data on annual harvests in the halibut guided recreational vessel fishery, the Administrator, Alaska Region, NMFS, will publish a notification in the **Federal Register** announcing the harvest reduction measures (if any) to be imposed for the succeeding year, pursuant to paragraphs (f)(1)(i)(C) and (f)(2)(ii)(C) of this section.

(ii) At the conclusion of a guided recreational halibut fishing season during which harvest reduction measures have been in effect, the North Pacific Fishery Management Council will review such measures to evaluate their efficacy in preventing further excess harvests and will recommend that NMFS adjust those measures as necessary to ensure that the following season's harvest levels do not exceed the GHF.

4. In § 300.65, paragraph (c) is added to read as follows.

§ 300.65 Prohibitions.

* * * * *

(c) Any harvest reduction measure issued under § 300.63(f).

[FR Doc. 02-2005 Filed 1-25-02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125 and 126

RIN 3245-AE 66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration proposes to amend its regulations for the Historically Underutilized Business Zone Program (HUBZone Program). On December 21, 2000, the Small Business Reauthorization Act of 2000 made several changes to the HUBZone Program, including changes to the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. This proposed rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to website addresses.

In addition, SBA proposes to amend its regulations, which address subcontracting limitations. Specifically, SBA proposes consolidating all of the subcontracting limitations requirements into one regulation, rather than have them scattered throughout SBA's chapter of the Code of Federal Regulations. In addition, SBA proposes language explaining how to petition for changes in the subcontracting limitations requirements.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product

of any manufacturer, including a large business, and still be considered small.

DATES: Comments must be received on or before February 27, 2002.

ADDRESSES: Send your comments to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program (AA/HUB), 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, AA/HUB, (202) 205-8885 or hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: The HUBZone Program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Public Law 105-135, enacted December 2, 1997. The purpose of the HUBZone Program is "to provide for Federal contracting assistance to qualified HUBZone small business concerns." 15 U.S.C. 657a(a). The HUBZone Act authorizes the Administrator of the U.S. Small Business Administration (SBA or Agency) to publish regulations implementing the program. Public Law 105-135, section 605. On April 2, 1998, SBA published its proposed rules for the HUBZone Program. 63 FR 16148. After the close of the public comment period and review of the comments, SBA published its final regulations. 63 FR 31896 (June 11, 1998). These regulations amended parts 121 and 125 of title 13 of the Code of Federal Regulations (CFR), and added part 126. On October 3, 2000, SBA published a proposed rule amending the definition of principal office, the affiliation requirement, the non-manufacturer eligibility requirement, and the non-manufacturer contract performance requirement. 65 FR 58963. SBA published this rule as final on January 18, 2001. 66 FR 4643.

Since that time, SBA has received more applications for certification, has certified over four thousand concerns into the program, and has become aware of additional amendments that should be made to the program's regulations. Many of these amendments are technical, while others are proposed to clarify existing regulations. Some amendments, such as the amendment to the definition of "employee," propose to ease program eligibility requirements perceived to be burdensome on concerns and streamline the operation of the HUBZone Program. SBA has also

proposed to remove any regulatory provisions that it deems duplicative.

In addition, the proposed regulations address the recent amendments made to the HUBZone Act by the Small Business Reauthorization Act of 2000, Public Law 106-554. Specifically, Congress amended the eligibility requirements for small business concerns (SBCs) owned by Tribal Governments or Community Development Corporations (CDCs). Further, Congress amended the definition of HUBZone to include "redesignated areas," and added definitions for the terms Indian Reservation and Alaska Native Corporation. This regulation addresses those amendments.

SBA also proposes to amend part 125 of its regulations to add language that addresses requests for changes in subcontracting percentages for small business set-asides and for SBA's various programs. In order to be awarded a small business set-aside or partial small business set-aside contract, an 8(a) contract, a HUBZone contract, a woman-owned small business (WOB) contract, or a contract awarded pursuant to an unrestricted procurement where a concern claims a 10 percent price evaluation preference/adjustment, the concern must agree that it will perform a certain percentage of the contract itself. In other words, there is a limit on the percentage of work that the concern can subcontract. Currently, § 125.6 sets forth these limitations on subcontracting percentages for SBCs, 8(a) concerns, and small and disadvantaged business concerns. Current § 126.700 addresses the subcontracting limitations for qualified HUBZone SBCs.

SBA does not propose changing these percentages; rather, SBA proposes adding language in § 125.6 explaining how such percentages may be changed through requests from interested parties. In addition, SBA proposes adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, to § 125.6 so that all such subcontracting limitations will be located in one place and, thus, be easy for SBCs and contracting officials to locate.

Finally, SBA proposes to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. This change corresponds to a similar change made in this rule with respect to HUBZone

contracts. For contracts below the simplified acquisition threshold, SBA proposes to permit a small business nonmanufacturer to submit the product of any manufacturer, including a large business, and still be considered small.

SBA invites comments on the proposed rule and on any additional ways to improve the HUBZone Program.

Section-by-Section Analysis

SBA proposes to amend § 121.406(b) of SBA's size regulations pertaining to the application of the nonmanufacturer rule. Proposed § 121.406(b)(6) would permit a nonmanufacturer to supply the product of any domestic business, small or large, and be considered small with respect to any contract below the simplified acquisition threshold. This change corresponds to a similar change made in this rule for the HUBZone program in proposed § 126.601(e)(2). SBA believes that procurements below the simplified acquisition threshold were intended to be quick and easy, and that small business nonmanufacturers should not be restricted in this limited contracting arena. In addition, SBA proposes to remove current paragraph (d) because it would be superceded by the above amendment.

The proposed rule also revises § 121.1001 to permit the AA/HUB to protest the size status of a concern in connection with a HUBZone contract, and authorizes the AA/HUB to request a formal size determination in connection with a HUBZone application or continued HUBZone eligibility.

SBA proposes to amend 13 CFR 125.6 by adding the subcontracting limitations for qualified HUBZone SBCs, currently set forth in § 126.700, so that all such subcontracting limitations will be located in one place and thus easy for SBCs and contracting officials to locate. In addition, SBA proposes language explaining when it may use different percentages. According to the proposed rule, SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by the six digit industry codes in the North American Industry Classification System (NAICS). The proposed rule sets forth the procedures by which an interested party may request a change (in writing, with information supporting its request). If SBA determines that there is an adequate preliminary showing, it will publish a notice in the **Federal**

Register of its receipt of a request to consider a change in the subcontracting percentage requirements for a particular industry. The notice will identify the party making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

SBA proposes several amendments to 13 CFR part 126.

SBA proposes to amend § 126.101, which addresses the government departments and agencies subject to the HUBZone Program. Prior to September 30, 2000, the HUBZone Program applied to the procurements of only ten agencies and departments. These agencies and departments are currently set forth in the regulations. The HUBZone Program now applies to more than those ten agencies and departments. Thus, SBA proposes to remove the names of those agencies and departments and simply state that the HUBZone Program applies to all agencies and departments that employ one or more contracting officers.

SBA proposes several amendments to the definitions contained in § 126.103. This rule would amend the definitions of the Associate Administrator for 8(a) Business Development (AA/8(a)BD) and Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD). The rule would also change the name of the AA/8(a)BD to the Associate Administrator for Business Development and change the name of the ADA/GC&8(a)BD to the Associate Deputy Administrator for Government Contracting and Business Development. In addition, SBA is amending the definition of the term AA/HUB to mean the Associate Administrator for the HUBZone Empowerment Contracting Program. SBA proposes these changes in response to a re-organization within SBA's Office of Government Contracting and Business Development.

SBA proposes to define the term "Agricultural Commodity," because Congress recently amended the HUBZone Act's application of the price evaluation preference in procurements involving agricultural commodities. This definition appearing in this rule is the same as the one mandated by Congress in Public Law 106-554.

SBA proposes to define the terms "Alaska Native Corporation (ANC)" and "Alaska Native Village" as those terms are defined in Public Law 106-554. Currently, the HUBZone regulations define the term "Alaska Native Corporation" under its definition of "person." SBA proposes to define the terms "ANC" and "person" separately, to avoid confusion.

SBA proposes moving the definition of "attempt to maintain," which is currently found in two places in the HUBZone regulations, to the definition section so that it is easier to find. The proposed rule would not change the substance of this definition, but would merely move it to the definition section for ease of use.

The proposed rule adds a definition for the term "Community Development Corporation (CDC)." Public Law 106-554 defines CDC and adds an eligibility criterion for SBCs owned by CDCs so that such concerns can participate in the HUBZone Program. The proposed definition is the same as the one enacted by Congress—a CDC is a corporation that receives financial assistance under 42 U.S.C. 9805.

SBA proposes to add a definition for the term "Contracting Officer (CO)." According to the HUBZone Act, a CO has the meaning given that term in 41 U.S.C. 423(f)(5). That statute defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

SBA proposes to amend the definition of the term "employee." Currently, the regulations provide that an "employee" of a concern includes "full-time equivalents." SBA proposes to remove the provision concerning "full-time equivalents" because SBA believes it is confusing. SBA proposes a definition that allows persons employed on a full-time or part-time basis to be considered employees of the concern. This proposed definition is similar to the one used for size, set forth in part 121 of SBA's regulations.

In addition, SBA proposes to allow leased or temporary employees to be counted as employees of the concern. It is believed that such employees comprise approximately 2-5% of the work force in the U.S. economy. In addition, small businesses account for the employment of about 40% of such employees. SBA believes that counting leased, temporary and part-time employees will fulfill the statutory purpose and intent of the HUBZone Act by providing more job opportunities for HUBZone residents, albeit temporary or part-time.

Finally, the proposed definition of the term "employee" specifically states that volunteers are not to be counted. The rule would define a volunteer as a person who receives no compensation for work performed. SBA intends the term compensation to be read broadly and to be more than wages. Thus, a

person who receives food, housing, or other non-monetary compensation in exchange for work performed would not be considered a volunteer under this regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act—job creation and economic growth in underutilized communities.

The proposed rule would amend the definition of the term “HUBZone” to include redesignated areas. As part of the Small Business Administration Reauthorization Act of 2000, Congress made “redesignated areas” qualified HUBZones because governmental data, which determines whether census tracts and non-metropolitan counties are qualified HUBZones, changes periodically. Non-metropolitan counties that qualify based upon unemployment level, may, as a result of updated U.S. Department of Labor, Bureau of Labor Statistics data, shift in and out of eligibility year after year. Also, individual census tracts and non-metropolitan counties that qualify based upon certain income levels may lose their status as a result of data developed during the decennial census—the results of which are due shortly. As a result, SBCs that locate to a HUBZone may lose their eligibility in only one year due to changes in such data. Consequently, Congress sought to stabilize this situation and determined that “redesignated areas” should be HUBZones. A “redesignated area” is a qualified census tract or qualified non-metropolitan county that ceases to be qualified as a result of a change in official government data. This “redesignated” status lasts for a period of 3 years following the date of the census tract’s or non-metropolitan county’s disqualification. It is important to note that the redesignated status applies to concerns currently in the program and concerns seeking certification to the program. Thus, because a redesignated area is a HUBZone, concerns may seek certification to the program if their principal office is located in and the required percentage of their employees reside in such an area. SBA has also proposed defining the term “redesignated area,” as set forth below.

SBA proposes to amend the term “HUBZone SBC.” The current definition is redundant of the eligibility criteria set forth in § 126.200 and does not set forth the new eligibility criteria for SBCs owned by Tribal governments or CDCs. The proposed definition would state that a “HUBZone SBC” is: (1) One that is owned and controlled by 1 or more persons, each of whom is a United

States citizen; (2) an ANC owned and controlled by Natives (determined pursuant to the Alaskan Native Claims Settlement Act (ANCSA), 43 U.S.C. 1626(e)(1)); (3) a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant ANCSA); (4) one that is wholly-owned by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments; (5) one that is owned in part by 1 or more Indian Tribal Governments, or by a corporation that is wholly owned by 1 or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or (6) one that is wholly owned by a CDC; or, (7) one that is owned in part by 1 or more CDCs, if all other owners are either United States citizens or SBCs. This proposed definition is the same as the one set forth in the HUBZone Act.

SBA proposes to amend its definition of “Indian reservation” to conform to Public Law 106–554. According to that law, the term “Indian reservation” has the same meaning as the term “Indian country” in 18 U.S.C. 1151, with certain exceptions. According to 18 U.S.C. 1151, the term “Indian country” means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. The amendments to the HUBZone Act, however, excepted the following land from being treated as an “Indian reservation” for purposes of the HUBZone Program: (a) lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of the date of enactment (December 21, 2000), unless that tribe is recognized after that date of enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and (b) lands taken into trust or acquired by an Indian tribe after the date of enactment of this paragraph if such

lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of enactment.

In addition, Congress provided that for the state of Oklahoma, the term “Indian reservation” will include lands within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of Interior) and lands that are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151 (as in effect as of December 21, 2000).

Essentially, the statutory definition of “Indian Reservation,” for HUBZone Program purposes, includes federally-recognized Indian reservations, Indian communities dependent on the Federal Government, and certain federal Indian allotments (parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians). The new statutory definition of “Indian Reservation” does not include lands transferred to Alaskan Natives pursuant to the Alaskan Native Claims Settlement Act. *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). In the state of Oklahoma, an “Indian Reservation” includes a federally recognized Indian reservation and trust land. SBA has been and intends to keep working with the U.S. Department of the Interior to appropriately identify these areas.

The proposed rule defines for the first time the term “Indian Tribal Government.” The recent amendments to the HUBZone Program set forth specific eligibility criteria for concerns owned by “Indian Tribal Governments.” The statutory amendments, however, do not define that term. Thus, SBA proposes to define the term “Indian Tribal Government” to mean “the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” The Bureau of Indian Affairs of the U. S. Department of the Interior (BIA) publishes in the **Federal Register** a list of tribes that it recognizes as eligible for special Federal programs. *See* 65 FR 13298 (March 13, 2000). An Indian Tribal Government is essentially the governing body of one of the tribes or entities set forth on that list. This definition does not include ANCs because the recent amendments to the HUBZone Program establish specific eligibility criteria solely for ANCs and concerns owned by ANCs.

SBA proposes to amend the definition of "person" by removing the provision relating to ANCs. ANCs and their subsidiaries were made eligible by Public Law 106-554 and therefore the discussion on ANCs in this definition is unnecessary.

SBA proposes to amend the terms "qualified census tract" and "qualified non-metropolitan county" to address non-technical changes made by Public Law 106-554. The changes to the definitions are based entirely on the changes made by Public Law 106-554.

SBA proposes defining the term "redesignated area," discussed above, to mean any census tract and any non-metropolitan county that ceases to be a qualified HUBZone, except that a census tract or a non-metropolitan county may be a "redesignated area" only for the 3-year period following the date on which the census tract or non-metropolitan county ceased to be so qualified. This is the same definition that is set forth in the HUBZone Act, as recently amended. In addition, SBA proposes to use the public release date of the official government data, which affects the eligibility of the HUBZone, as the date on which the census tract or non-metropolitan county ceases to be qualified. It is important to note that it is the formerly qualified census tract or qualified non-metropolitan county that is designated as a HUBZone area (as a "redesignated area") for three years from the date that it ceases to be qualified. As such, a concern that applies for and receives HUBZone certification based on its location in a redesignated area would not receive three years of HUBZone participation unless the tract or county again becomes qualified as a HUBZone based on new data. Such a firm would remain eligible as a qualified HUBZone concern until three years from the date that the tract or county became a redesignated area, regardless of the amount of time it had participated in the HUBZone Program.

SBA proposes a definition for the term "small business concern (SBC)." The recent amendments to the HUBZone Act allow a HUBZone SBC to be owned in part by a SBC, with certain restrictions. SBA proposes defining the term SBC to mean a concern that, with its affiliates, meets the size standard for its primary industry.

SBA proposes to amend the definition of "small disadvantaged business" to clarify that such a concern is one that is certified by SBA pursuant to subpart B, part 124, of this chapter.

SBA proposes to remove the definition of woman-owned business because that term is no longer

referenced in this part of the regulations.

SBA proposes to amend § 126.200, which sets forth the eligibility requirements for the program, because Congress recently changed these requirements in Public Law 106-554. To be eligible, all applicants must (together with all their affiliates) be small. In addition, according to Public Law 106-554, concerns owned by Indian Tribal Governments or tribal corporations must certify: (1) That they are owned by an Indian Tribal Government, by a wholly-owned tribal corporation, or owned in part by a Indian Tribal Government or tribal corporation and in part by another SBC or U.S. citizens, and (2) when the concern obtains a HUBZone contract, at least 35 percent of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation. When enacting this legislation, Congress believed that no firm should be made eligible solely by virtue of who owns the concern. Thus, for example, concerns owned by Indian Tribal Governments will not be eligible solely because they are tribally-owned. Instead, such concerns will be eligible only if they agree to advance the goals of the HUBZone Program—job creation and economic development in the areas that need it most. See S. Rpt. 422, 106th Cong., 2d Sess. 21 (2000).

As discussed above, the statutory amendments provide that an Indian Tribal Government or tribal corporation may own a HUBZone SBC "in part" with a SBC or U.S. citizens. For example, an SBC in which a Tribal Government or tribal corporation owned 1% or less could claim that it qualified for the program if the other owners were SBCs or U.S. citizens. Further, there is no principal office eligibility requirement for such applicants. Thus, SBA is considering whether or not to require a Tribal Government or tribal corporation to own at least 51 percent of the HUBZone SBC. SBA is specifically requesting comments on this issue, and whether or not the Agency should require the Tribal Government or tribal corporation own a certain percentage (e.g., 51% or more) of the HUBZone SBC. SBA believes Congress intended the HUBZone benefits to assist Native American Indian Tribes, their Indian Reservations, and the HUBZone communities adjoining those reservations. If a Tribal Government or tribal corporation were able to own an inconsequential amount of a HUBZone SBC, the intended

benefits may not reach that community or those people.

It must be noted that SBA is not considering such a limitation on ownership for HUBZone SBC owned by CDCs. As discussed below, a HUBZone SBC may be owned in part by a CDC and in part by U.S. citizens or SBCs. SBA is not considering a limit on how much or little of the applicant the CDC must own because the qualified HUBZone SBC that is owned "in part" by a CDC must also have its principal office located in a HUBZone and must meet the 35% HUBZone residence requirement. Therefore, the benefits of the program must necessarily flow to a HUBZone community, regardless of the percentage of ownership by a CDC.

Finally, proposed § 126.200(a)(3) defines the term "adjoining." When tribally-owned concerns obtain a HUBZone contract, at least 35 percent of the qualified HUBZone SBC's employees engaged in performing that contract must reside within any Indian reservation governed by one or more of the qualified HUBZone SBC's Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation. The common meaning of the term "adjoining" is "to be next to" or "to be in contact." SBA believes that tribal members often may not reside on the reservation, but may still live next to the reservation. Thus, SBA believes the common meaning of the term is in harmony with the purpose of this amendment, the HUBZone Act and the employee residency requirement. Thus, this rule proposes that a HUBZone and Indian reservation are "adjoining" when the two areas are right next to and in contact with each other.

SBA also proposes to address the eligibility requirements for all other SBCs in § 126.200. According to the HUBZone statute, an applicant that is not tribally-owned must: be small; have a principal office located in a HUBZone; have at least 35% of its employees residing in a HUBZone; represent that it will attempt to maintain this percentage during the performance of any HUBZone contract; and represent that it will ensure compliance with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700. The recent amendments to the HUBZone Act provide that an applicant may be owned by a CDC or owned in part by a CDC and the rest by U.S. citizens or SBCs.

SBA also proposes to amend § 126.201 concerning who owns a HUBZone SBC. The proposed rule would clarify Example 1 to § 126.201,

addressing ownership of stock options. In addition, the proposed rule would move Example 2 from § 126.201 to § 126.200 because it provides a better example of the U.S. citizen ownership requirement set forth in that section. In addition, SBA has proposed addressing who it considers to own a concern owned by an Employee Stock Option Plan (ESOP). According to the proposed rule, SBA will deem the employees that participate in the ESOP and the ESOP's trustees to be owners because these persons have legal and equitable ownership in the ESOP. Likewise, SBA proposes addressing who it considers to own a concern owned by a trust. SBA believes that where the ownership interest in a HUBZone SBC is held under a trust, all of the trustees and trust beneficiaries must be deemed owners.

SBA proposes to amend § 126.202 to add "managing member" to the list of persons who share control of a concern because such persons share control of limited liability companies.

In § 126.203, SBA proposes a technical correction in paragraph (b). SBA recently amended its size regulations and established a new table of small business size standards based upon the NAICS rather than the Standard Industrial Classification (SIC) code. Thus, SBA proposes changing the reference in paragraph (b) from SIC codes to NAICS codes.

SBA proposes to amend § 126.205 to clarify that all SBCs, and not just 8(a) Participants, WOBs, and small disadvantaged businesses (SDBs), may be qualified HUBZone SBCs, if they meet the HUBZone Program's eligibility requirements.

SBA proposes amending § 126.207 to state that HUBZone SBCs may have offices located outside of a HUBZone, so long as the concern's principal office is located in a HUBZone (when required by § 126.200 to have a principal office located in a HUBZone). As noted above, Congress recently amended the HUBZone Act to no longer require certain tribally-owned concerns to have a principal office in a HUBZone.

SBA proposes to remove parts of § 126.300 that are duplicative of § 126.304. In addition, SBA has proposed language that allows SBA to draw an adverse inference from the failure of a HUBZone SBC to cooperate or submit additional information.

SBA proposes amendments to § 126.303 to address how the electronic HUBZone application may be submitted to SBA online.

SBA proposes to amend §§ 126.304(a)-(b) and move the certification requirement currently set

forth in § 126.501 to this section. Currently, paragraph (a) reiterates all of the eligibility requirements set forth in § 126.200. SBA proposes to amend paragraph (a) to state that to be certified, concerns must submit a completed application (paper or electronic) and represent that they meet the eligibility requirements of § 126.200. In addition, paragraph (b) currently requires all concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation to submit official documentation from the appropriate BIA Land Titles and Records Office confirming that it is located within such an area. When SBA first promulgated the HUBZone regulations, it did not have available electronic data for lands within the external boundaries of an Indian reservation, as it did for qualified census tracts and qualified nonmetropolitan counties. SBA now has this data available electronically. However, SBA understands that there may be rare instances when a concern believes a certain location is within the external boundaries of an Indian reservation, but the HUBZone maps indicate otherwise. Thus, the proposed regulation provides that upon such an occurrence, the concern may obtain certification from the appropriate BIA Land Titles and Record Offices confirming that the location is within the external boundaries of an Indian Reservation, as defined by the HUBZone Act and regulations.

Finally, SBA proposes adding a new paragraph (c) to § 126.304 stating that if the concern was decertified for failure to notify SBA of a material change affecting its eligibility, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern. This requirement is currently set forth in § 126.501, which addresses a qualified HUBZone SBC's ongoing obligations. SBA believes it would be appropriate to place this requirement in this section, which addresses application requirements.

SBA proposes amending § 126.306 by deleting part of paragraph (b). Currently, the first sentence of paragraph (b) states that SBA will base its certification on facts existing on the date of submission. However, SBA can only certify a concern into the program that meets all of the eligibility requirements. If circumstances change from the date of submission of the application that affect the concern's eligibility, then SBA can not certify the concern into the program.

Section 126.307 would be amended to reflect the change in the Internet website where SBA maintains its List of qualified HUBZone SBCs and the change in SBA's HUBZone e-mail address. SBA believes that in addition to having a separate List of qualified HUBZone SBCs, Pro-Net may also be used as the List. Pro-Net is a database containing profiles of over 200,000 SBCs. The information in the Pro-Net system includes data from SBA's files and other available databases. Pro-Net is designed to be used as a search engine for COs and a marketing tool for SBCs.

Section 126.308 would be amended to reflect the change in SBA's HUBZone e-mail address.

Section 126.401, addressing program examinations, would be amended to clarify that examiners will verify that the concern currently meets the HUBZone eligibility requirements, and that it met such requirements at the time of its initial certification or most recent recertification. This provision would also permit an examination of a HUBZone certification in connection with a HUBZone contract. In addition, paragraph (b) would be amended to clarify how the examiners will conduct the review. SBA proposes to add a sentence explaining that the review, or parts of the review, may be conducted at one or all of the concern's offices. SBA also proposes an amendment that specifically allows the examiners to determine the location of the examination.

SBA proposes to amend § 126.403 to provide that SBA may draw an adverse inference from the failure of a concern to cooperate with a program examination or provide requested information. This provision should discourage firms from being unresponsive to SBA's request for more information. SBA also does not want firms to be able to purposely delay the examination process. SBA should be allowed to draw an adverse inference to make the process more efficient.

SBA proposes to remove § 126.405. This regulation currently provides that if SBA verifies that a concern is eligible after conducting a program examination or a protest, then SBA will amend the date of certification on the List to reflect the date of verification. Protests and program examinations do not always cover all of the program's eligibility requirements. Therefore, the List should not be amended to reflect a new "eligibility" date. In addition, even if a protest or program examination does cover all of the eligibility requirements, SBA believes that amending the List will be confusing to the SBC as to when

its next recertification submission is due.

SBA proposes to amend § 126.500 concerning continued eligibility in the program. Currently, a qualified HUBZone SBC must recertify annually that it continues to be eligible for the program. SBA believes that such an annual recertification is burdensome to SBCs, and proposes that qualified HUBZone SBCs recertify every three years that they continue to meet all of the program eligibility requirements. SBA believes that the program examination process and protest mechanism will effectively eliminate concerns that are not eligible, and, therefore, annual recertification is unnecessary. SBA also believes that three years is a reasonable period of time to give effect to a HUBZone certification. SBA notes that a small disadvantaged business (SDB) certification generally lasts for three years. See 13 CFR 124.1014. In addition, under the new statutory language identified above, three years will correspond with the amount of time an area losing its HUBZone status is classified as a redesignated area.

SBA proposes amending § 126.501 to state that failure to notify SBA of a material change in the circumstances of a qualified HUBZone SBC's eligibility may result in decertification. In addition, SBA proposes moving the last sentence of this section, which requires the concern to submit with any new application for HUBZone certification a statement explaining why it failed to notify SBA of a material change, to § 126.304, which addresses what a concern must submit to SBA to be certified into the program.

SBA proposes combining the substance of current § 126.404, concerning what happens if SBA is unable to verify a concern's eligibility, with § 126.503, regarding decertification. In addition, SBA proposes to revise § 126.503 to clarify the procedures by which SBA decertifies a concern. These procedures ensure that due process is followed before any firm is decertified from the program. Under these procedures, SBA must generally first propose to decertify the concern and allow the concern to respond to all allegations that it is ineligible. The current regulations require a concern to respond within 10 business days from the date that it receives notification of SBA's intent to decertify. This rule changes the amount of time a concern has to respond to SBA's notification of intent to decertify from 10 business days to 30 calendar days. SBA believes that it is important to give a HUBZone SBC ample

opportunity to respond to SBA's notification of its intent to decertify the concern. This is particularly true in the context of the 35% HUBZone residency requirement. Where a HUBZone SBC is experiencing economic hardships, it may be required to temporarily reduce its number of employees, and may fall below the 35% requirement. SBA would give the concern the opportunity to explain its situation and meet the 35% requirement. Although the firm would not be able to certify itself to be a qualified HUBZone SBC in connection with a HUBZone contract during the time that it did not meet the 35% requirement, if SBA believes that the firm will come into compliance, it may determine not to decertify the firm. The AA/HUB will review any responses submitted by a concern receiving a notification of SBA's intent to decertify and will make a written determination, which is the final agency decision. Where decertification emanates from an adverse finding in the resolution of a HUBZone protest, SBA need not propose the firm for decertification. The same due process rights afforded a concern through proposing a concern for decertification are available in the protest context. In both cases, the firm is apprised of allegations against it, and has the opportunity to rebut those allegations and prove its eligibility.

SBA proposes to amend § 126.601 to change the reference in paragraph (a) from SIC to NAICS, in light of SBA's change to the NAICS system. In addition, SBA proposes to add a new paragraph (b) that would specify that a firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract. Further, SBA proposes to amend § 126.601 to clarify that a qualified HUBZone SBC must make certain representations to a CO at the time it submits its *initial and final* offers for a HUBZone contract. A concern that is not a qualified HUBZone SBC at the time it submits its initial offer can not submit an offer on a HUBZone sole source or set-aside contract, or receive the benefits of the HUBZone price evaluation preference. Similarly, a concern that is not qualified at the time of award can not receive a HUBZone contract. The proposed rule would also require SBCs owned by Indian Tribal Governments (as set forth in § 126.200(a)) to certify on a HUBZone contract that at least 35 percent of its employees engaged in performing the HUBZone contract will reside within any Indian reservation governed by one or more of the HUBZone SBC's tribal

government owners or within any HUBZone adjoining any such Indian reservation. This is a statutory requirement for such concerns, added by Public Law 106-554.

Finally, SBA proposes to amend paragraph (e) to address confusion regarding the nonmanufacturer rule. The statutory nonmanufacturer rule generally requires a small business nonmanufacturer to supply the product of a small business in connection with an 8(a) or small business set aside contract. The SBA Administrator may waive that requirement in certain cases. The nonmanufacturer rule that applies to HUBZone contracts requires a HUBZone nonmanufacturer to supply the product of a manufacturer, which is a qualified HUBZone SBC. This rule would clarify that for purposes of a HUBZone contract, there are no waivers of the nonmanufacturer rule. The program is designed to assist HUBZones by assuring that individuals residing in those areas are employed generally by a qualified HUBZone SBC and specifically in connection with the performance of a HUBZone contract. SBA believes that allowing a non-HUBZone manufacturer to be the firm ultimately supplying the product for a HUBZone contract would be contrary to the intent of the program. The proposed rule would provide, however, that for HUBZone contracts at or below the simplified acquisition threshold (currently \$100,000), a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

SBA proposes to amend § 126.602 to address the employee residency requirements for qualified HUBZone SBCs performing HUBZone contracts. The requirements are different, depending on the ownership of the qualified HUBZone SBC, as mandated by Public Law 106-554. In addition, SBA proposes deleting the definition for "attempt to maintain" currently set forth in this regulation and moving it to the definition section of the regulations.

SBA proposes to replace the term "procuring agencies" in § 126.603 with "contracting activities" for consistency in the regulations and conformance with the Federal Acquisition Regulations (FAR).

SBA proposes to amend § 126.605 by deleting paragraph (c) to allow HUBZone contracts for micropurchases. SBA believes this will open up the market to the program's participants. In addition, SBA proposes to amend § 126.608 to explain that HUBZone contracts at or below the micropurchase threshold are not mandatory. Further, SBA proposes to clarify § 126.608 and

allow HUBZone contract opportunities "at or below" the simplified acquisition threshold, as opposed to just below the simplified acquisition threshold. This change will conform the regulation to FAR part 13.

SBA proposes to amend § 126.606 to change the reference of "AA/8(a)BD" to "AA/BD," as a result of a reorganization in SBA's Office of Government Contracting and Business Development that occurred more than a year ago, and to clarify that the AA/BD will consult with the AA/HUB before determining whether to release an 8(a) requirement to the HUBZone Program.

In response to several inquiries, SBA proposes to amend § 126.607 to clarify the interaction between the HUBZone and 8(a) Programs. The proposed rule would provide for parity between the two programs. A CO must look first to the HUBZone and 8(a) Programs in determining how to fulfill a particular procurement requirement. In deciding which contracting vehicle to use, a CO must consider where the contracting activity is in fulfilling its HUBZone and 8(a) goals, as well as other pertinent factors. The CO is directed to exercise his/her discretion on whether to offer the requirement to the 8(a) or HUBZone Program. For example, if the contracting activity has met 0% of its HUBZone goals and has met its 8(a) goals, then the CO should restrict the requirement for competition among HUBZone SBCs, if all other criteria are met. If the activity has met half of its HUBZone and half of its 8(a) goals, then the CO has the discretion to offer the requirement to the 8(a) Program or restrict the requirement for competition among HUBZone SBCs. At this point, other factors, including knowledge of a particular HUBZone or 8(a) SBC that is capable of performing the requirement, become more important. SBA believes that this determination should be made by the contracting activity, based upon the activity's needs at that time. Further, the regulation restates the position in the FAR that HUBZone set-asides procurements take priority over small business set-asides. A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

SBA proposes amending § 126.611 to clarify that SBA may appeal a CO's decision to not use a HUBZone contract for a certain requirement to the Secretary of the department or the head of the agency, rather than the head of the contracting activity. This proposed change conforms with the statute.

SBA proposes amending § 126.612 to address the conversion from the SIC to

NAICS code. In addition, SBA has proposed adding language in paragraph (e), addressing when a CO may issue a sole source award to a qualified HUBZone SBC, to state that it is the CO's determination (not SBA's) that the contract can be made at a fair and reasonable price. This language is the same as set forth in the HUBZone Act.

SBA proposes amending § 126.613 to conform to the recent statutory amendments made by Public Law 106-554. According to that statute, for purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences is 10 percent for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation; 5 percent for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and zero for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation. HUBZone contracts awarded pursuant to this preference may not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

In addition, SBA proposes to add other examples to § 126.613, regarding the price evaluation preference for a qualified HUBZone SBC in full and open competition, to clarify that only qualified HUBZone SBCs should benefit from the preference. SBA also proposes to amend the current example by correcting a mathematical error. According to the current example, if the qualified HUBZone SBC's offer was \$101 and the large business' offer was \$93, the award would go to the large business. This is inaccurate because at \$101, the HUBZone SBC's offer is not more than 10% higher than the large business' offer. SBA has amended the example to state that if the qualified HUBZone SBC's offer was \$103 and the large business' offer was \$93, the award would go to the large business because the qualified HUBZone SBC's offer would be more than 10% higher than the lowest, responsive, responsible offeror.

SBA proposes to correct a typographical error in § 126.614. That regulation currently refers to the price evaluation preference described in "126.614." The regulation should refer to the price evaluation preference described in "126.613." In addition, SBA proposes to amend the regulation by providing examples of how to apply

the HUBZone and SDB price evaluation preferences when a CO receives offers from two such concerns and must apply both preferences, and when a CO receives an offer from a concern that qualifies for both preferences. SBA had proposed similar examples when it issued its first proposed regulations for the HUBZone Program. See 63 FR 16148, 16152 (April 2, 1998). SBA did not provide these examples in the final rule because the Agency decided to leave the mechanics for implementation in the FAR. 63 FR 31896, 31904 (June 11, 1998). Although the FAR has addressed these issues, SBA has received numerous requests for further clarification. Therefore, SBA proposes to provide examples explaining clearly how this process works.

SBA proposes to amend § 126.616 to allow for joint ventures comprised of only qualified HUBZone SBCs and not 8(a) concerns or women-owned businesses. SBA believes the proposed eligibility requirements allowing qualified HUBZone SBCs to be owned in part by SBCs, makes joint ventures with other SBCs and large businesses unnecessary. Allowing HUBZone contracts to go to qualified HUBZone SBCs that are owned in part by a non-qualified HUBZone SBC, and which joint venture with another non-qualified HUBZone SBC, will dilute the benefits intended to go to the HUBZone area and residents. In addition, SBA proposes clarifying that the joint venture, which is comprised of two or more qualified HUBZone SBCs, does not itself have to be certified as a qualified HUBZone SBC, because joint ventures are limited entities that are formed for the purpose of performing on a specific contract. In addition, SBA proposes to amend the reference of SIC to NAICS.

SBA proposes to add § 126.617 to address disputes arising under a HUBZone contract. Oftentimes, qualified HUBZone SBCs request SBA's assistance with contract disputes between the procuring activity and the concern. However, it is not within SBA's authority to decide disputes arising under a HUBZone contract. Therefore, SBA proposes a regulation specifically stating that for purposes of the Disputes Clause of a HUBZone contract, the procuring activity will decide disputes arising between a qualified HUBZone SBC and the procuring activity.

SBA proposes to add a new § 126.618, which would explain how the participation of an applicant to the HUBZone Program or a HUBZone SBC in a Mentor-Protégé relationship affects its participation in the HUBZone Program. This section would provide

that qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements. For example, SBA may approve mentor-protégé agreements for purposes of its 8(a) BD program in which the mentor owns up to 40% of the 8(a) protégé firm. See 13 CFR 124.520(d)(2). Because such a relationship would violate the statutory requirement that a HUBZone SBC be 100% owned and controlled by persons who are United States citizens, a protégé firm in such a relationship would not be eligible for the HUBZone Program. For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small, proposed § 126.618(b) would exempt a protégé firm from being considered affiliated with its mentor based on its mentor-protégé agreement. SBA could still find affiliation on other grounds. Proposed § 126.618(c) would permit a qualified HUBZone SBC to team with and subcontract work under a HUBZone contract to its mentor, but would not permit a joint venture between a protégé and its mentor on a HUBZone contract unless the mentor was also a qualified HUBZone SBC.

SBA proposes to amend § 126.700 to state that the performance of work requirements for qualified HUBZone SBCs are set forth in 13 CFR 125.6. SBA proposes adding the performance of work requirements for qualified HUBZone SBCs to § 125.6 so that all of the performance of work requirements will be located in one place and thus easy to locate.

In addition, SBA is considering adding a new paragraph to § 126.700, which would add an additional contract performance requirement for construction HUBZone contracts. Specifically, in the case of a HUBZone construction contract (either general construction or specialty trade construction), SBA is considering requiring qualified HUBZone SBCs to perform at least 50 percent of the contract, either at the prime or subcontracting level. Such a provision would not affect the prime performance of work requirements set forth in § 125.6 (i.e., 15% for general construction and 25% for specialty trade construction); rather, the Agency is considering a new overall performance of work requirement for HUBZone construction contracts. Thus, for general construction, if a prime contractor will perform 15% of the contract, it would be required to subcontract at least 35% of the contract to one or more other qualified HUBZone SBCs. For a

specialty trade construction contract, if a prime contractor will perform 25% of the contract, it would be required to subcontract at least 25% of the contract to one or more other qualified HUBZone SBCs.

The HUBZone Program is intended to stimulate historically underutilized business zones through job creation and capital investment. Where a qualified HUBZone SBC is able to subcontract up to 85% of a general construction contract or up to 75% of a specialty trade construction contract to non-HUBZone SBCs (which may in fact be large businesses), SBA is concerned that it would not be adequately meeting the underlying Congressional purpose of the program. At the same time, however, SBA is not seeking to impose a barrier that could dissuade COs from using the HUBZone Program. If such a requirement in any way would cause a CO to use a contracting vehicle other than a HUBZone set-aside because he or she believes that there are not at least two qualified HUBZone SBCs that could meet it, then the requirement would have the opposite effect of what is intended. In such a case, instead of causing more work to be done by one or more qualified HUBZone SBCs, and hopefully increasing jobs in a HUBZone, the requirement would have caused 15% (or 25% for specialty trade construction) of the work that would have been performed by a qualified HUBZone SBC to be taken away from the Program and go elsewhere.

Thus, SBA is also considering several alternatives that would attempt to encourage increased performance by qualified HUBZone SBCs, but that would not adversely affect the HUBZone Program. One alternative that SBA is considering is requiring that HUBZone SBCs perform at least 50% of a construction contract through prime or subcontracting arrangements, but allow the CO to waive this requirement where he or she believes it cannot be met for a particular procurement. Where a CO believes that the 50% requirement can be met, it would continue to apply. Where a CO waives the 50% requirement, the solicitation would have to specify that the 50% requirement does not apply to the HUBZone procurement. The 15% or 25% prime contractor performance of work requirement would continue to apply. As another alternative, SBA is also considering imposing an evaluation factor in the award of negotiated HUBZone set-asides relating to overall performance by qualified HUBZone SBCs. SBA specifically requests comments on these proposals, including whether the 50% requirement is one

that can be met by the affected concerns, and whether and to what extent the CO waiver and evaluation factor can be used to make the requirement acceptable to COs and the procurement community.

In addition, SBA proposes to amend § 126.702 to state that the procedures for requesting changes in the subcontracting percentages are set forth in 13 CFR 125.6. As noted above, SBA has proposed a regulation amending § 125.6, which outlines the procedures for requesting changes in subcontracting percentages for all of SBA's program, including the HUBZone Program. Because it is redundant and unnecessary to have these procedures listed twice in the regulations, SBA proposes to remove § 126.703.

SBA proposes to amend paragraph (b) of § 126.800 to clarify that SBA and the CO may protest the apparent successful offeror's qualified HUBZone SBC status.

SBA proposes amending § 126.801 to clarify that SBA does not review protest issues concerning the conduct or administration of a HUBZone contract. In addition, SBA proposes amending paragraphs (d) to state that any protest received after the time limits is untimely, unless it is from SBA or the CO. This is similar to SBA's size protest procedures and will allow SBA or the CO to file HUBZone status protests any time either obtains information that a qualified HUBZone SBC may not be eligible. Further, SBA proposes amending paragraph (e) to state the information a CO should include in his or her protest referral letter to SBA. The CO's protest referral letter, in which he or she refers a HUBZone protest, should include certain information about the procurement so that SBA can determine issues of standing and timeliness.

SBA proposes amending paragraph (d) of § 126.803. Currently, that paragraph states that if SBA denies a protest, it will amend the date of certification on the List of qualified HUBZone SBCs to reflect the date of the protest decision. SBA believes that because protests often do not decide all eligibility issues, the Agency should not change the date of certification for the concern.

SBA proposes to change the references in § 126.805 of the ADA/GC&8(a)BD to ADA/GC&BD, to conform to SBA's recent re-organization and change in title of this position.

SBA proposes a technical change to § 126.900(b). SBA proposes to replace the term "civil remedies" with "civil penalties," in accordance with the statute.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866. A copy of the Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis—HUBZone Empowerment Contracting Program

A. General Considerations

1. Is There a Need for the Regulatory Actions?

Yes. The U.S. Small Business Administration (SBA) is statutorily authorized to administer the HUBZone Empowerment Contracting Program (HUBZone Program). In addition, the SBA is required to implement and administer all statutory changes to the program. The HUBZone Act has been amended by the 2000 Reauthorization Act. These amendments must be implemented pursuant to regulations. There are no practical alternatives to the implementation of the proposed regulatory changes. In addition, the SBA believes these changes are necessary and appropriate to better service the needs of small business concerns (SBCs) and the statutory goals of the HUBZone Program.

2. What Is the Baseline?

There are several baselines being considered in the formulation of this proposed rule change. These include the present set of HUBZone Program regulations and definitions that would be modified by this proposal, the estimated universe of potential HUBZone SBCs, the existing statutory requirements, the achievement of HUBZone contracting goals by Federal agencies, and current procurement practices of Federal agencies. The SBA estimates that over 30,000 small businesses may be eligible and may be certified for the HUBZone Program. As of the end of fiscal year 2001, there were 4000 firms participating in the HUBZone Program. There are, at present, approximately 8000 designated HUBZone areas and approximately one HUBZone certified firm for every two designated HUBZone areas. As of the end of fiscal year 2000, Federal agencies (according to the Federal Procurement Data Center—FPDC) are, on average, achieving only 22% of their statutorily mandated goals for HUBZone contracting. This means that agencies are well below the required HUBZone

goal of 2–3 percent of the total contracting dollars.

It is difficult to obtain precise quantitative estimates of the impact these changes might have on these baseline criteria. However, we estimate that adoption of this proposed regulation will significantly increase the number of HUBZone SBCs, increase the number of HUBZone procurement actions by Federal agencies, and result in better and more efficient administration of the program. Ultimately, the program would move closer to meeting its statutory objectives of creating jobs and infusing capital into distressed communities.

3. Alternatives

There are no alternatives to implementing or changing the statutorily mandated items detailed in the proposed rule. Issuance of policy notices, for example, which are not published material like regulations, would hinder a SBC’s access to this needed information. However, SBA did consider proposing that no regulatory changes, other than those required by the amendments to the HUBZone Act, be made to the HUBZone Program. We also considered the proposal of less stringent and more stringent regulatory changes that were either well-short of or well-beyond what is included in this proposal. Those alternatives were disregarded on the basis of market, economic and administrative considerations. The utilization of HUBZone SBCs, while growing, lags far behind congressional goals. The SBA has observed and investigated this phenomenon and has concluded that our current rules are insufficient to propel the program to the legislatively established levels. The alternatives to propose less or more stringent regulatory changes were abandoned by the SBA as they precluded the Agency from striking a balance between the competing considerations of program integrity, program viability and program resources.

In addition, the “program achievement costs” of implementing less stringent regulations or not changing the regulations are unacceptably high. At the other end of the spectrum, the potential increases in program achievement to be gained by writing more stringent rules are far outweighed by the exponential increase in administrative and operating costs necessary to enforce regulations of that nature.

Our proposal maintains the legislative intent of the HUBZone Program. It facilitates the growth of the program to congressionally established levels, and

provides balanced give and take among the needs to manage the program, maintain program integrity, service the program’s small business participants and meet the procurement needs of other Federal agencies.

B. Benefit Estimates

The three most significant benefits to implementing the changes included in this proposal are:

1. *Improved efficiency of the HUBZone Program and its added benefits to both small businesses and Federal agencies.* SBA believes that the changes in this proposal will increase the base number of small businesses in the HUBZone Program and increase the viability and practicability of using the HUBZone Program by Federal agencies. We consider these to be mutually dependent in that the more firms that are in the program, the more Federal agencies will use the program, and when more Federal agencies use the program, more concerns will want to be able to take advantage of the benefits (contracts) available in the program. According to FPDC data, in fiscal year 2000 Federal agencies executed 3500 HUBZone actions worth over \$650,000,000. We estimate that these changes in the rule have the potential to triple the number of participating concerns and the number of contract actions directed to the HUBZone Program.

2. *Greater administrative efficiency and program integrity.* SBA believes that this proposal will allow the program to be run more effectively with existing resources relative to program activity while simultaneously permitting SBA to more precisely focus the benefits of the program on the businesses and those areas of low income or high unemployment.

3. *Greater contracting efficiency for Federal agencies.* SBA believes that by increasing the level of activity and participation in the HUBZone Program, it will increase economic savings to the Federal government on HUBZone awards. By having more HUBZone eligible concerns, procuring agencies will have a larger base of HUBZone vendors, which will ultimately reduce the cost of HUBZone contracts through increased competition among HUBZone SBCs.

C. Cost Estimates

Pursuant to this proposed rule, SBA expects significant increases in the number of concerns participating in the HUBZone Program and in the number of contract dollars spent in the program by Federal agencies. To the extent that this materializes, there may be attendant

cost increases to the government in terms of the costs of goods and services and slightly increased administrative costs. However, existing provisions of the Federal Acquisition Regulations concerning the determination of "fair and reasonable" pricing will mitigate any significant monetary costs to the government of this proposal.

The SBA does not believe these changes will result in significantly higher increased costs to HUBZone SBCs because SBA is attempting to streamline the program and ease burdensome restrictions on SBCs.

D. Other Considerations Including Distributional Effects, Equity Considerations and Uncertainty

SBA anticipates that the distribution of contracts among different procurement vehicles will change. Non-HUBZone concerns currently participating in the Federal marketplace will be affected economically as a result of their not being eligible to compete for the contracts that are restricted to the HUBZone Program. These costs will vary based on the goods and services provided by newly eligible HUBZone SBCs. In some industries there may be very little impact, while in other industries there may be substantial impact.

Large Federal prime contractors will see some decrease in contract opportunities as Federal agencies begin to utilize the HUBZone Program. However, these changes are insignificant in light of the magnitude of Federal procurement versus HUBZone procurement. The Federal government annually spends about \$200 billion on goods and services. However, in fiscal year 2000, the HUBZone Program accounted for only \$650 million of that amount (less than half of one percent). This is significantly less than the estimated \$1–6 billion goal set by Congress for the program.

Current and future HUBZone participants will see a tightening of definitions concerning contract performance. However, additional contracting opportunities and clearer regulations should offset these additional restrictions.

Most of the benefits of this proposal will accrue to HUBZone communities. Expanded eligibility for designated areas, increased HUBZone contracting and a refocusing of HUBZone subcontracting should result in more Federal contract dollars going to distressed communities.

Overall, projecting winners and losers from regulatory changes in the HUBZone Program cannot be done with certainty. SBA believes that increasing

the efficiency and access to the HUBZone Program to both Federal agencies and small businesses will, over time, result in increased use of the program and a higher probability that the HUBZone Program will meet its original objectives to create jobs and increase capital investment in HUBZone communities. The HUBZone Act of 1997 increased the small business goal from 20% to 23%, to include the HUBZone contracting goal (maximum level 3%), and ensure that small business contracting would not be impacted. In every case, the mix of winners and losers will be affected by the decisions of contracting agencies to use or not to use the HUBZone Program.

SBA has determined that this rule, if adopted in final form, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The amendments proposed in this rule involve revising several definitions, including the definition of "HUBZone" and "employee." These amendments may affect a large percentage of the over 30,000 SBCs that SBA believes are eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program. Thus, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) and has submitted a complete copy of the IRFA to the Chief Counsel for Advocacy of the SBA. The IRFA explains that this proposed rule will affect those SBCs that participate in Federal procurements, that hire leased or temporary employees, or are owned by Indian Tribal Governments or tribal corporations. The proposed rule will make it easier for such entities to apply to and become eligible for the program. For a complete copy of the IRFA, please contact Michael McHale at (202) 205–8885.

SBA has determined that this proposed rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. The rule authorizes SBA to request that a HUBZone SBC submit updated financial information and information relating to the number of its employees. This information is needed to comply with the statutory requirement that SBA report to Congress "the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones." Pub. L. 105–135, Title VI, § 606, 111 Stat. 2635. As noted in the Supplementary Information above, SBA has certified over four thousand concerns into the HUBZone Program.

Each of these concerns could be subject to this request for information. SBA estimates the burden of this collection of information as follows: SBA may request updated financial information and information relating to the number of employees from a qualified HUBZone SBC annually. SBA estimates that the time needed to complete this collection will average less than one-half hour. SBA estimates that the cost to complete this collection will be approximately \$30 per hour. Thus, the estimated aggregated burden for each qualified HUBZone SBC is 0.5 hours per annum costing an estimated \$15 for the year. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 and to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth above, SBA proposes to amend 13 CFR parts 121, 125 and 126, as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. Revise the authority citation for 13 CFR part 121 to read as follows:

Authority: Pub. L. 105-135 sec. 601 et seq., 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5); and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. Amend § 121.406 by revising the section heading, by adding a new paragraph (b)(6) to read as follows, and by removing paragraph (d):

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) Nonmanufacturers. (1) * * *

(6) With respect to any contract under the simplified acquisition threshold, a small business nonmanufacturer may supply the end item of any manufacturer made in the United States, including a large business.

* * * * *

3. Amend § 121.1001 by revising paragraph (a)(6)(iv), and by adding new paragraph (b)(7) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) Size status protests. * * *

(6) * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

* * * * *

(b) * * *

(7) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

4. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

5. In § 125.6, redesignate paragraphs (b), (c), (d), (e), (f), and (g) as paragraphs (d), (e), (f), (g), (h), and (i) respectively, and add new paragraphs (b) and (c) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(b) A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract (as defined in § 126.600) provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(4) In the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement; and

(5) In the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, the qualified HUBZone SBC may not purchase from a subcontractor any of the commodity if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(c) SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry

codes in the North American Industry Classification System (NAICS) pursuant to the following procedures.

(1) Format of request. Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Associate Administrator of the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDB, woman-owned business, or HUBZone programs.

(2) Notice to public. Upon an adequate preliminary showing to SBA, SBA will publish in the Federal Register a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) Comments. SBA will provide a period of not less than 30 days for public comment in response to the Federal Register notice.

(4) Decision. SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the Federal Register. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

* * * * *

PART 126—HUBZONE PROGRAM

6. Revise the authority citation for 13 CFR part 126 to read as follows:

Authority: 15 U.S.C. 632, and 15 U.S.C. 657a.

7-8. Amend § 126.101 by revising paragraph (a), removing paragraph (b), and redesignating current paragraph (c) as paragraph (b) to read as follows:

§ 126.101 Which government departments or agencies are affected directly by the HUBZone Program?

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

9. Amend § 126.103 to remove the terms and definitions for "HUBZone 8(a) concern," and "Woman-owned business (WOB);" revise the terms and definitions of "AA/8(a)BD", "AA/HUB," "ADA/GC&8(a)BD", "employee," "HUBZone," "HUDZone small business concern (HUBZone SBC)," "Indian reservation," "Lands within the external boundaries of an Indian reservation", "Person," "Qualified census tract," "Qualified non-metropolitan county," and "Small disadvantaged business (SDB);" add the terms "Agricultural Commodity," "Alaska Native Corporation (ANC)," "Alaska Native Village," "Attempt to Maintain," "Community Development Corporation," "Contracting Officer," "Indian Tribal Government," "Redesignated area," and "Small business concern (SBC)" to read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

AA/BD means SBA's Associate Administrator for the Office of Business Development.

AA/HUB means SBA's Associate Administrator for the HUBZone Empowerment Contracting Program.

ADA/GC&BD means SBA's Associate Deputy Administrator for Government Contracting and Business Development.

Agricultural Commodity has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

Alaska Native Corporation (ANC) has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

Alaska Native Village has the same meaning as the term "Native village" in section 3 of the ANCSA, 43 U.S.C. 1602.

Attempt to maintain means making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs.

Community Development Corporation (CDC) means a corporation that has

received financial assistance under 42 U.S.C. 9805 et seq.

Contracting Officer (CO) has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

Employee means a person (or persons) employed by a concern on a full-time, part-time, temporary, leased or other basis. SBA will consider the totality of circumstances, including factors relevant for tax purposes, when determining whether individuals are employees of a concern. Volunteers (i.e., persons who receive no compensation for work performed) are not considered employees. To determine the size of a HUBZone concern, SBA uses the calculation of "employee" set forth in § 121.106 of this chapter.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, or redesignated areas.

HUBZone SBC means:

(1) An SBC that is owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) An SBC that is wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) An SBC that is 51% owned by one or more Indian Tribal Governments or 51% owned by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or,

(6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs.

Indian reservation has the same meaning as the term "Indian country" in 18 U.S.C. 1151, except that such term does not include—

(1) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(2) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000. However, in the State of Oklahoma, "Indian reservation" means lands that—are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151, as in effect on December 21, 2000.

Indian Tribal Government means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Lands within the external boundaries of an Indian reservation includes all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that located outside the perimeter of an Indian reservation is not "lands within the external boundaries of an Indian reservation."

Person means a natural person.

Qualified census tract has the meaning given that term in § 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under § 42(d)(5)(C)(ii) of the

Internal Revenue Code of 1986, and in which:

(1) The median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(2) The unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

Redesignated area means any census tract or any nonmetropolitan county that ceases to be a qualified HUBZone, except that such census tracts or nonmetropolitan counties may be "redesignated areas" only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified. The date on which the census tract or nonmetropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

* * * * *

Small business concern (SBC) means a concern that, with its affiliates, meets the size standard for its primary industry, pursuant to part 121 of this chapter.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this chapter, is owned and controlled by one or more socially and economically disadvantaged individuals, tribes, ANCs, Native Hawaiian Organizations, or CDCs and has been certified pursuant to subpart B, part 124 of this chapter.

* * * * *

10. Revise § 126.200 to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) *Concerns owned by Indian Tribal Governments.*

(1) *Ownership.* (i) The concern must be wholly owned by one or more Indian Tribal Governments;

(ii) The concern must be wholly-owned by a corporation that is wholly owned by one or more Indian Tribal Governments;

(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or

(iv) The concern must be owned in part by a corporation, which is wholly-owned by one or more Indian Tribal

Governments, and all other owners are either United States citizens or SBCs.

(2) *Size.* The concern, with its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Employees.* The concern must certify that when performing a HUBZone contract, at least 35 percent of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other.

(b) *Concerns owned by U.S. citizens or CDCs.*

(1) *Ownership.* (i) The concern must be 100 percent owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The concern is not eligible because it is not 100 percent owned by U.S. citizens;

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to § 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to § 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to § 29(e)(2)) of the ANCSA); or

(iii) The concern must be wholly-owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

(2) *Size.* The concern, together with its affiliates, must qualify as a small business under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Principal office.* The concern's principal office must be located in a HUBZone.

(4) *Employees.* At least 35 percent of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number;

Example 1: A concern has 25 employees, 35 percent or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35 percent or 33.25 employees must reside in

a HUBZone. Thus, 34 employees must reside in a HUBZone.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will attempt to maintain having 35 percent of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

11. Revise § 126.201 to read as follows:

§ 126.201 Who does SBA consider to own a HUBZone SBC?

An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC. If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner. In addition:

(a) *Corporations.* SBA considers any person who owns stock, whether voting or non-voting, to be an owner. SBA considers options to purchase stock and the right to convert debentures into voting stock to have been exercised.

Example: U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Thus, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not 100 percent owned and controlled by persons who are United States citizens.

(b) *Partnerships.* SBA considers all partners, whether general or limited, to be owners in a partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA considers each member to be an owner of a limited liability company.

12. Revise § 126.202 to read as follows:

§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decisionmaking authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions:

officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

13. Revise § 126.203(b) to read as follows:

§ 126.203 What size standards apply to HUBZone SBCs?

* * * * *

(b) *At time of initial contract offer.* A HUBZone SBC must be small within the size standard corresponding to the NAICS code assigned to the contract.

14. Revise § 126.205 to read as follows:

§ 126.205 May participants in other SBA programs be certified as qualified HUBZone SBCs?

Participants in other SBA programs may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in this part.

15. Revise § 126.207 to read as follows:

§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to be certified as a qualified HUBZone SBC and if required by § 126.200, the concern's principal office must be located in a HUBZone.

16. Revise § 126.300 to read as follows:

§ 126.300 How may a concern be certified as a qualified HUBZone SBC and what information will SBA consider?

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

17. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application and certification?

A concern seeking certification as a HUBZone SBC must submit its electronic application to SBA via <https://eweb1.sba.gov/hubzone/internet/> and its written application to the AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Certification pages must be signed by a person authorized to represent the concern.

18. Revise § 126.304 to read as follows:

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must submit a completed application and represent to SBA that it meets the requirements set forth in § 126.200. The concern must also submit any additional information required by SBA.

(b) Concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation must use SBA's maps to verify that the location is within the external boundaries of an Indian reservation. If, however, SBA's maps indicate that the location is not within the external boundaries of an Indian reservation and the concern disagrees, then the concern must submit official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 126.501, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

19. Revise § 126.306(b) to read as follows:

§ 126.306 How will SBA process the certification?

* * * * *

(b) SBA may request additional information or clarification of information contained in an application submission at any time.

* * * * *

20. Revise § 126.307 to read as follows:

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified on Pro-Net at <http://pro-net.sba.gov> and on the HUBZone Web page at <https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm>. In addition, requesters may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

21. Revise § 126.308 to read as follows:

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter, should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or via e-mail at hubzone@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

22. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification no sooner than one year from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. *See* § 126.304(c).

23. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination and what will SBA examine?

(a) *General.* A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process or in connection with a HUBZone contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.

(b) *Scope of review.* Examiners may conduct the review, or parts of the review, at one or all of the concern's offices. SBA will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the location and ownership of the concern, the

employee percentage requirements, and the concern's attempt to maintain this percentage. The concern must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission of the application and any recertifications issued to SBA.

24. Revise § 126.402 to read as follows:

§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is certified as a qualified HUBZone SBC.

25. Revise § 126.403 to read as follows:

§ 126.403 May SBA require additional information from a HUBZone SBC?

(a) At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a HUBZone SBC to cooperate with a program examination or provide requested information.

(b) In order to gauge the success of the program, SBA may request that a HUBZone SBC submit updated financial information and information relating to the number of its employees.

§ 126.404 [Removed]

26. Remove § 126.404.

§ 126.405 [Removed]

27. Remove § 126.405.

28. Revise § 126.500 to read as follows:

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone status?

Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC. Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309.

The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements.

29. Revise § 126.501 to read as follows:

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

A qualified HUBZone SBC must immediately notify SBA of any material change that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or principal office of the concern, or a failure to meet the 35% HUBZone residency requirement. The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change may result in decertification and removal from the List pursuant to § 126.504. In addition, SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, it must apply for certification pursuant to §§ 126.300 through 126.306.

§ 126.503 [Redesignated as § 126.504]

30. Redesignate current § 126.503 as § 126.504.

31. Add new § 126.503 to read as follows:

§ 126.503 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility or determines that the concern is no longer eligible for the program?

If SBA is unable to verify a qualified HUBZone SBC's eligibility or determines it is not eligible for the program, SBA may propose decertification of the concern.

(a) *Proposing Decertification.* Except as set forth in paragraph (c) of this section, the Deputy AA/HUB or designee will first notify the qualified HUBZone SBC in writing of the reasons why decertification is being proposed. The qualified HUBZone SBC will have 30 calendar days from the date that it receives SBA's notification to respond, in writing, to the AA/HUB or designee.

(b) *SBA's Decision.* The AA/HUB or designee will consider the reasons for proposed decertification and the qualified HUBZone SBC's response before making a written decision whether to decertify. The AA/HUB may draw an adverse inference where a qualified HUBZone SBC fails to cooperate with SBA or provide the information requested. The AA/HUB's decision is the final agency decision.

(c) *Decertifying Pursuant to a Protest.* SBA may decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

32. Revise § 126.601 to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(b) A firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract.

(c) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

(1) It is a qualified HUBZone SBC that appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List that could affect its HUBZone eligibility;

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will attempt to maintain the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a) of this title, then it must represent that at least 35 percent of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(d) If bidding as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(e) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406(b)(1) of this chapter, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) For HUBZone contracts at or below the simplified acquisition threshold in total value, a qualified HUBZone SBC may supply the end item of any manufacturer made in the United States, including a large business.

33. Revise § 126.602 to read as follows:

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status.

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35 percent of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

34. Revise § 126.603 to read as follows:

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase their prospects of having a requirement set aside for HUBZone contract award.

35. Amend § 126.605 by removing the semicolon and "or" at the end of paragraph (b), adding a period in its place, and removing paragraph (c).

36. Revise § 126.606 to read as follows:

§ 126.606 May a CO request that SBA release an 8(a) requirement for award as a HUBZone contract?

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made

to the AA/BD, who will make a determination after consulting with the AA/HUB.

37. Revise § 126.607 to read as follows:

§ 126.607 When must a CO set aside a requirement for qualified HUBZone SBCs?

(a) The CO first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) After determining that paragraph (a) of this section does not apply, the CO must next determine whether the requirement should be set aside for competition restricted to qualified HUBZone SBCs or offered to the 8(a) program. In making this determination, the CO must consider the contracting activity's achievement of its HUBZone and 8(a) goals, and other relevant factors.

(c) A CO must consider using a HUBZone set-aside to fulfill a requirement before considering whether award can be made as a small business set-aside.

(d) If the CO decides to set-aside the requirement for competition restricted to qualified HUBZone SBCs, the CO must:

- (1) Review SBA's List of Qualified HUBZone SBCs and have a reasonable expectation that at least two qualified HUBZone SBCs will submit offers; and
- (2) Determine that award can be made at a fair market price.

38. Revise § 126.608 to read as follows:

§ 126.608 Are there HUBZone contract opportunities at or below the simplified acquisition threshold or micropurchase threshold?

A CO may make a requirement available as a HUBZone set-aside if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a qualified HUBZone SBC at or below the micropurchase threshold.

39. Revise § 126.610 to read as follows:

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the AA/HUB, his or her designee, or other interested parties.

40. Revise § 126.611(c) to read as follows:

§ 126.611 What is the process for such an appeal?

* * * * *

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

* * * * *

41. Revise paragraphs (b)(1), (b)(2), and (e) of § 126.612 to read as follows:

§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

* * * * *

(b) * * *

(1) \$5,000,000 for a requirement within the NAICS codes for manufacturing; or

(2) \$3,000,000 for a requirement within all other NAICS codes;

* * * * *

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

42. Revise § 126.613 to read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98, a non-HUBZone SBC submits an offer of \$95, and a large business submits an offer of

§93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of \$103, a non-HUBZone SBC submits an offer of \$100, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be that from a large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10 percent higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at \$100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98 and a non-HUBZone SBC submits an offer of \$93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single IFB.

(2) The 10 percent and 5 percent price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25 percent and 40 percent volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example. There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is \$1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is \$1.05/pound for 20,000 pounds of wheat. Bid 3

(from a HUBZone SBC) is \$1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from \$20,000 for the first 20,000 pounds to \$22,000. Bid 3's price of \$20,800 ($\$1.04 \times 20,000$) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from \$5,000 to \$5,500. Bid 2's price of \$5,250 ($\$1.05 \times 5,000$) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (i.e., 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from \$15,000 to \$15,750. Bid 2's price for that 15,000 pounds is also \$15,750 ($\$1.05 \times 15,000$). Because the evaluation price for Bid 2 is *not more than* 10 percent higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

43. Revise § 126.614 to read as follows:

§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.613 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the

Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103-355, in a full and open competition.

Example 1: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of \$102; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; and a large business submits an offer of \$93. The CO first applies the SDB price evaluation preference and adds 10 percent to the qualified HUBZone SBC's offer thereby making that offer \$112.2, and to the large business's offer thereby making that offer \$102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

Example 2: A qualified HUBZone SBC (but not an SDB) submits an offer of \$102; a qualified HUBZone SBC that is also an SDB submits an offer of \$105; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of \$100; and a large business submits an offer of \$93. The CO must first apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes \$112.2; the qualified HUBZone SBC/SDB's offer remains \$105; the SDB's offer remains \$107; the small business concern's offer becomes \$110; and the large business's offer becomes \$102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of \$112.2 is not more than 10 percent higher than the large business's price, however, the qualified HUBZone/SDB's price of \$105 is also not more than 10 percent higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

44. Revise § 126.616 to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of performing a specific HUBZone contract. The joint venture itself need

not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; and

(ii) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by 13 CFR 125.6.

45. Add new § 126.617 to read as follows:

§ 126.617 Who decides contract disputes arising between a qualified HUBZone SBC and a contracting activity after the award of a HUBZone contract?

For purposes of the Disputes Clause of a specific HUBZone contract, the contracting activity will decide disputes arising between a qualified HUBZone SBC and the contracting activity.

46. Add new § 126.618 to read as follows:

§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) Qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or HUBZone SBC and the firm that is its mentor in a Federally-approved mentor-protégé relationship on the basis of the mentor-protégé agreement.

(c)(1) A qualified HUBZone SBC that is a prime contractor on a HUBZone

contract may team with and subcontract work to its mentor.

(i) The HUBZone SBC must meet the applicable performance of work requirement set forth in § 125.6(b) of this chapter.

(ii) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. See § 121.103(f)(4) of this chapter.

(2) A qualified HUBZone SBC may not joint venture with its mentor on a HUBZone contract unless the mentor is also a qualified HUBZone SBC.

47. Revise § 126.700 to read as follows:

§ 126.700 What are the performance of work requirements for HUBZone contracts?

A prime contractor receiving an award as a HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

48. Revise § 126.702 to read as follows:

§ 126.702 How can the subcontracting percentage requirements be changed?

SBA may change the required subcontracting percentage for a specific industry if the Administrator determines that such action is necessary to reflect conventional industry practices among SBCs that are below the numerical size standard for businesses in that industry group. The procedures for requesting changes in subcontracting percentages are set forth in § 125.6 of this chapter.

§ 126.703 [Removed]

49. Remove § 126.703, "What are the procedures for requesting changes in subcontracting percentages."

50. Revise § 126.800(b) to read as follows:

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

* * * * *

(b) *For all other procurements.* SBA, the CO, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

51. Revise paragraphs (a), (d)(2) and (e) of § 126.801 to read as follows:

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests

both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does review protest issues concerning the conduct or administration of a HUBZone contract.

* * * * *

(d) *Timeliness.*

(1) * * *

(2) Any protest received after the time limits is untimely, unless it is from SBA or the CO.

* * * * *

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

52. Revise § 126.803(d) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&BD, pursuant to § 126.805. If SBA upholds the protest, SBA will decertify the concern.

53. Revise paragraphs (a), (b), and (h) of § 126.805 to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the CO

may file appeals of protest determinations with the ADA/GC&BD.

(b) *Timeliness of appeal.* The ADA/GC&BD must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

* * * * *

(h) *Decision.* The ADA/GC&BD will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the CO, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&BD's decision is the final agency decision.

54. Revise paragraph (b) of § 126.900 to read as follows:

§ 126.900 What penalties may be imposed under this part?

* * * * *

(b) *Civil penalties.* Persons or concerns are subject to civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

* * * * *

Dated: January 16, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02–1834 Filed 1–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell, Inc., Part Number HG1075AB05 and HG1075GB05 Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 inertial reference units (IRU) that are installed on aircraft. This proposed AD would require you to inspect the affected IRU's

for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection. This proposed AD is the result of a report that these IRU's may not function when using backup battery power in certain installations. The actions specified by this proposed AD are intended to ensure the correct transition of the IRU to backup battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 29, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Honeywell, Inc., Commercial Aviation Products, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

A ground test for proper inertial reference unit (IRU) function revealed a wiring defect that is attributed to a manufacturing error on certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 IRU's. This wiring defect disables the IRU's capability to detect a loss of primary input power and transition to backup battery input power in some installations.

The affected IRU's incorporate the following:

- P/N HG1075AB05: any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659) that incorporates modification status 3; and
- P/N HG1075GB05: serial number (last four digits) 0652 or 0659 that incorporates modification status 2.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Is There Service Information That Applies to This Subject?

Honeywell, Inc. has issued the following:

- Alert Service Bulletin HG1075AB–34–A0013, dated May 21, 2001; and
- Alert Service Bulletin HG1075GB–34–A0005, dated May 21, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for inspecting the affected IRU's for proper function. It also

specifies having the IRU returned to Honeywell and modified.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on any type design aircraft that incorporates one of the affected IRU's;

- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect any affected IRU for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 80 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection and modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at \$60 per hour = \$120	Honeywell to provide at no cost	\$120	\$9,600

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would 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. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Honeywell, Inc.: Docket No. 2001-CE-28-AD.

(a) *What aircraft are affected by this AD?* This AD affects any aircraft, certificated in any category, that incorporates one of the following:

- (1) Inertial Reference Unit (IRU) part number (P/N) HG1075AB05, any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659), that incorporates modification status 3; or
- (2) IRU P/N HG1075GB05, serial number (last four digits) 0652 or 0659, that incorporates modification status 2.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft with any of the equipment identified in paragraph (a) of this AD installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to ensure the correct transition of the IRU to battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect any affected IRU for proper function	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB-34-A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB-34-A0005, dated May 21, 2001, as applicable.
(2) Remove any affected IRU from the airplane	If found to not function properly during the inspection required by paragraph (d)(1) of this AD, remove prior to further flight after the inspection. If found to function properly, remove within 200 hours time-in-service (TIS) after the inspection required by paragraph (d)(1) of this AD.	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB-34-A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB-34-A0005, dated May 21, 2001, as applicable.

Actions	Compliance	Procedures
<p>(3) Do not install, on any aircraft, one of the IRU's identified in paragraphs (a)(1) and (a)(2) of this AD, unless it has been modified at Honeywell, Inc. and updated to one of the following:</p> <p>(i) IRU P/N HG1075AB05 IRU Mod 7; or</p> <p>(ii) IRU P/N HG1075GB05 IRU Mod 6</p>	<p>As of the effective date of this AD</p>	<p>Not Applicable.</p>

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Chicago Aircraft Certification Office, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: This AD applies to any aircraft with an inertial reference unit (IRU) installed as identified in paragraphs (a)(1) and (a)(2) of this AD, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294-8113; facsimile: (847) 294-7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Honeywell, Inc., Commercial Aviation Products, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433-6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 18, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-1967 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 292

RIN 1076-AD93

Gaming on Trust Lands Acquired After October 17, 1988; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule: Reopening of comment period; correction.

SUMMARY: This document corrects a discrepancy in the reopening of the comment period on a proposed rule concerning gaming on trust lands acquired after October 17, 1988, published in the **Federal Register** on December 27, 2001.

DATES: Comments must be received on or before March 27, 2002.

ADDRESSES: Mail comments to George Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street, NW., MS2070-MIB, Washington, DC 20240. Comments may be hand delivered to the same address from 9 a.m. to 4 p.m. Monday through Friday or sent by facsimile to 202-273-3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Indian Gaming Management Staff Office, at 202-219-4066.

SUPPLEMENTARY INFORMATION: On Thursday, December 27, 2001, the Bureau of Indian Affairs published a document reopening the comment period on a proposed rule, 66 FR 66847, concerning Gaming on Trust Lands Acquired After October 17, 1988. The document published on December 27 incorrectly stated in the **EFFECTIVE DATE** section of the preamble that the deadline for receipt of comments was February 25, 2002. In addition, the caption **EFFECTIVE DATE** should have read **DATES**. Accordingly, on page 66847, in the third column, the **EFFECTIVE DATE** section is corrected to read "**DATES:** Comments must be received on or before March 27, 2002."

Dated: January 8, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02-1284 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-4N-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG-142686-01]

RIN 1545-BA26

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing; extension of time to submit outlines of oral comments.

SUMMARY: This document changes the date of the public hearing on the proposed regulations that relate to incentive stock options and options granted under employee stock purchase plans. It also extends the time to submit outlines of oral comments for the hearing.

DATES: The public hearing will be held May 14, 2002, beginning at 10 a.m. Additional outlines of oral comments must be received by April 23, 2002.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:ITA:RU (REG-142686-01), Room 5226, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-142686-01), Courier's Desk, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting

comments directly to the IRS Internet site at <http://www.irs.ustreas.gov/tax—regs/regslst.html>.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622-6040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001, (66 FR 57023), announced that a public hearing on the proposed regulations relating to incentive stock options and options granted under employee stock purchase plans would be held on March 7, 2002, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has changed to May 14, 2002, at 10 a.m. in the IRS Auditorium. Outlines of oral comments must be received by April 23, 2002.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).
[FR Doc. 02-2047 Filed 1-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-231-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the proposed removal of a required amendment to the Kentucky regulatory program (the "Kentucky program") at 30 CFR 917.16(f) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This document gives the times and locations that the Kentucky program and proposed

amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t. February 27, 2002. If requested, we will hold a public hearing on the amendment on February 22, 2002. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on February 12, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-8400. e-mail: bkovacic@osmre.gov.
Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Telephone: (859) 260-8400. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these

criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

30 CFR 917.16(f) required a program change to 405 KAR 8:010 sections 5(1)(c) and (d) to require that information required by sections 2 and 3 of 405 KAR 8:030 and 8:040 be submitted on any format prescribed by OSM, as well as any format prescribed by the Cabinet. On December 19, 2000 (65 FR 79582), we removed the requirement that states must submit information on forms approved by OSM.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. KY-231-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260-8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. February 12, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of

Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02-1944 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 254-0318b; FRL-7132-2]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (Nox) emissions from stationary internal combustion engines. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by February 27, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at

our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 1001 "I" Street,
Sacramento, CA 95812
Yolo-Solano Air Quality Management
District, 1947 Galileo Court, Suite
103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 972-3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the local rule: YSAQMD Rule 2.32. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rules and address the comments in subsequent action based on these proposed rules. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 28, 2001.

Jack Broadbent,

Acting Regional Administrator, Region IX.

[FR Doc. 02-2008 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH95

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Newcomb's Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Newcomb's snail (*Erinna newcombi*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of nine stream segments and associated tributaries, springs and seeps on the

island of Kauai, Hawaii, totaling approximately 26.29 kilometers (16.35 miles).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat for the survival and recovery of the species.

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 data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries described in this proposal after taking into consideration the comments or any new information received during the comment period, and such information may lead to a final regulation that differs from this proposal.

DATES: We will consider comments from all interested parties received by March 29, 2002. Requests for public hearing must be received by March 14, 2002.

ADDRESSES: Submit comments and requests for public hearing to Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Ongoing erosion has formed steep-walled valleys with well-developed soils and stream systems throughout the chain. Kauai, geologically the oldest and most northwesterly of the eight main islands, is characterized by deep valleys, high rainfall, abundant vegetation, and numerous streams and springs.

The island of Kauai is 1,430 square kilometers (km²) (552 square miles (mi²)) in size, the fourth largest of the main Hawaiian islands. Most of the land mass of Kauai was formed between 5.6 and 3.6 million years ago from one or more large shield volcanoes. More recent, secondary eruptions occurred over the eastern portion of the island as

recently as the Pleistocene epoch, approximately 0.6 million years ago. Due to the age and climate of the island, Kauai is heavily eroded, with numerous steep, water-carved valleys and gulches.

The prevailing northeasterly trade winds are typically laden with moisture in the central Pacific latitudes where Kauai is located. Substantial precipitation is brought to the windward and interior portions of the island as a result of uplift and cooling of the warm, moist surface airmass as it flows over the steep topography of the island. The high elevation areas in the vicinity of the Alakai Plateau such as Mt. Waialeale (1,600 meters (m), 5,248 feet (ft)), are among the rainiest places on earth, receiving an average of 11.3 m (444 inches (in)) of precipitation annually (Juvik and Juvik 1998). This large volume of rainwater flows to perennial and intermittent streams and wetlands, and infiltrates into the island's aquifers. The west and southwest coastal areas of the island lie in the rain shadow of the Alakai Plateau and interior uplands, and these areas receive considerably less rain.

Kauai has at least 61 streams that are considered perennial, and a similarly large number of intermittent streams (Hawaii Stream Assessment (HSA) 1990). The Hanalei River, for example, is 27 km (17 mi) in length and is the largest stream system in the State by volume, with a long-term mean discharge of 216 cubic feet per second (34-year average calculated from 1964 to 1997). The headwaters of the Hanalei River are near the summit of Mt. Waialeale and the river flows towards Hanalei Bay on the island's north shore. The basalts that form the bulk of the main Hawaiian islands are porous and permeable, which facilitates infiltration and storage of groundwater. A lens-shaped body of groundwater (the basal lens) exists within these porous basalts at lower elevations. In some areas, the basal lens is partially confined by lower-permeability coastal alluvial and calcareous deposits ("caprock"). Recent groundwater investigations in the southern Lihue basin indicate that permeabilities of both the basalt and the younger rock from secondary eruptions are low, which allows the basal groundwater lens to thicken and thereby reach greater elevations than on the other Hawaiian islands (Izuka and Gingerich 1998). This causes basal groundwater to enter and support stream and spring flow up to relatively high elevations. Because the basal lens groundwater reserve is very large in size, streams, springs, and rock seeps (rheocrenes) fed by basal groundwater exhibit highly permanent, stable flows.

In addition to the basal lens, smaller, perched groundwater systems form at higher-elevations above dense geologic features of low permeability such as those formed by layers of ash. Groundwater bodies may also form within higher elevation geologic formations as a result of confinement by dikes, which are vertical sheets of low-permeability rock that cut through more permeable basalt in some places. Groundwater bodies that form behind these perched and dike-confined aquifers contribute water to streams and springs at higher elevations, although these aquifers are smaller in volume than basal systems and their contribution to surface water would be expected to be reduced during prolonged drought (MacDonald *et al.* 1960).

Human-caused modifications to surface and ground water systems on Kauai and throughout Hawaii have profoundly altered natural hydrologic regimes. Plantation irrigation systems, built to support the cultivation of sugar cane over a century ago, transfer large volumes of water out of natural watercourses and into extensive systems of ditches, tunnels, flumes, reservoirs, and ultimately to fields. Historically, stream water diversion structures were typically built to be highly efficient in their ability to entrain water. These dams usually divert all flowing stream water at moderate to low flows, leaving the stream channel below the dam dry. At least one third of all Kauai's streams are significantly dewatered for agricultural and industrial water supplies (HSA 1990); in 1994, a total of 224.17 million gallons per day (mgd) was used island-wide for irrigation, and 93.72 mgd was used for generation of hydroelectric power (Wilcox 1996).

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968, Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kauai. Newcomb's snail is unique among the Hawaiian lymnaeids in that the shell spire typically associated with lymnaeids has been substantially reduced. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 in.) long and 3 mm (0.12 in.) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell

morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well-defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. & A. Adams (see Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus *Lymnaea*. Morrison (1968) contradicted Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna*. Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie *et al.* (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi*. This is the currently accepted scientific name for Newcomb's snail.

The Newcomb's snail is restricted to freshwater. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation and there are no widely dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Very little is known about the biological or environmental factors that affect population size in Newcomb's snails. Important factors may include annual, multi-year or decadal changes in streams flows, severe-weather high-flow channel-scouring events, or periods of severe or prolonged drought. Dispersal of the snails in both upstream and downstream directions within a stream system probably plays an important function in gene flow and in colonizing or recolonizing suitable habitat, especially microhabitat that is protected from channel scour. Dispersal of Newcomb's snail between stream systems is likely very infrequent due to their freshwater habitat requirements, and historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. It should be noted that this life history differs greatly from the freshwater Hawaiian neritid snails (*Neritina* spp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). It is likely that larvae of these neritid snails can disperse across

the oceanic expanses that separate the Hawaiian Islands and colonize streams on any or all of these islands. This dispersal capacity is not available to the Newcomb's snail.

Based on past and recent field observations, the specific habitat requirements of the Newcomb's snail include fast-flowing perennial streams and associated springs, seeps, and vertical-to-overhanging waterfalls (Stephen Miller, U.S. Fish and Wildlife Service *in litt.* 1994a, 1994b; Polhemus *et al.* 1992; Burch 1968; and Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kauai indicate that the Newcomb's snail is found only in protected areas within main stream channels (Michael Kido, University of Hawaii, *in litt.* 1994). The limited occurrence of this snail in main stream channels is likely due to periodic channel scouring by sediment, rocks, and boulders that are moved downstream during runoff events due to the frequent heavy rains. Consequently, suitable habitat is generally associated with overhanging waterfalls located in the main channel of perennial streams supported by stable groundwater input, or with small, spring-fed tributaries. Another common element among the sites harboring snail populations is that the water source appears to be consistent and permanent, even during severe drought.

Five populations of Newcomb's snail were identified prior to 1925. These include populations from sites located in Waipahee Stream (a tributary to Kealia Stream), Wainiha River, Hanakapiai Stream, Hanakoa Stream, and Kalalau Stream. Three of these populations (Wainiha River, Hanakapiai Stream, and Hanakoa Stream) are now thought to be extirpated. Of the two remaining pre-1925 populations, one (Waipahee Stream) is small and the other (Kalalau Stream) is relatively large (see below). Since about 1993, surveys of approximately 50 sites located along numerous streams and their associated tributaries and springs on Kauai have located four previously unknown populations of Newcomb's snail (M. Kido, *in litt.* 1994). The current known range of Newcomb's snail is limited to very small sites located within six stream systems in north- and east-facing drainages on Kauai. They are: Kalalau Stream; Lumahai River; Hanalei River (four subpopulations); Waipahee Stream (a tributary to Kealia Stream); two subpopulations in Makaleha Stream (a tributary to Kapaa Stream); and the North Fork Wailua River.

No historic information is available on the population size of Newcomb's snail. However, recent reports indicate

that two of the six known populations of Newcomb's snail are relatively large: the Kalalau Stream and Lumahai River populations. The Kalalau Stream population is found in the northeastern fork of Kalalau Stream on two permanent waterfalls and in the stream reach between the waterfalls. The high density of individuals in this population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller, *in litt.* 1994b). The total area occupied by these snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Habitat used by these snails may be limited to the lower section of the waterfall that receives a high amount of spray from the falling water. Little information on specific size or area is currently available for the population of Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido, *in litt.* 1995a).

The population in Makaleha Stream is divided into two subpopulations. The subpopulation at the waterfall that forms the head of the main channel of Makaleha Stream is estimated at 30 snails/ m^2 (2 to 3 snails/ ft^2) distributed over 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994; M. Kido, pers. comm. 1995b). This is considerably smaller than the population in Kalalau Stream described above. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non-native predators and biocontrol agents that feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs (which forms a series of very small tributaries to Makaleha Stream) covers approximately 20 to 30 m^2 (212 to 318 ft^2) (S. Miller, *in litt.* 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/ m^2 (1 to 3 snails/ ft^2) (S. Miller, *in litt.* 1994a).

The sizes of three other populations of Newcomb's snail have been characterized as small. The population in the Waipahee tributary of Kealia Stream is estimated to cover 5 to 10 m^2 (53 to 106 ft^2) with a density of approximately 50 to 80 snails/ m^2 (4 to 8 snails/ ft^2) (Adam Asquith, U.S. Fish and Wildlife Service, *in litt.* 1994). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations in the upper reach of this river (M. Kido, *in litt.* 1994, 1995a). One subpopulation has approximately

10 to 20 snails/ m^2 (1 to 2 snails/ ft^2) and occupies 2 to 3 m^2 (21 to 32 ft^2) (M. Kido, *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations in the Hanalei River are reported to be small with very few snails (M. Kido, *in litt.* 1995a). The population found in the upper reaches of the North Fork of the Wailua River just upstream of a concrete agricultural water diversion intake, appears to vary over time but was made up of just a few scattered individuals during surveys in 1996 and 1997 (M. Kido, pers. comm. 1995b; M. Kido, pers. comm. 2000).

Based on these data, we estimate that the six known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the populations found in Kalalau Stream and the Lumahai River.

Previous Federal Action

The February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We published a proposed rule on July 21, 1997 (62 FR 38953), to list this species as threatened. On January 26, 2000 (65 FR 4162), we published a final rule determining Newcomb's snail to be a threatened species.

In the final listing rule we determined that designation of critical habitat for the Newcomb's snail would be prudent because such a designation could benefit the species beyond listing as threatened by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits. Despite the prudency determination, we also indicated that we were not able to develop a proposed critical habitat designation for the Newcomb's snail at that time due to budgetary and workload constraints. However, on June 2, 2000, the U.S. Fish and Wildlife Service was ordered by U.S. District Court (*Conservation Council for Hawaii vs. Bruce Babbitt and Jamie Rappaport Clark*, Civil No. 99-00603 SCM/BMK) to publish the critical habitat designation for Newcomb's snail by February 1, 2002. The plaintiffs and the Service have entered into a consent decree

stating that we will jointly seek an extension of this deadline to August 10, 2002 (*Center for Biological Diversity, et al. vs. Norton*, Civil No. 01-2063 (JR) (D.D.C.); October 2, 2001). This proposed rule responds to the court's order.

On March 5, 2001, we mailed letters to 104 potentially interested parties informing them that the Service was in the process of designating critical habitat for the Newcomb's snail and requesting from them information concerning the range of the Newcomb's snail, observational life history accounts, current threats, and management activities on lands where Newcomb's snail currently occurs or occurred in the past. The letters contained a fact sheet describing the Newcomb's snail and included a map depicting the current range of the Newcomb's snail. Recipients of these letters included land owners and managers that own and manage land at the two sites where Newcomb's snails are found on private lands, and the various State agencies responsible for managing State of Hawaii lands and water resources at the other locations where the Newcomb's snail are known to occur. We received seven responses to our written request for information: four from various State agencies within the Hawaii Department of Land and Natural Resources (State Historic Preservation Office, Commission on Water Resource Management, Land Division, and the Office of the Chairperson of the Board of Land and Natural Resources), one from the Office of Hawaiian Affairs, one from the Office of the Mayor of Kauai County, and one from a Museum-affiliated researcher. The information provided in the responses was considered and incorporated into this proposed rule. In addition, on March 15, 2001, a public informational meeting was held on Kauai to provide an opportunity for the general public, non-governmental organizations, and representatives from government agencies to meet with Service personnel and discuss the critical habitat designation process.

Critical Habitat

Critical habitat is defined in section 3(5)(A) 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 a determination that such areas are essential for the conservation of the species.

In order for occupied habitat to be included in a critical habitat designation, the habitat features must be "essential to the conservation of the species." Such critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection may be provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Newcomb's snail and do not require special management or protection, they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposal.

In order for unoccupied habitat to be included in a critical habitat designation, it must be "essential to the conservation of the species." Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is defined as the direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or

biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not afford any additional regulatory protection under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

When we designate critical habitat at the time of listing, as required under Section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs

of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take 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 the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of

designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods and Criteria Used To Identify Critical Habitat

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Newcomb's snail. This information included: Peer-reviewed scientific publications (Hubendick 1952, Morrison 1968, Patterson and Burch 1978, and Cowie *et al.* 1995); unpublished reports, field notes and correspondence by Service personnel, State agency biologists, and university researchers (M. Kido, *in litt.* 1994, 1995a, 1995b; S. Miller, *in litt.* 1994a, 1994b; A. Asquith, *in litt.* 1994; Donald Heacock, Hawaii Department of Land and Natural Resources Division of Aquatic Resources, pers. comm. 1994, D. Heacock pers. comm. 2001); and responses to the Newcomb's snail critical habitat outreach material mailed to Federal, State, and private land managers and land owners.

Most of the currently occupied Newcomb's snail sites are located in close proximity to one another. For example, the Hanalei river population is located just 3.2 km (1.9 mi) from the North Fork Wailua River population, and the Makaleha Springs population is just 2.5 km (1.6 mi) from the Waipahee Stream population. The exception is the population found in Kalalau Stream, which is located 11 km (6.3 mi) from the Lumahai River population, its nearest neighbor. Despite the relatively short distances between snail populations, the steep, rugged terrain and circular shape of the island creates conditions that allow the sites to be exposed to severe weather and other natural phenomena from markedly different directions. For example, the Hanalei River valley is aligned in a south-to-north direction, while the North Fork Wailua River valley extends from north-to-south. The two Newcomb's snail populations in these drainages are separated by a distance of a few km, but the ridge between them is over 900 m (2953 ft) in elevation. Because the terrain where Newcomb's snail is found is remote and extremely rugged, three of the six known populations (located in Kalalau Stream, Lumahai River and Waipahee Stream) have not been resurveyed since their initial discovery or rediscovery.

Growth rates, life span, reproductive potential, age at first reproduction, dietary needs, and microhabitat preferences are not known. As noted above, accurate population estimates and the natural variability of populations over time are also not available. We are in the process of developing a draft recovery plan for this species. We anticipate the draft being available for public review and comment by the spring of 2002.

Because of the topography of the island and the prevalent weather patterns, torrential rains that may cause flooding, channel scour, and landslides are usually restricted to one or two quadrants of the island during any single storm event. Recent examples of such recurring natural phenomena include Hurricane Iniki (a category 4 hurricane which devastated Kauai on September 11, 1992), Hurricane Iwa (November 23, 1982), and the huge upper Olokele Valley landslide of October 31, 1981 (Fitzsimons *et al.* 1993, Jones *et al.* 1984). Each of these events markedly degraded or entirely eliminated large areas of potential Newcomb's snail habitat which had never been surveyed to locate snail populations. These physical conditions indicate that recovery through protection of the existing populations, plus reestablishment of populations in suitable areas of historical range that provide a wide geographical separation, is necessary for the ensured survival of the species. We therefore find that inclusion of three currently unoccupied areas identified as containing the primary constituent elements is essential to the conservation of the Newcomb's snail. These three sites are located in the northwest quadrant of the island, in drainages between the Lumahai River and Kalalau Stream populations. These three locations are identified as priority recovery units for translocation efforts in the draft Newcomb's snail Recovery Plan currently under preparation by the Service.

Complete recovery will require restoration of Newcomb's snails to areas of historically occupied habitat either through natural dispersal or translocation. Mere stabilization of Newcomb's snail populations within its currently occupied habitat will not achieve recovery of the species. The locations currently occupied by known Newcomb's snail populations are not sufficiently dispersed to consider the species safe from extinction. Existing known populations are found in remarkably small areas of only a few square meters of aquatic habitat, each of which is at risk from even a small,

localized landslide or high flow event. Recovery actions are likely to include: Maintaining existing populations through regulatory mechanisms that protect water resources, watershed protection and stabilization efforts; control of non-native predators; and translocation of snails for the purpose of reestablishing additional self-sustaining populations in the wild. Recovery criteria will require persistence of populations of snails that are geographically separated in natural habitats to reduce the threat of total elimination of entire populations through catastrophic events such as hurricanes, landslides, fire, drought, and predator invasions.

We used several criteria to identify and select locations proposed for designation as critical habitat: (1) We began with all locations that are currently occupied by Newcomb's snail; (2) we then added three locations where Newcomb's snail was found historically but is now thought to be extirpated in the northwest extent of its range. In

deciding which unoccupied areas to propose for designation as critical habitat, we gave preference to sites that (a) were most recently known to be occupied, or (b) provided the greatest geographic diversity to the array of locations under consideration for critical habitat. Two of these sites are on lands that are publicly owned (Na Pali Coast State Park and Hono O Na Pali Natural Area Reserve) and one site is on private land. These areas are in the northwest quadrant of the island and would presumably be most exposed to severe weather events such as hurricanes from the north and northwest. With the exception of the Kalalau Stream population, all other populations of Newcomb's snails are located in the northeast or southeast quadrants of the island, and these sites would be exposed to severe weather events such as hurricanes primarily from the east and northeast.

Nine critical habitat units are proposed, and these units are located within three stream complexes that

share similar characteristics (Table 1). The stream complexes share common topography, watershed characteristics, population characteristics, and exposure to natural disasters. Each stream complex and the proposed critical habitat units within them are discussed below.

Within the proposed critical habitat unit boundaries, only waterbodies containing one or more of the primary constituent elements are proposed as critical habitat. Existing features and structures within the boundaries of the mapped units, such as dams, ditches, tunnels, flumes, and other human-made water features that do not contain the primary constituent elements, are not proposed as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat.

TABLE 1.—PROPOSED CRITICAL HABITAT UNITS FOR THE NEWCOMB'S SNAIL BY LOWER AND UPPER BOUNDARY ELEVATIONS IN METERS (M) (FEET (FT)) AND THE LENGTH OF THE STREAM SEGMENTS IN KILOMETERS (KM) (MILES (MI))

Stream complex	Critical habitat units	Ownership	Lower boundary elevation	Upper boundary elevation	Stream segment length*	
I. Na Pali Coast Streams.	(a) Kalalau Stream	State—Na Pali Coast State Park.	183 m (600 Ft)	488 m (1,600 ft)	1.38 km (0.86 mi)	
	(b) Hanakoa Stream	State—Na Pali Coast State Park.	122 m (400 ft)	457 m (1,500 ft)		
	(c) hanakapiai Stream	State—Na Pali Coast State Park.	183 m (600 ft)	457 m (1,500 ft)		0.56 km (0.35 mi).
II. Central Rivers ..	(a) Wainiha River	Private—Alexander and Baldwin, Inc..	244 m (800 ft)	457 m (1,500 ft)	5.26 km (3.27 mi)	
	(b) Lumahai River	Private—Kamehameha Schools.	183 m (600 ft)	457 m (1,500 ft)		5.0 km (3.11 mi).
	(c) Hanalei River	State—Halela Forest Reserve.	122 m (400 ft)	457 m (1,500 ft)		7.58 km (4.71 mi).
III. Eastside Mountain Streams.	(a) Waipahee Stream	Private—Cornerstone Hawaii Holdings, LCC.	244 m (800 ft)	366 m (1,200 ft)	2.41 km (1.50 mi)	
	(b) Makaleha Stream	State—Kealia Forest Reserve.	183 m (600 ft)	457 m (1,500 ft)	1.59 km (0.99 mi)	
	(c) North Fork Wailua River	State—Lihue-Koloa Forest Reserve.	305 m (1000 ft)	427 m (1,400 ft)	1.71 km (1.06 mi)	
TOTAL .....	.....	.....	.....	.....	26.29 km (16.35 mi)

* Length of main stream channel, does not include tributaries or springs.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required 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 features are termed Primary Constituent Elements, and include but are not limited to: space for individual and

population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; space for breeding and reproduction; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

The primary constituent elements for the Newcomb's snail are those habitat components that are essential for the primary biological needs of foraging,

sheltering, reproduction, and dispersal. These primary constituent elements are found in locations that, as a result of their geologic and hydrologic setting in the landscape, support permanently flowing streams, springs and seeps in mid-elevation locations in valleys on the island of Kauai. The primary constituent elements are: cool, clean, moderate-to fast-flowing water in streams, springs and seeps; the associated watersheds and hydrogeologic features that capture and

direct water flow to these spring and stream systems; a hydrologic regime that supports perennial flow throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar areas. All proposed critical habitat areas contain one or more of the primary constituent elements for the Newcomb's snail.

Proposed Critical Habitat Designation

Locations proposed as critical habitat provide the full range of primary constituent elements needed by the Newcomb's snail, including foraging, sheltering, reproduction, and dispersal. Proposed critical habitat is limited to segments of perennial streams, their tributaries, and associated springs. Critical habitat boundaries were derived using topographical characteristics of the valley and nearby drainages immediately adjacent to locations where Newcomb's snails occur or occurred historically. The upper and lower elevations of critical habitat boundaries were chosen based upon the elevational distribution from each recorded population, or nearby watersheds where Newcomb's snails are found or were found historically. An area of upland riparian habitat adjacent to the actual aquatic sites is included in the designation of critical habitat. The size of the riparian area was determined based on the steepness of the adjacent valley walls, the number and size of adjacent small drainages, and the distance and elevation gain to adjacent ridge lines. The riparian areas are included in this critical habitat designation because the stream and spring systems that contain or may contain Newcomb's snails are dependent upon riparian areas for shade, moderating water flow, sediment retention, and nutrient inputs.

Areas proposed as critical habitat for the Newcomb's snail occur in nine separate watersheds and may include the main channel of a named stream, contiguous named and unnamed tributaries, and springs and seeps. Proposed critical habitat includes locations under State and private ownership and includes six sites currently known to be occupied and, in addition, includes three locations where the species was known to occur in the early 1900s, but where it is now thought to be extirpated.

Stream reaches are identified using elevations of the stream or tributary channels as upstream and downstream boundaries; these elevations were derived separately for each of the nine

reaches and were delineated by recognizing unique physiographic features within each watershed such as waterfalls, small tributaries, and springs. A brief description of each stream reach and reasons for proposing it as critical habitat are presented below.

Unit I: Na Pali Coast Streams

Streams of the Na Pali Coast are small, short, and flow over steep terrain. These streams are located in the northwest quadrant of the island, and, because they are located in smaller watersheds, they are directly exposed to coastal weather conditions. Rainfall in this area is lower than in the other watersheds proposed for critical habitat. The vegetation of the Na Pali Coast Stream Complex consists primarily of mixed-species mesic forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. One of the three locations currently has snails present. The other two locations were known to harbor Newcomb's snail populations relatively recently but the species is now thought to be extirpated at those sites.

Unit I(a): Kalalau Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the east fork of Kalalau Stream and its tributaries, including springs and seeps, from an elevation of 183 to 488 m (600 to 1,600 ft). This reach contains one of the two largest known populations of Newcomb's snails, and it contains the largest population of snails documented on public lands. At least two large, vertical or overhanging waterfalls in this reach appear to provide important refuge from high, channel-scouring flows (S. Miller, in litt. 1994b). This population is currently the most isolated of the Newcomb's snail populations, and it is separated from the nearest neighboring population, located in Lumahai River, by 11.8 km (7.3 mi). It is the only remaining population in the northwest quadrant of the island.

This unit is essential to the conservation of Newcomb's snail because it has the most robust population of snails ever recorded, as documented in Service surveys conducted in 1994. This unit is required to maintain one of the six known populations of snails. This stream segment is located within the Na Pali Coast State Park. Kalalau Stream has no water diversions.

Unit I(b): Hanakoa Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Hanakoa Stream and its tributaries, including springs and seeps, from an elevation of 122 to 457 m (400 to 1,500 ft). Historical records from the early 1900s indicate that Newcomb's snails were found in this stream; however, a recent survey failed to locate any snails (S. Miller in litt. 1994b). This reach is located on the northwest side of the island and is exposed to severe weather approaching from the northwest. Hanakoa Stream was heavily impacted by Hurricane Iniki in 1992 (Fitzsimons *et al.* 1993), prior to surveys intended to locate populations of Newcomb's snail.

This unit is essential to the conservation of Newcomb's snail because it was occupied until recently and is therefore one of only nine locations known with certainty to contain suitable habitat conditions for Newcomb's snails. For the reasons discussed above, it is essential to the conservation of the species to have stream sites in the northwest part of its range available for repopulation by Newcomb's snails either by natural dispersal or through experimental translocation. This stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve. Hanakoa Stream has no water diversions.

Unit I(c): Hanakapiai Stream

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Hanakapiai Stream and its tributaries, including springs and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). Historical records indicate that Newcomb's snail occurred in this reach; however, no recent surveys have located snails (M. Kido, in litt. 1994, A. Asquith pers. comm. 2001). This reach, like those in Kalalau and Hanakoa streams, is located in the northwest portion of the island and is exposed to severe weather from the north and northwest (Fitzsimons *et al.* 1993).

This unit is essential to the conservation of Newcomb's snail because it was occupied until recently and is therefore one of only nine locations known with suitable habitat conditions for Newcomb's snails. Because it is located in the northwest part of its range and has exhibited habitat conditions known to support Newcomb's snail in the recent past it should continue to be available for repopulation by Newcomb's snails either by natural dispersal or through

experimental translocation. This stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve. Hanakapiai Stream has no water diversions.

Unit II: Central Rivers

The central rivers of Kauai are large relative to other streams in the State, and flow through relatively low-gradient watersheds. These rivers are located in the northern half of the island and, because their headwaters are located well inland and in large valleys, are exposed to weather conditions that are greatly influenced by the surrounding landmass. Rainfall in this area is higher than in the other watersheds proposed for critical habitat. The vegetation of the Central Rivers Complex watersheds consists primarily of mixed-species wet and mesic forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. Two of the three locations currently have Newcomb's snail populations present, and the remaining location was known to harbor Newcomb's snail populations historically, but the species is now thought to be extirpated there.

Unit II(a): Wainiha River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the Wainiha River and its tributaries, including springs and seeps, from an elevation of 244 to 457 m (800 to 1,500 ft). Historical records indicate that Newcomb's snail occurred in this stream, which is one of the largest stream systems in the State. Surveys have failed to locate snails (M. Kido, *in litt.* 1994). This site is located well inland in a steep-walled valley that is in the northwest portion of the island. The potential exposure to severe weather at this site is primarily from the north, but this exposure is greatly influenced by the precipitous valley walls, which rise some 975 m (3,200 ft) above the stream channel.

This stream segment is located on private land. A major water diversion structure is located at the 213 m (700 ft) elevation of Wainiha River below which the river channel is frequently dry. The dam is located approximately one kilometer downstream of the lower boundary of the area proposed for designation as critical habitat. This diversion removes an average of 50 million gallons per day (2.19 cubic meters per second) of water from the river at the 213 m (700 ft) elevation; this water is transported in ditches, tunnels,

and flumes approximately 5.3 km (3.3 m) downstream to a powerhouse. This facility is the largest hydroelectric power producer in the State.

This unit is essential to the conservation of Newcomb's snail because it was historically occupied and is therefore one of only nine locations known with certainty to contain suitable habitat conditions for Newcomb's snails. This location should be considered for experimental repopulation by Newcomb's snails through translocation efforts.

Unit II(b): Lumahai River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Lumahai River and its tributaries, including springs and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). One of the largest populations of Newcomb's snails ever documented occurs in this reach of Lumahai River and its tributaries. This stream segment is located on private land. Lumahai River has no water diversions.

This unit is essential to the conservation of Newcomb's snail because it has one of the most robust population of snails ever discovered, as recorded at the time of the discovery of the population by Hawaii Department of Land and Natural Resources division of Aquatic Resources personnel in 1994. This unit is required as critical habitat to maintain and recover one of the six known populations of Newcomb's snails.

Unit II(c): Hanalei River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the Hanalei River and its tributaries, including springs and seeps, from an elevation of 122 to 457 m (400 to 1,500 ft), excluding ditches and flumes. The four sub-populations found within this stream system represent the largest number of Newcomb's snail sub-populations occurring within a single watershed. Segments of several named tributaries to the Hanalei River are included in this designation, and these include Kaapoko, Kaiwa, and Waipunaea Streams. This stream segment is located within the Halela Forest Reserve on State lands. The proposed critical habitat that contains the Hanalei River subpopulations of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing known populations of snails.

A complex of stream diversion works that includes dams, ditches and tunnels, is found at the 378 m (1,240 ft) elevation

of the Hanalei River, in the vicinity of the upper two main-channel Hanalei River sub-populations and upstream of the Kaapoko tributary sub-population at an elevation of 396 m (1,300 ft). These dams and associated ditches and tunnels historically diverted large volumes of water out of Kaapoko tributary and the Hanalei River to watersheds in the southeast portion of the island for irrigation use. Typical diversion structures in Hawaiian streams completely divert all of a streams flowing water during moderate-to low-flow periods, leaving the stream channel below the dam completely dry. The water diversion structures and associated ditches and tunnels in the upper Hanalei River and its tributaries are currently in disrepair and, although they locally alter flow characteristics, no water is diverted out of the Hanalei watershed at this time.

Unit III: Eastside Mountain Streams

The streams proposed for critical habitat designation that flow towards the east and southeast portions of the island are intermediate in size. Rainfall is moderate in comparison to the other locations proposed as critical habitat. All three of the locations included in this stream complex are known to be occupied by extant populations of snails. The vegetation of the Eastside Mountain Stream watersheds consists primarily of mixed-species wet forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species.

Unit III(a): Waipahee Stream (tributary to Kealia Stream)

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Waipahee Stream and its tributaries, including springs and seeps, from an elevation of 244 to 366 m (800 to 1,200 ft). Newcomb's snail was historically known to occur in Waipahee Stream, and a recent survey has confirmed the presence of Newcomb's snails within this reach. The proposed critical habitat that contains the Waipahee Stream population of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Waipahee Stream is located on private land that, in the lower elevation areas, is undergoing a transition in use from commercial plantation-style sugarcane agriculture to pasture, forestry, diversified crops, and "ecotourism" use. Higher elevation areas of these private

lands, such as where Newcomb's snails are found, are not used for agriculture and are relatively undisturbed. Water is diverted from Kealia Stream at several locations at lower elevations.

Unit III(b): Makaleha Stream (tributary to Kapaa Stream)

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with Makaleha Stream and its tributaries, including Makaleha Springs, other springs, and seeps, from an elevation of 183 to 457 m (600 to 1,500 ft). The Makaleha Stream and Makaleha Springs Newcomb's snail populations have been surveyed several times in recent years. Two subpopulations are known to occur within this reach: Newcomb's snails are found within the complex of small tributary streams originating from Makaleha Springs, and a small number of snails are found upstream of the springs at a waterfall located in the Makaleha Stream main channel. This stream segment is located within the Kealia Forest Reserve on State lands. Water is diverted from Makaleha Stream and Kapaa Stream at several locations at lower elevations. The proposed critical habitat that contains the Makaleha Stream population of Newcomb's snail are essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Unit III(c): North Fork Wailua River

Critical habitat for Newcomb's snail is proposed for all flowing surface waters associated with the North Fork of the Wailua River and its tributaries, including springs and seeps, from an elevation of 305 to 427 m (1,000 to 1,400 ft), excluding ditches and flumes. This population was the most recent to be discovered and is apparently small. This is the only population located in the southwest quadrant of the island and is found in a watershed that flows to the west. This stream segment is located within the Lihue-Koloa Forest Reserve on State lands. Water is diverted from the North Fork Wailua River at an elevation of 326 m (1,070 ft), within the area proposed as critical habitat. This diversion removes approximately 13 mgd from the stream. The proposed critical habitat that contains the North Fork Wailua River population of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. 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, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) 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. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species nor 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 (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project 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 the Director believes would avoid 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 with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Newcomb's snail or its critical habitat would require section 7 consultation; however, no populations of Newcomb's snail are known to exist on Federal land. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be

affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of the Newcomb's snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Destroying or degrading Newcomb's snail habitat (as defined in the primary constituent elements discussion) through activities adjacent to or upstream of Newcomb's snail habitat. Such activities may include reduction or redirection of stream or spring water flow, dam construction, channel alteration or realignment, substrate alteration, or other direct means (e.g., pesticide or herbicide application, waste discharge, groundwater withdrawal, groundwater contamination, reduction of groundwater recharge, etc.).

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential predators, diseases or disease vectors, vertebrate or invertebrate food competitors, invasive plant species, watershed degradation through overgrazing, augmentation of feral ungulate populations, an altered fire regime, or other activities that degrade water quality or quantity to an extent that it detrimentally affects stream structure and function).

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 conservation of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the

species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, there is a potential benefit from critical habitat designation in unoccupied areas, and consultation under section 7 of the Act would be triggered in these areas if they were designated as critical habitat.

Federal agencies already must consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

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

(3) Development on private or State lands requiring permits from other Federal agencies, such as Department of Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense on their lands or lands under their jurisdiction;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

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

(8) Other activities such as those funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Transportation, Department of Energy, Department of the Interior (U.S. Geological Survey, National Park Service, Bureau of Reclamation), Department of Commerce (National Oceanic and Atmospheric Administration), Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Newcomb's snail and do not require special management or protection, they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and so would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider: (1) Whether a current plan specifies the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) the plan includes a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) the plan includes provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Based on information provided to us by land owners and managers to date, we will need to work with the land owners and managers to adequately

manage to address the threats to the Newcomb's snail. Several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the Newcomb's snail, but we find that the management does not adequately reduce the primary threats to this species.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not 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**.

Currently, no habitat conservation plans (HCPs) include the Newcomb's snail as a covered species. However, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat.

We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the Newcomb's snail and appropriate management for those areas. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Public Comments Solicited

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

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and distribution of Newcomb's snail and what habitat is essential to the conservation of this species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the Newcomb's snail;

(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) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and

(7) Economic and other values associated with designating critical habitat for the Newcomb's snail, such as those derived from non-consumptive uses (e.g., hiking, camping, wildlife-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If we receive information that any of the areas proposed as critical habitat are currently being managed to address the conservation needs of the Newcomb's snail and provide adequate management and protection, we may exclude such areas from the final rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act. We may also exclude areas pursuant to section 4(b)(2) of the Act if information on impacts received during the public comment period or developed as part of the economic analysis indicates that the benefits of exclusion outweighs the benefits of inclusion, provided it will not result in extinction of the species. If

you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**):

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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. To the extent consistent with applicable law, 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 Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

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 copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of

those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) 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 notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified 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. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to 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. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the "Exclusions Under Section 4(b)(2)" section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Newcomb's snail since its listing in January of 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation 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 proposed rule, if made final, will not significantly impact 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 incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a small number of small entities. However, should the economic analysis prepared pursuant to section 4(b)(2) of the ESA indicate otherwise, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than

100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect Newcomb's snail. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. An action that appreciably diminishes habitat for the conservation of the species may also jeopardize the continued existence of the species by

reducing population numbers, decreasing reproductive success, or altering species distribution because of negative impacts to such habitats.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since Newcomb's snail has only been listed since January 2000, and there are no consultations involving the species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because Newcomb's snail has been listed only a relatively short time and there have been no activities with Federal involvement in these areas during this time, there is no history of consultations based on the listing of this species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

None of the proposed designation is on Federal lands. Six of the nine sites are on lands owned and managed by the State of Hawaii, which is not a small entity for purposes of this analysis. This includes units within the Na Pali Coast State Park, Hono O Na Pali Natural Area Reserve, the Halela Forest Reserve and the Lihue-Koloa Forest Reserve. All of these land areas are primarily managed for conservation of natural resources, including threatened and endangered species. In state lands, activities with no Federal involvement would not be affected by the critical habitat designation.

Three of the nine units of the proposed designation are on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. No activities of an economic nature currently occur on the private lands in the area encompassed by this proposed designation. These areas are in the State Conservation District and have a very limited range of allowable activities that could occur there under the State Conservation District Use permitting program. Because of the Conservation District zoning, and because the sites are so remote and inaccessible that helicopter

transport is normally required for access, even small-scale commercial or agricultural development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects, is unlikely to be involved in projects in these areas. On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy, and the U.S. Army Corps of Engineers (ACOE). In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve permits for discharge of fill material in wetlands or waterways and occur due to the presence of threatened or endangered species (primarily the five endangered Hawaiian waterbirds) that spend at least part of their life in aquatic habitats. Because the stream channels proposed for Newcomb's snail critical habitat are so remote, no consultations due to ACOE permits are anticipated for activities such as road construction. Construction of new diversion structures in the stream segments proposed for critical habitat, or rehabilitation of the abandoned water diversion structures in the proposed Hanalei critical habitat unit, is unlikely because agriculture practices have changed and irrigation demands have greatly diminished, but if such activities do occur and involve discharge of fill, ACOE permitting and section 7 consultation would be required.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing

the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for Newcomb's snail, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with the listed terrestrial snails in Hawaii. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species and predators, restoration of degraded habitat, construction of protective fencing, and regular monitoring. As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of

small entities. The entire designation involves six sites on state lands and three sites on privately owned land; all of which are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, the private lands are within the state Conservation District and no commercial activities are undertaken at those locations and, therefore, are not likely to require any Federal authorization. In these areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement would be through some unforeseen activity within a stream channel that would call for a permit or authorization from the ACOE. Because of the rugged terrain and extreme remoteness of the island interior, we anticipate that projects involving the ACOE and other Federal agencies will be infrequent within the proposed designation. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for Newcomb's snail will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this proposed rule indicate that there may be significant economic impacts on a substantial number of small entities, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is 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 August 25, 2000 *et seq.*):

(a) This rule, as proposed, 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 programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the Newcomb's snail in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from appropriate State resource agencies in Hawaii. The designation of critical habitat for Newcomb's snail would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this

definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The proposed 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 Newcomb's snail.

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. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not have 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 Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat for the Newcomb's snail does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon

request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Gordon Smith, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

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. In § 17.11(h) revise the entry for "Snail, Newcomb's" under "SNAILS" 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						
		*	*	*		*	*
SNAILS							
Snail, Newcomb's	<i>Erinna newcombi</i>	U.S.A. (HI),	N/A	T	680	17.95(f)	*
		*	*	*		*	*

3. Amend § 17.95 (f) by adding critical habitat for the Newcomb's snail (*Erinna newcombi*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(f) Clams and snails.
* * * * *

Newcomb's snail (*Erinna newcombi*)

(1) Critical Habitat Units are depicted for the County of Kauai, Hawaii, on the maps below.

(2) Within these areas, the primary constituent elements required by the Newcomb's snail are those habitat components that are essential for the biological needs of foraging, sheltering, reproduction, and dispersal. These primary constituent elements are found in locations that support permanently flowing streams, springs, and seeps in mid-elevation locations in valleys on the island of Kauai. The primary constituent elements are: cool, clean,

moderate- to fast-flowing water in streams, springs, and seeps; the associated watersheds and hydrogeologic features that capture and direct water flow to these spring and stream systems; a hydrologic regime that supports perennial flow throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar refugia.

(3) Existing features and structures, such as dams, ditches, tunnels, flumes, and other human-made aquatic habitat features that do not contain one or more of the primary

constituent elements, are not proposed as critical habitat.

(4) Critical Habitat Unit I—Na Pali Coast Streams.

(i) Unit I(a): Kalalau Stream (149 ha; 368 ac)

The Kalalau Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 63 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435010, 2450871; 434991, 2450828; 435008, 2450782; 435112, 2450715; 435107, 2450681; 435044, 2450591; 435058, 2450537; 435120, 2450441; 435078, 2450308; 435048, 2450279; 435017, 2450341; 434968, 2450375; 434678, 2450406; 434682, 2450441; 434678, 2450551; 434618, 2450603; 434578, 2450602; 434518, 2450564; 434418, 2450540; 434444, 2450711; 434428, 2450733; 434388, 2450657; 434338, 2450612; 434278, 2450596; 434228, 2450621; 434188, 2450596; 434166, 2450621; 434159, 2450691; 434148, 2450691; 434058, 2450599; 433995, 2450571; 433968, 2450540; 433878, 2450559;

433825, 2450544; 433767, 2450451; 433738, 2450478; 433700, 2450581; 433670, 2450611; 433670, 2450671; 433633, 2450738; 433715, 2450996; 433732, 2451168; 433740, 2451380; 433642, 2451551; 433633, 2451598; 433688, 2451664; 433842, 2451694; 434206, 2451592; 434680, 2451547; 435053, 2451609; 435129, 2451611; 435147, 2451590; 435114, 2451460; 435048, 2451400; 434973, 2451360; 435041, 2451320; 435043, 2451250; 435134, 2451170; 435126, 2451120; 435089, 2451069; 435075, 2451013; 435018, 2450933; 435010, 2450871;

(ii) Unit I(b): Hanakoa Stream (63 ha; 156 ac)

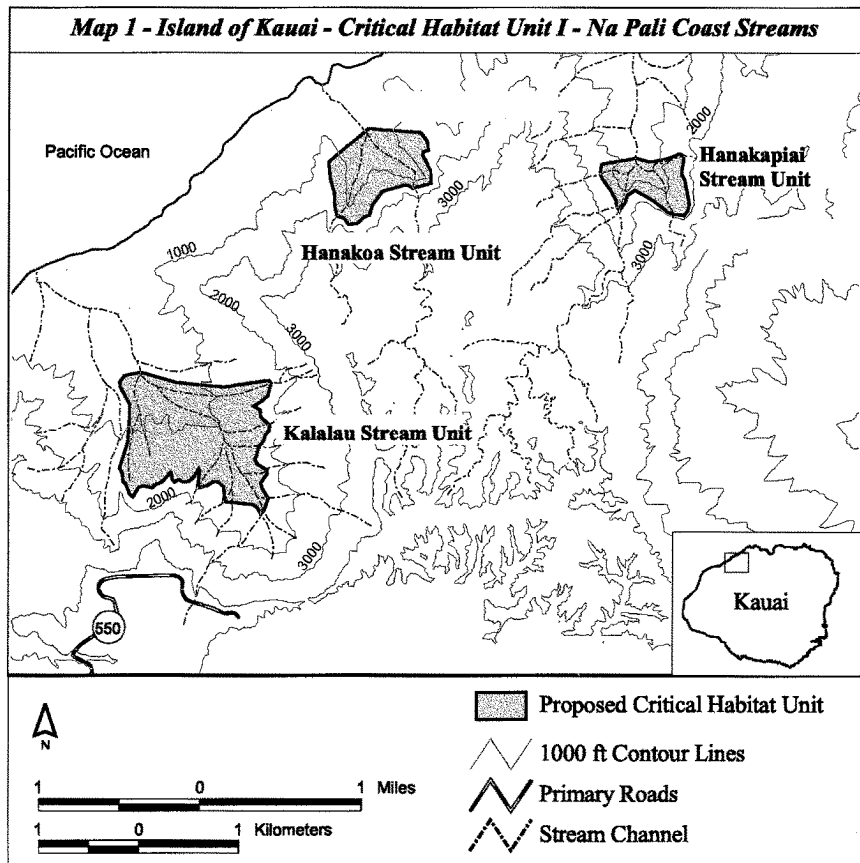
The Hanakoa Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 24 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435729, 2453628; 435717, 2453789; 436111, 2454127; 436637, 2454087; 436700, 2454008; 436719, 2453907; 436658, 2453889; 436654, 2453857; 436735, 2453697; 436744, 2453577; 436558, 2453527; 436518, 2453555; 436478, 2453559;

436250, 2453496; 436152, 2453358; 436123, 2453263; 436068, 2453238; 435998, 2453171; 435918, 2453168; 435869, 2453229; 435799, 2453248; 435780, 2453320; 435770, 2453490; 435729, 2453628.

(iii) Unit I(c): Hanakapiai Stream (35 ha; 86 ac)

The Hanakapiai Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 25 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 438438, 2453772; 438785, 2453827; 438899, 2453794; 438961, 2453796; 439113, 2453829; 439216, 2453871; 439257, 2453846; 439234, 2453666; 439263, 2453606; 439310, 2453377; 439299, 2453306; 439258, 2453253; 439158, 2453265; 439098, 2453290; 438949, 2453407; 438769, 2453508; 438692, 2453457; 438674, 2453387; 438618, 2453307; 438591, 2453347; 438578, 2453417; 438525, 2453507; 438443, 2453622; 438429, 2453677; 438438, 2453772.

(iv) Map 1—Unit I—Na Pali Coast Streams—follows:



(5) Critical Habitat Unit II—Central Rivers
(i) Unit II(a): Wainiha River (229 ha; 566 ac)

The Wainiha River Newcomb's snail critical habitat location consists of all flowing surface waters within 97 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 442795, 2446794; 442920, 2446901; 442806, 2446971;

442788, 2447024; 442714, 2447047; 442714, 2447111; 442595, 2447098; 442621, 2447201; 442708, 2447313; 442348, 2447194; 442331, 2447221; 442451, 2447358; 442418, 2447470; 442243, 2447470; 442368, 2447704; 442088, 2447660; 442149, 2447860; 442108, 2447916; 441936, 2447898; 441979, 2448161; 441686, 2448150; 441684, 2448250; 441799, 2448430; 441655, 2448417; 441686, 2448587; 441884, 2448882; 442498, 2449142; 442608, 2449108;

442607, 2448878; 442728, 2448926; 442797, 2448769; 442572, 2448540; 442605, 2448467; 442519, 2448310; 442521, 2448210; 442618, 2448118; 442768, 2448120; 442780, 2447942; 442967, 2447939; 442876, 2447700; 443058, 2447588; 443075, 2447517; 443239, 2447510; 443207, 2447420; 443222, 2447360; 443111, 2447280; 443229, 2447111; 443274, 2446940; 443358, 2446898; 443560, 2446922; 443608, 2446854; 443678, 2446875; 443708, 2446811;

443764, 2446846; 443780, 2446780; 443823, 2446750; 443757, 2446661; 443768, 2446624; 444168, 2446355; 444308, 2446345; 444278, 2446241; 444314, 2446077; 444508, 2445964; 444575, 2445968; 444575, 2445921; 444660, 2445851; 444723, 2445696; 444809, 2445671; 444941, 2445544; 444983, 2445431; 444918, 2445128; 444854, 2445447; 444688, 2445518; 444579, 2445642; 444532, 2445651; 444538, 2445724; 444487, 2445730; 444468, 2445801; 444348, 2445871; 444153, 2445926; 444153, 2446001; 444079, 2446172; 443964, 2446197; 443912, 2446265; 443718, 2446356; 443618, 2446334; 443613, 2446426; 443508, 2446587; 443388, 2446514; 443368, 2446613; 443208, 2446600; 443098, 2446552; 443073, 2446656; 442946, 2446651; 443000, 2446763; 442828, 2446711; 442795, 2446794.

(ii) Unit II(b): Lumahai River (492 ha; 1216 ac)

The Lumahai River Newcomb's snail critical habitat location consists of all flowing surface waters within 89 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 447598, 2445954; 447344, 2446136; 447298, 2446352; 447248, 2446290; 447178, 2446384; 447088, 2446327; 446972, 2446364; 446950, 2446572; 446787, 2446678; 446648, 2446627; 446648, 2446739; 446445, 2446836; 446409, 2447000; 446278, 2447034; 446208, 2447169; 446097, 2447178; 446141, 2447349; 446024, 2447449; 446014, 2447649; 445808, 2447618; 445809, 2447680; 445839, 2447840; 445616, 2447859; 445773, 2448009; 445589, 2448069; 445728, 2448189; 445531, 2448299; 445685, 2448359;

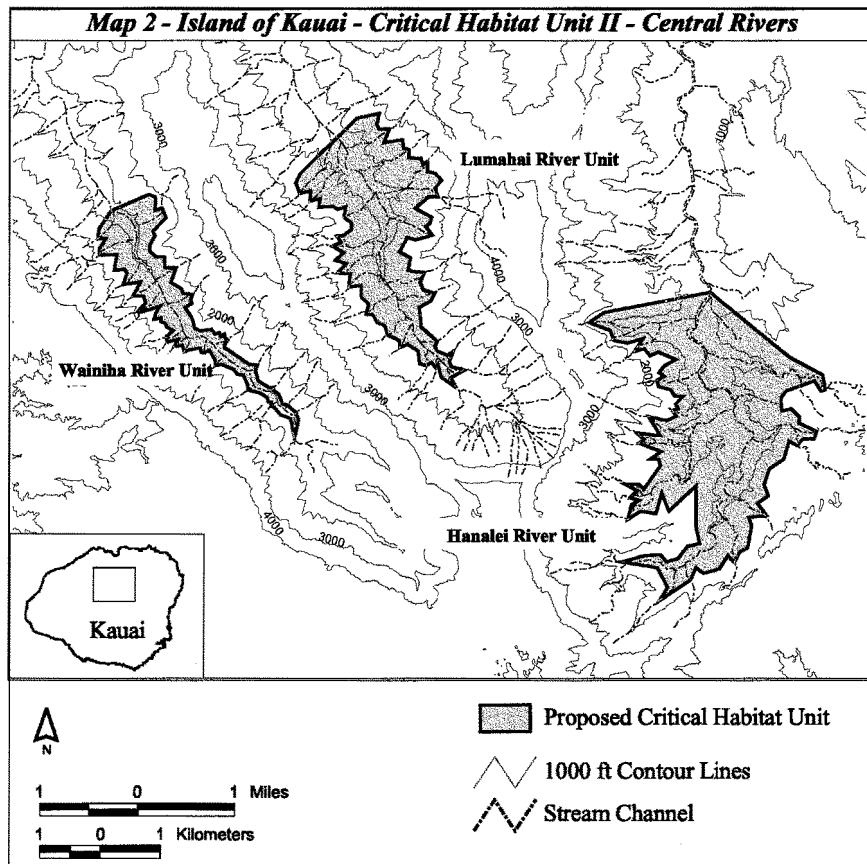
445605, 2448469; 445728, 2448478; 445854, 2448578; 445858, 2448680; 445728, 2448778; 445759, 2448939; 445618, 2448896; 445548, 2448954; 445318, 2448932; 445338, 2449080; 445164, 2449034; 445171, 2449211; 444998, 2449168; 444932, 2449348; 445008, 2449493; 445936, 2450417; 446309, 2450498; 446262, 2450317; 446309, 2450238; 446476, 2450245; 446385, 2450007; 446688, 2450060; 446714, 2449913; 446811, 2449890; 446799, 2449758; 446998, 2449747; 447028, 2449643; 447101, 2449690; 447098, 2449525; 447228, 2449509; 447343, 2449387; 447229, 2449247; 447298, 2449117; 447128, 2449116; 446901, 2448918; 447174, 2448778; 447144, 2448668; 447066, 2448628; 447190, 2448478; 446898, 2448400; 446778, 2448451; 446649, 2448198; 446831, 2448108; 446782, 2447899; 447064, 2447862; 446986, 2447707; 447038, 2447583; 447225, 2447529; 447162, 2447395; 446973, 2447289; 447008, 2446969; 447288, 2446719; 447234, 2446659; 447268, 2446571; 447448, 2446499; 447548, 2446559; 447484, 2446393; 447518, 2446304; 447739, 2446259; 447507, 2446131; 447598, 2445954;

(iii) Unit II(c): Hanalei River (876 ha; 2165 ac)

The Hanalei River Newcomb's snail critical habitat location consists of all flowing surface waters within 91 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450038, 2447210; 451786, 2447529; 453099, 2446469; 453648, 2446167; 453691, 2445925; 453614, 2445904; 453508, 2446074; 453044, 2445908; 452961, 2445785; 452974, 2445578; 453125,

2445605; 453267, 2445468; 453258, 2445377; 453550, 2445238; 453508, 2445111; 453318, 2445096; 453238, 2444991; 453098, 2445064; 453010, 2444769; 452768, 2444606; 452680, 2444349; 452760, 2444169; 452581, 2444039; 452723, 2443844; 452429, 2443810; 452486, 2443680; 452419, 2443309; 452280, 2443240; 452198, 2443073; 452088, 2443185; 451948, 2442960; 451678, 2442885; 451549, 2442979; 451471, 2442787; 450955, 2442448; 451082, 2442651; 450916, 2442988; 450337, 2443081; 450718, 2443188; 450968, 2443197; 451068, 2443077; 451255, 2443133; 451414, 2443330; 451612, 2443370; 451552, 2443666; 451549, 2444330; 451107, 2443911; 450988, 2444210; 450894, 2443874; 450638, 2443920; 450431, 2443773; 450492, 2444026; 450614, 2444100; 450468, 2444134; 450592, 2444250; 450389, 2444360; 450621, 2444363; 450698, 2444275; 450967, 2444669; 450939, 2444770; 450803, 2444769; 450978, 2444899; 450611, 2445032; 450698, 2445101; 450573, 2445219; 450969, 2445168; 450768, 2445479; 451068, 2445422; 451226, 2445489; 451158, 2445584; 451251, 2445606; 451216, 2445692; 451335, 2445819; 451188, 2445824; 451124, 2445925; 450928, 2445983; 450904, 2446088; 451017, 2446148; 450940, 2446208; 451031, 2446325; 451208, 2446428; 450928, 2446552; 450788, 2446490; 450688, 2446603; 450538, 2446560; 450668, 2446774; 450418, 2446700; 450199, 2446739; 450133, 2446913; 449784, 2447034; 450038, 2447210.

(iv) Map 2—Unit II—Central Rivers— follows:



(6) Critical Habitat Unit III—Eastside Mountain Streams

(i) Unit III(a): Waipahee Stream (106 ha; 262 ac)

The Waipahee Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 89 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 458928, 2447407; 458921, 2447414; 458943, 2447424; 458998, 2447420; 459102, 2447444; 459044, 2447534; 459104, 2447563; 459108, 2447613; 459085, 2447643; 459100, 2447671; 459118, 2447693; 459108, 2447714; 459078, 2447703; 459048, 2447661; 459028, 2447663; 459017, 2447694; 459045, 2447696; 459054, 2447727; 459118, 2447770; 459164, 2447749; 459191, 2447646; 459231, 2447596; 459309, 2447603; 459321, 2447623; 459306, 2447685; 459351, 2447663; 459398, 2447531; 459478, 2447584; 459518, 2447553; 459568, 2447656; 459586, 2447613; 459648, 2447556; 459738, 2447649; 459918, 2447569; 459998, 2447569; 460018, 2447584; 460048, 2447572; 460092, 2447599; 460188, 2447591; 460225, 2447606; 460592, 2447476; 460703, 2447365; 460814, 2447311; 460738, 2447092; 460451, 2446778; 460396, 2446632; 460318, 2446566; 460314, 2446634; 460270, 2446746; 460127, 2446673; 460168, 2446764; 460178, 2446877; 460058, 2446836; 459978, 2446834; 459906, 2446782; 459887, 2446803; 459902, 2446878; 459848, 2446946; 459818, 2446933; 459778, 2446940; 459694,

2446904; 459702, 2447004; 459648, 2447020; 459638, 2447098; 459608, 2447104; 459508, 2447031; 459502, 2447068; 459448, 2447061; 459500, 2447134; 459467, 2447203; 459445, 2447214; 459408, 2447183; 459388, 2447194; 459318, 2447163; 459268, 2447169; 459248, 2447139; 459218, 2447136; 459182, 2447074; 459148, 2447057; 459078, 2447076; 459083, 2447094; 459148, 2447124; 459185, 2447224; 459166, 2447274; 459178, 2447334; 459118, 2447345; 458948, 2447313; 459001, 2447384; 458928, 2447407.

(ii) Unit III(b): Makaleha Stream (95 ha; 235 ac)

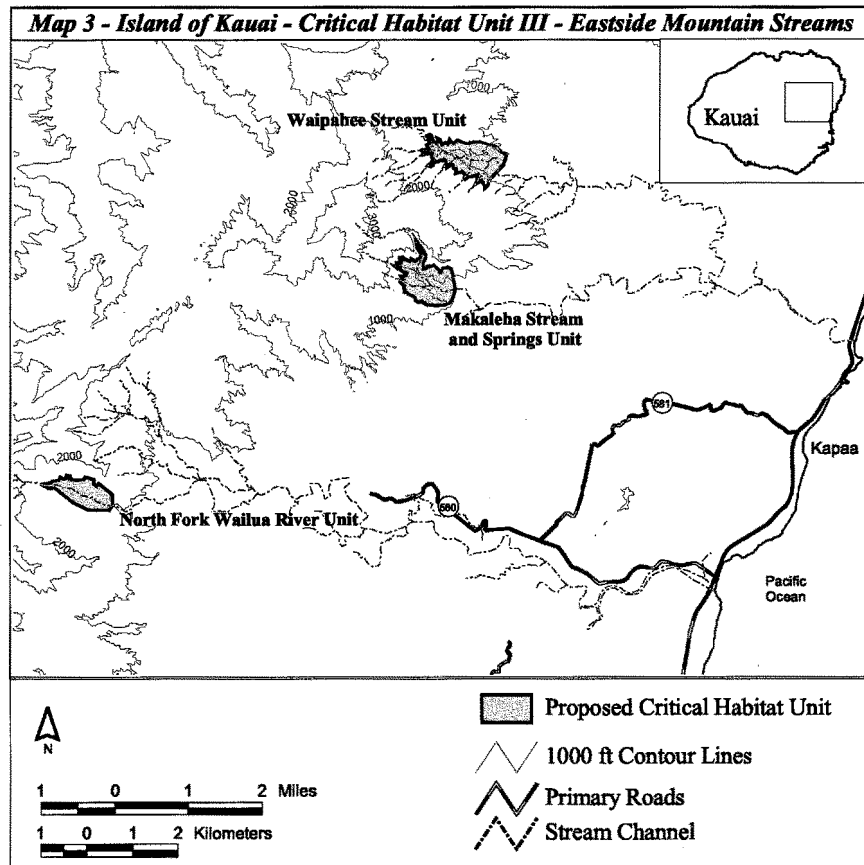
The Makaleha Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 68 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 459368, 2444730; 459372, 2444732; 459414, 2444830; 459438, 2444851; 459498, 2444854; 459528, 2444873; 459588, 2444828; 459601, 2444832; 459689, 2444388; 459662, 2444260; 459604, 2444112; 459455, 2444044; 459279, 2444030; 459064, 2444037; 459008, 2444069; 459002, 2444101; 458968, 2444099; 458944, 2444123; 458878, 2444096; 458808, 2444142; 458803, 2444197; 458748, 2444245; 458658, 2444279; 458633, 2444322; 458576, 2444325; 458582, 2444377; 458552, 2444407; 458568, 2444467; 458478, 2444527; 458474, 2444587; 458537, 2444607; 458492, 2444667; 458608, 2444684; 458633, 2444746; 458545, 2444763; 458495,

2444803; 458485, 2444833; 458418, 2444844; 458347, 2444897; 458418, 2444925; 458411, 2444963; 458504, 2444960; 458503, 2444991; 458458, 2445046; 458458, 2445076; 458528, 2445084; 458582, 2445036; 458678, 2444990; 458718, 2445049; 458798, 2444992; 458818, 2444992; 458868, 2445050; 458908, 2445056; 458933, 2445106; 458927, 2445176; 458854, 2445276; 458808, 2445463; 458960, 2445258; 459033, 2445116; 459033, 2445066; 458978, 2444969; 458983, 2444831; 459038, 2444842; 459088, 2444900; 459158, 2444877; 459218, 2444913; 459331, 2444816; 459368, 2444730.

(iii) Unit III(c): North Fork Wailua River (64 ha; 158 ac)

The North Fork Wailua River Newcomb's snail critical habitat location consists of all flowing surface waters within 97 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450656, 2440137; 450861, 2440154; 450920, 2440206; 450968, 2440196; 451045, 2440217; 451079, 2440286; 451145, 2440241; 451197, 2440262; 451211, 2440324; 451291, 2440314; 451291, 2440244; 451426, 2440217; 451589, 2440237; 451616, 2440286; 451811, 2440230; 451800, 2440137; 451873, 2440095; 451918, 2440151; 452209, 2439915; 452223, 2439665; 452140, 2439565; 451672, 2439575; 451343, 2439745; 450968, 2440043; 450840, 2440040; 450656, 2440137.

(iv) Map 3—Unit III—Eastside Mountain Streams—follows:



Dated: January 15, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-1770 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 011206293-1293-01; I.D. 101501A]

RIN 0648-AK17

Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement a guideline harvest level (GHL) and a system of harvest reduction measures for managing the harvest of Pacific halibut in the guided recreational fishery in International Pacific Halibut Commission (Commission) areas 2C and 3A off Alaska. The GHL would establish an estimated amount of halibut harvests that may be taken annually in the guided recreational fishery. The system of harvest reduction measures would provide for a number of management measures to take effect incrementally in the event that harvests exceed the GHL. This action is necessary to allow NMFS to manage more comprehensively the Pacific halibut stocks in waters off Alaska. It is intended to further the management and conservation goals of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Comments on the proposed rule must be received by February 27, 2002.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the North Pacific Fishery Management Council at 605 West 4th

Avenue, Suite 306, Anchorage, AK 99501-2252.

SUPPLEMENTARY INFORMATION:

Background

The Commission promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Commission's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary) (16 U.S.C. 773b). Additional management measures may be developed by the North Pacific Fishery Management Council (Council) to allocate harvesting privileges among U.S. fishermen. The Halibut Act provides NMFS with authority to implement such allocation measures through regulatory amendments approved by the Secretary in consultation with the Council. In addition to the IPhC regulations, the commercial halibut fishery off Alaska is managed under the halibut Individual Fishing Quota (IFQ) Program implemented in 1995.

Each year the Commission staff assesses the abundance and potential yield of Pacific halibut using all available data from the commercial fishery and scientific surveys. Harvest limits for 10 regulatory areas are determined by fitting a detailed population model to the data from each area. A biological target level for total removals in a given area is then calculated by multiplying a fixed harvest rate, presently 20 percent, to the estimate of exploitable biomass. This target level is called the "constant exploitation yield" (CEY) for that area in the coming year. Each CEY represents the total allowable harvest (in net pounds) for that area, which cannot be exceeded. The Commission then estimates the sport and personal use, subsistence harvests, wastage, and bycatch mortalities for each area. These are subtracted from the CEY and the remainder may be set as the catch quota for each area's directed commercial fixed gear fishery. Allocations to the guided recreational fishery are thus unrestricted within the CEY and represent an open-ended allocation to the guided recreational fishery from quota available to the commercial halibut fishery. Hence, as the guided recreational fishery expands, its harvests reduce the pounds available to

be fished in the commercial halibut fishery and, subsequently, the value of quota shares (QS) in the IFQ Program.

The Council has discussed the expansion of the halibut guided recreational fleet since 1993, when the rapid increase in guided recreational vessel effort in some small Alaskan communities, such as Sitka, gave rise to concerns about localized depletion of the halibut resource and the potential reallocation of greater percentages of the CEY from the IFQ fishery to the guided recreational vessel fishery. In 1995, the Council developed the following six-point problem statement to direct its analysis of issues attending the guided recreational halibut fishery:

The recent expansion of the halibut charter industry may make achievement of Magnuson-Stevens Act National Standards more difficult. Of concern is the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource. Specifically, the Council notes the following areas of concern with respect to the recent growth of halibut charter operations:

1. Pressure by charter operations may be contributing to localized depletion in several areas.

2. The recent growth of charter operations may be contributing to overcrowding of productive grounds and declining harvests for historic sport and subsistence fishermen in some areas.

3. As there is currently no limit on the annual harvest of halibut by charter operations, an open-ended reallocation from the commercial fishery to the charter industry is occurring. This reallocation may increase if the projected growth of the charter industry occurs. The economic and social impact on the commercial fleet of this open-ended reallocation may be substantial and could be magnified by the IFQ program.

4. In some areas, community stability may be affected as traditional sport, subsistence, and commercial fishermen are displaced by charter operators. The uncertainty associated with the present situation and the conflicts that are occurring between the various user groups may also be impacting community stability.

5. Information is lacking on the socioeconomic composition of the current charter industry. Information is needed that tracks: (1) the effort and harvest of individual charter operations; and (2) changes in business patterns.

6. The need for reliable harvest data will increase as the magnitude of harvest expands in the charter sector.

In September 1997, the Council took final action on two management actions affecting the halibut guided recreational fishery, culminating more than 4 years of discussion, debate, public testimony, and analysis. First, the Council

approved recording and reporting requirements for the halibut guided recreational fishery. To implement this requirement, the Alaska Department of Fish and Game (ADF&G) Sport Fish Division, under the authority of the Alaska Board of Fisheries, instituted a Saltwater Charter Vessel Logbook (Logbook) in 1998. Information collected under this program provides fishery scientists and managers with the number of fish landed and/or released, the date and primary location of fishing, the hours and number of lines fished, the number of clients and crew fishing, the ownership of the vessel, and the identity of the vessel operator.

The logbook collects such information as the Council and ADF&G determined at the time to be essential for managing the guided recreational fishery harvests of halibut. It complements additional sportfish data collected by the State of Alaska (State) through the Statewide Harvest Survey (Harvest Survey), conducted annually since 1977, and the on-site (creel and catch sampling) surveys conducted separately by ADF&G in Southeast and Southcentral Alaska.

For the second management action in September 1997, the Council recommended GHLS for the halibut guided recreational fishery in Commission regulatory areas 2C and 3A. The GHLS were based on the guided recreational sector receiving 125 percent of its 1995 harvest. This amount was equivalent to 12.76 percent and 15.61 percent of the combined commercial/guided recreational halibut quota in areas 2C and 3A, respectively. The Council stated its intent that guided recreational harvests in excess of the GHLS would not lead to a mid-season closure of the fishery, but instead would trigger other management measures to take effect in years following attainment of the GHLS. The overall intent was to maintain a stable guided recreational season of historical length, using area-specific harvest reduction measures. If end-of-season harvest data indicated that the guided recreational sector likely would have reached or exceeded its area-specific GHLS in the following season, NMFS would implement measures to slow down guided recreational halibut harvest. Given the 1-year lag between the end of the fishing season and the availability of that year's harvest data, management measures in response to the guided recreational fleet's meeting or exceeding the GHLS would take up to 2 years to become effective. However, the Council did not recommend specific management measures to be implemented by NMFS if the GHLS were reached.

In December 1997, the NMFS Alaska Regional Administrator informed the Council that the GHLS could not be published as a regulation without specific management measures to give it effect. Further, because the Council had not recommended specific management measures by which to limit harvests if the GHLS were reached, no formal approval decision by the Secretary was required for the Council's proposed GHLS policy, and it was not forwarded for review.

After being notified that its 1997 GHLS policy recommendation would not be submitted for review, the Council initiated a public process to identify GHLS management measures. The Council formed a GHLS Committee to recommend alternative management measures for analysis that would constrain guided recreational harvests below the GHLS. In April 1999, the Council identified the following for analysis: (1) a suite of GHLS management measure alternatives; (2) alternatives that would change the GHLS as approved in 1997; and (3) area-wide and local area management plan moratorium options under all alternatives. Several factors influenced the Council to recommend a program in which the implementation of harvest reduction measures would be triggered in fishing years subsequent to a year in which the GHLS was achieved or exceeded. Among these factors were (1) the unavailability of reliable in-season catch monitoring for the halibut guided recreational fishery; (2) the impracticality of making in-season adjustments to the commercial IFQ fishery; and (3) the undesirability of shortening the current guided recreational fishing season, which the Commission's annual halibut regulations have typically set between February 1 and December 31.

In February 2000, after 7 years of discussing the halibut guided recreational fishery, the Council took final action and voted 10-1 to recommend a redefined halibut guided recreational GHLS and a system of management measures, the essential design of which was forged by representatives of both the commercial halibut fishery and halibut guided recreational fleet. As part of this action, the Council also recommended expediting review of a proposal to integrate the halibut guided recreational fisheries in Commission Regulatory Areas 2C and 3A into the existing commercial IFQ Program. The Council reviewed the analysis for that proposal in February, 2001, and, at its meeting the following April, it took final action to recommend implementation of halibut guided recreational IFQs. If

approved by the Secretary, a halibut guided recreational IFQ program would supersede the management of the fishery under the GHLS proposed in this action.

The GHLS

The GHLS establishes a pre-season estimate of acceptable annual harvests for the halibut fishery in Commission areas 2C and 3A. To allow for limited growth of the guided recreational fleet while approximating historical harvest levels, the GHLSs would be based on 125 percent of the average of 1995-99 guided recreational harvest estimates as reported by the ADF&G's Harvest Survey. By weight, the GHLSs would equate to 13.05 percent of the combined guided recreational and commercial quota in area 2C or 1,432,000 lb (649.5 mt) net weight; and 14.11 percent of the combined guided recreational and commercial quota in area 3A or 3,650,000 lb (1,655.6 mt) net weight.

The GHLS would be responsive to annual reductions in stock abundance. In the event of a reduction in either area's halibut stocks, as determined by the Commission, the area GHLS would be reduced incrementally in proportion to the stock reduction. The reductions in the GHLS would be made using percentages based on the average harvests from 1999 to 2000, as a reflection of recent harvest levels.

For example, should the halibut stock in area 2C fall 15 percent or more below its 1999-2000 average, the area 2C GHLS would be reduced by 15 percent, from 1,432,000 lb (649.5 mt) to 1,217,200 lb (552.1 mt). Should the area stock abundance fall a further 10 percent or more, the GHLS would also be reduced by an additional 10 percent from 1,217,200 lb (552.1 mt) to 1,095,480 lb (496.9 mt), and so on with further 10 percent reductions in abundance. As abundance returns to its pre-reduction level (the 1999-2000 average), the GHLS would be increased by commensurate incremental percentage points to its initial level of 125 percent of the average of 1995-99 guided recreational harvest estimates.

In the case of increases in stock abundance, the GHLS would never exceed its initial level of 1,432,000 lb (649.5 mt) in Area 2C and 3,650,000 lb (1,655.6 mt) in Area 3A. Setting the GHLS at 125 percent of the 1995-1999 harvest estimates would allow for limited growth of the guided recreational fishery, but would effectively limit further growth at this level. NMFS invites public comment on this feature of the proposed action.

Harvest reduction measures

The GHL will not institute in-season actions to reduce guided recreational harvests. Instead, measures to reduce guided recreational harvests would be implemented by notification in following years. NMFS specifically requests that the public provide comments on this method of implementing management measures to reduce halibut harvest. The ADF&G typically publishes data on a given year's halibut guided recreational harvests from the ADF&G's Logbook program and Harvest Survey, respectively, in February and August of the following year. Given this delay between a given year's harvests and the issuance of logbook and harvest survey reports of the data from those harvests, measures to reduce guided recreational harvests would also be delayed to ensure the accuracy of data indicating that harvests exceeded the GHL.

NMFS would reduce harvests incrementally, based on the percentage at which the previous year's harvests exceeded the GHL. For example, a reduction in the daily "bag limit" or number of halibut a sport angler may harvest each day would be triggered and implemented only as the final tool when the GHL is exceeded by greater than 50 percent. This measure, like the others for harvests over 20 percent, would be implemented in the second year following the year of overharvest. For purposes of this limitation, daily bag limit means the amount of halibut that may be harvested per calendar day, or as specifically defined for waters in and off Alaska, the period from 0001 hours, A.l.t., until the following 2400 hours, A.l.t. (See 50 CFR 679.2 Definitions, Daily reporting period or day.)

In this system of harvest reduction measures, "harvest" means the catching and retaining of fish and, in the context of prohibiting harvests by a vessel's skipper and crew, is intended only to preclude retention by a vessel's skipper and crew and not to prevent a vessel's crew from assisting clients in fishing for and catching halibut.

The system recommended by the Council is as follows.

AREA 2C MANAGEMENT TOOLS

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
Less than 10 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.

**AREA 2C MANAGEMENT TOOLS—
Continued**

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
10-15 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut.
16-20 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
21-30 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
31-40 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.
41-50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year.

**AREA 2C MANAGEMENT TOOLS—
Continued**

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
More than 50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year; Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

AREA 3A MANAGEMENT TOOLS

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
Less than 10 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
10-20 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut.
21-30 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.

AREA 3A MANAGEMENT TOOLS—
Continued

When annual harvests in the halibut guided recreational fishery exceed GHL by:	Harvests will be restricted in following years by implementation of a restriction that:
31-40 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
41-50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.
More than 50 percent	No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; No operator or crew-member aboard a guided recreational vessel may retain halibut; No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year; Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

example, if harvests in Area 2C in 2002 exceeded the GHL by 15 percent, halibut guided recreational harvests in that area would be restricted in 2003 by prohibiting harvests by skipper and crew and by prohibiting a guided recreational vessel from concluding more than one fishing trip during which halibut are harvested during a single 24-hour period.

In years when harvests exceed the GHL by an amount greater than 20 percent of the GHL, harvest reduction measures would be implemented in two phases. First, measures designed to achieve a reduction of up to 20 percent in guided recreational harvests would be implemented for the fishing year following the overage. Second, measures designed to achieve greater than 20 percent reductions in harvest (e.g., annual limits and a one-fish bag limit in August) would be implemented 1 year later to allow for verification from the Harvest Survey of the percentage by which guided recreational harvests exceeded the GHL. For example, if guided recreational harvests in 3A were exceeded in 2002 by 35 percent, in 2003, harvests would be restrained by prohibiting harvests by skipper and crew and by prohibiting a guided recreational vessel from concluding more than one fishing trip during which halibut are harvested during a single 24-hour period. In the following year, 2004, once NMFS has data verifying that the GHL was exceeded by 35 percent, harvests would be further restrained by imposing an annual limit of six fish on each individual angler fishing from a guided recreational vessel.

The reason for the delay in implementing the harvest reduction measures is to not over-react to an overharvest until such time that NMFS has all data verifying the extent of overharvest, and so that, if necessary, either NMFS can institute greater or lesser reduction measures or the Council can recommend that measures currently in place be removed.

Once NMFS has preliminary data indicating that the level of harvests from a previous season exceeded the GHL, the appropriate harvest reduction measures would be triggered [to be in effect] for the following season. The Administrator, Alaska Region, NMFS (Regional Administrator) would announce such measures by notification in the **Federal Register** prior to the start of the annual sport halibut fishing season.

The proposed system of harvest reduction measures was developed by the Council using its best estimates of which measures would have the least effect and which the greatest effect. At

present, no single management measure can be accurately projected as reducing harvests by a certain percentage. For this reason, the measures more likely to reduce harvests substantially are reserved for curtailing harvests that greatly exceed the GHL. The experience of managing the guided recreational fishery under this system would likely give the Council and NMFS more certain data in the future by which to determine the extent of each particular management measure's ability to reduce harvests. Therefore, at the end of a sport halibut fishing season during which harvest reduction measures were in effect, the Council would review such measures to evaluate their efficacy in preventing further harvests in excess of the GHL or the appropriateness of lifting such management measures. This review accomplishes two goals: the first is to evaluate whether the overharvest is likely to continue in the subsequent years and the second is to evaluate whether any additional refinements are needed for any restrictions currently in place. If the Council, in consultation with NMFS, determines that restrictions should be lifted or refined, NMFS will undertake rulemaking to implement them, so long as the agency approves of such possible changes. Rulemaking will be undertaken in accordance with the requirements of applicable law.

Implementation Issues

NMFS is working with the Council and the ADF&G to resolve a number of recordkeeping and reporting issues essential to NMFS' ability to monitor compliance with the proposed harvest reduction measures. As noted above, in 1998 the ADF&G instituted its saltwater charter logbook program in response to the Council's initial recommendations for managing the halibut guided recreational fishery. The logbook provides one means by which NMFS may monitor compliance with harvest reduction measures in the field during the fishing season. However, NMFS' access to data derived from the logbook is limited by Alaska Statute 16.05.815 of the State's fish and game regulations, which requires that information provided to the State in compliance with its regulations be kept confidential and may not be released. This confidentiality provision prevents NMFS from accessing logbook data for enforcement purposes once logbooks have been submitted to the State and may prevent NMFS from accessing the information for such purposes prior to its submission to the State.

Moreover, the information collected by the logbook would not alone be sufficient to monitor compliance with

How the System of Harvest Reduction Measures Would Work

No guided recreational halibut harvest reduction measures would be implemented if the total guided recreational harvest in the area (2C or 3A) remains at or below the GHL for that area. However, if the GHL is exceeded in a given year, appropriate harvest reduction measures would be imposed in following years to reduce harvests incrementally by the percentage at which the previous year's harvests exceeded the GHL. For

the harvest reduction measures. NMFS would require additional information on times and dates of the end of fishing trips, as well as information identifying each individual angler and his or her total harvests aboard guided recreational vessels.

The ADF&G sportfishing license currently requires an angler's up-to-date information on catches of species that are managed under annual limits. Adequate monitoring of an annual limit on halibut harvests would require that halibut harvested aboard guided recreational vessels be added to this list. The ADF&G sportfishing license would then provide an additional means of monitoring compliance with harvest reduction measures in the field. NMFS may also require post-season data collection on annual limits for enforcement purposes, in which case an additional collection-of-information requirement would need to be put in place either as part of the logbook or by an alternative means.

Adequate recordkeeping and reporting requirements and monitoring capabilities are imperative to the enforceability and, hence, the success of the proposed GHL program in managing harvests by the guided recreational fishery. As explained above, NMFS is working with the ADF&G and State to resolve these recordkeeping and reporting issues. The ability of NMFS to adequately monitor and enforce a program is an important consideration when NMFS decides whether to approve recommendations of the Council.

Currently, there are no new collections of information associated with this proposed rule. As detailed above, NMFS is working with the State of Alaska to obtain the information necessary to enforce this rule. Nevertheless, if such efforts fail or necessary information if otherwise unavailable, NMFS may implement future collections of information in accordance with applicable law if necessary to monitor compliance.

Classification

The Council prepared an IRFA for this action that assesses potential impacts on small entities for purposes of the Regulatory Flexibility Act (RFA). According to 1999 ADF&G logbook data, 397 guided recreational businesses operated in Area 2C, and 434 in Area 3A. All 831 guided recreational businesses could be considered small entities for purposes of the RFA. The proposed action also would impact an estimated 4,000 permit holders and 860 registered commercial halibut buyers participating in the commercial halibut

IFQ Program, many of which are small entities. Also classified as small entities under the RFA are the many small government jurisdictions with fewer than 50,000 residents that are home to commercial halibut fishermen and guided recreational vessel owners and operators.

The Council identified the following issues in its discussion of the expansion of the halibut guided recreational fleet: (1) possible localized depletion of halibut because of fishing pressure by charter operations; (2) overcrowding of productive grounds and declining harvests for historic sport and subsistence fishermen in some areas; (3) economic and social impact on the commercial fleet by an open-ended reallocation from the commercial fishery to the charter industry, if projected growth of the charter industry occurs; and (4) effect on community stability as traditional sport, subsistence, and commercial fishermen are displaced by charter operators.

The Council also considered a moratorium on the further entry in the charter fisheries. The moratorium alternatives and options included years of participation, owners versus vessels, evidence of participation, vessel upgrades, transfers, and duration for review. However, the Council rejected the moratorium because, based on the number of qualifying vessels under various options, it was unlikely that a moratorium would constrain the charter harvest. In addition to the moratorium and the no action alternative, the Council considered alternative GHL levels.

The GHL alternatives reviewed by the Council represent trade-offs between the commercial and guided recreational fisheries. The GHL is designed to limit the amount of halibut that may be taken in the guided recreational fishery. The Council also considered not regulating harvests in the guided recreational fishery. However, the Council rejected this as failure to regulate could erode the harvest share available to commercial halibut fishermen, many of whom are also small entities.

The proposed GHL, which allows the charter industry to grow, represents a balance between the status quo's impact on small commercial entities and the impact of more restrictive alternatives on small recreational entities.

As this is a new rule applicable to a previously unregulated group, there are no duplicative or overlapping rules associated with this proposed rule.

This action does not contain federalism implications, as that term is defined in E.O. 13132. This proposed rule has been determined to be not

significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 19, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

2. Section 300.61 is amended by adding "Guided recreational vessel", "Guideline harvest level", and "Harvest" in alphabetical order as follows:

§ 300.61 Definitions.

* * * * *

Guided recreational vessel means a vessel and operator used for hire by a recreational angler for harvesting halibut.

Guideline harvest level means a level of allowable fish harvest by the recreational halibut guided recreational vessel fishery.

Harvest means the catching and retaining of fish.

* * * * *

3. In § 300.63, paragraph (f) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(f) *Guideline harvest levels.* (1) The annual guideline harvest levels for areas 2C and 3A are as follows.

(i) *Area 2C.* (A) The guideline harvest level for area 2C will be 1,432,000 lb (649.5 mt).

(B) In years of low abundance of halibut stocks in area 2C, as determined by the Commission, the guideline harvest level will be reduced:

(1) By 15 percent when the halibut stock abundance falls at least 15 percent below its 1999-2000 average; and

(2) After the initial 15 percent reduction, by further 10 percent increments as stock abundance declines by additional 10 percent increments below its 1999-2000 average.

(C) *Area 2C harvest reduction measures.* The appropriate annual harvest reduction measures for area 2C, identified in the table below, will take

effect pursuant to paragraph (f)(3) of this section when the Administrator, Alaska Region, NMFS, determines that harvests from the previous year exceeded the GHL for that year by the corresponding percentage.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

Harvests will be restricted in following years by implementation of a restriction that:

- (1) Less than 10 percent
 - (2) 10-15 percent
 - (3) 16-20 percent
 - (4) 1-30 percent
 - (5) 31-40 percent
- No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
 - (iii) No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

- (6) 41-50 percent
- (7) More than 50 percent

Harvests will be restricted in following years by implementation of a restriction that:

- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year;
 - (iv) Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.

(2) *Area 3A.* (i) *GHL.* The guideline harvest level for area 3A will be 3,650,000 lb (1,655.6 mt).

(ii) In years of low abundance of halibut stocks in area 3A, as determined by the Commission, the guideline harvest level will be reduced:

(A) By 15 percent when the halibut stock abundance falls at least 15 percent below its 1999-2000 average; and

(B) After the initial 15 percent reduction, by further 10 percent increments as stock abundance declines by additional 10 percent increments below its 1999-2000 average.

(C) *Area 3A harvest reduction measures.* The appropriate annual harvest reduction measures for area 3A, identified in the table below, will take effect pursuant to paragraph (f)(3) of this section when the Administrator, Alaska Region, NMFS, determines that harvests from the previous year exceeded the GHL for that year by the corresponding percentage.

When annual harvests in the halibut guided recreational fishery exceed GHL by:

- (1) Less than 10 percent
- (2) 10-20 percent
- (3) 21-30 percent
- (4) 31-40 percent
- (5) 41-50 percent

Harvests will be restricted in following years by implementation of a restriction that:

- No guided recreational vessel may complete more than one fishing trip in a single 24-hour period.
 - (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than seven halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than six halibut harvested on a guided recreational vessel during the calendar year.
- (i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period;
 - (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut;
 - (iii) No person may retain more than five halibut harvested on a guided recreational vessel during the calendar year.

<p>When annual harvests in the halibut guided recreational fishery exceed GHl by:</p>	<p>Harvests will be restricted in following years by implementation of a restriction that:</p>
<p>(6) More than 50 percent</p>	<p>(i) No guided recreational vessel may complete more than one fishing trip in a single 24-hour period; (ii) No operator or crew-member aboard a guided recreational vessel may retain halibut; (iii) No person may retain more than four halibut harvested on a guided recreational vessel during the calendar year; (iv) Between the dates of August 1 and August 31, no person may retain more than 1 halibut per day harvested aboard a guided recreational vessel.</p>

(3) *Implementation.* (i) As soon as practicable after receiving data on annual harvests in the halibut guided recreational vessel fishery, the Administrator, Alaska Region, NMFS, will publish a notification in the **Federal Register** announcing the harvest reduction measures (if any) to be imposed for the succeeding year, pursuant to paragraphs (f)(1)(i)(C) and (f)(2)(ii)(C) of this section.

(ii) At the conclusion of a guided recreational halibut fishing season during which harvest reduction measures have been in effect, the North Pacific Fishery Management Council will review such measures to evaluate their efficacy in preventing further excess harvests and will recommend that NMFS adjust those measures as necessary to ensure that the following season's harvest levels do not exceed the GHl.

4. In § 300.65, paragraph (c) is added to read as follows.

§ 300.65 Prohibitions.
 * * * * *

(c) Any harvest reduction measure issued under § 300.63(f).
 [FR Doc. 02-2005 Filed 1-25-02; 8:45 am]
BILLING CODE 3510-22-S

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01-034-1]

RIN 0579-AB30

Draft Action Plan for the Noxious Weeds Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are requesting comments on a draft document titled "Draft Action Plan for the Noxious Weeds Program" that we have developed. The draft document recommends specific changes to the noxious weeds regulatory program, including changes to the noxious weeds regulations. Because these recommendations may form the basis for future rulemaking, we are requesting public comments on the draft document so that we may consider any relevant public input before taking further action.

DATES: We invite you to comment on the draft document. We will consider all comments that we receive by March 29, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01-034-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 01-034-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

You may request a copy of the "Draft Action Plan for the Noxious Weeds Program" by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The draft action plan is also available in our reading room or on the Internet through APHIS' Noxious Weeds Home Page at <http://www.aphis.usda.gov:80/ppq/weeds/weedhome.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1237; (301) 734-5225.

SUPPLEMENTARY INFORMATION: The Plant Protection Act (7 U.S.C. 7701-7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation into the United States, and the interstate movement within the United States, of any plants and plant products to prevent the introduction into and dissemination in the United States of noxious weeds. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360 (referred to below as the regulations), which prohibit or restrict the importation and interstate movement of noxious weeds.

On March 20, 2000, we published in the **Federal Register** (65 FR 14927-14931, Docket No. 98-064-1) an advance notice of proposed rulemaking (ANPR) to gain information on ways in which we can increase the effectiveness of our noxious weeds regulatory program and regulations. We solicited comments on the ANPR for 90 days, ending June 19, 2000. By that date, we received 272 comments. They were from State departments of agriculture, representatives of the seed and nursery stock industries, and other interested persons. The commenters provided suggestions on weed categories and risk assessment and permitting issues, and offered recommendations for prioritizing funding resources for

existing and future noxious weeds programs. The commenters most frequently recommended that the following areas be priorities for our noxious weeds program: Exclusion, prevention, survey and early detection, and eradication of introduced weeds of limited distribution. The commenters also supported, but mentioned less frequently, risk assessment, public education, and cooperative integrated management, including biological control.

Immediately following the close of the comment period for our March 2, 2000, ANPR, the Plant Protection Act was signed into law. The Plant Protection Act repealed portions of the Federal Noxious Weed Act (7 U.S.C. 2801 [except 2801 note]-2813) and now provides us greater authority to regulate the importation and interstate movement of noxious weeds. The Plant Protection Act and its effect on our noxious weeds program are discussed in greater detail in the draft action plan. Many of the comments we received on the ANPR are relevant to the development of regulations under our new authority.

Based on those comments, we developed the draft document titled "Draft Action Plan for the Noxious Weeds Program." The draft document presents a draft plan for addressing the commenters' areas of concern and reflects our current thinking on the changes necessary to improve the design and conduct of the noxious weeds program. However, the draft document does not commit APHIS to making any changes to the noxious weeds regulations.

We are seeking public comment on the draft action plan. Public comments will help us decide whether the plan outlined in the draft document is needed and would be effective. We ask that comments on the draft action plan also suggest alternative approaches to updating our noxious weeds program, if appropriate. If, after we consider public comments on the draft document, we decide to propose changes to the noxious weeds regulations, we will publish a proposed rule in the **Federal Register**.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 7701-7772.

Done in Washington, DC, this 23rd day of January 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02-2018 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, February 21, 2002. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

- (1) Welcome, Introductions, Agenda
- (2) User Data
- (3) Public Survey for Planning
- (4) Area Planning—Public Participation Models
- (5) Trust Fund Financial Review
- (6) Discussion of Public Comments Received
- (7) FS Community Efforts

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by February 13, 2002, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on Thursday, February 21, 2002, 8:30 a.m. to 3 p.m., CST.

ADDRESSES: The meeting will be held at the Kenlake State Resort Park and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270-924-2002.

SUPPLEMENTARY INFORMATION: None.

Dated: January 22, 2002.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 02-1976 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[01-04-C]

Opportunity to Comment on the Applicants for the Central Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area assigned to Central Iowa Grain Inspection Service, Inc.

DATES: Comments must be postmarked, or electronically date stamped by February 27, 2002.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202-690-2755, attention: Janet M. Hart. Electronic mail users may send comments to: janhart@gipsadc.usda.gov. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202-720-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 4, 2001, **Federal Register** (66 FR 63015), GIPSA asked persons interested in providing official services in the Central Iowa area to submit an application for designation by January 2, 2002. There were two applicants: Central Iowa Grain Inspection Service, Inc., and Kevin D. Bredthauer and Sandra M. Bredthauer, Des Moines, Iowa, proposing to do business as Central Iowa Grain Inspection Corporation. Central Iowa Grain Inspection Service, Inc., and Central Iowa Grain Inspection Corporation both applied for designation to provide official services in the entire area currently assigned to

Central Iowa Grain Inspection Service, Inc.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above addresses. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 14, 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02-2019 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF COMMERCE

[I.D. 012302A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Marine Sport Fishing Economics Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 1,048.

Number of Respondents: 3,740.

Average Hours Per Response: 20 minutes to respond to a mail survey; and 5 minutes to respond to a follow-up phone survey.

Needs and Uses: The survey data is necessary to conduct required economic analyses of marine sport fisheries off Alaska. This data is currently not available for many areas and fisheries in Alaska. The survey data will be used to estimate the economic value of fishing to anglers, and how catch rates and fishery regulations affect that value. The respondents will be drawn from a random sample of U.S. residents who purchased an Alaska State sport fishing license in 2001. Follow-up calls will be

made to people not responding to a mail survey.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-2000 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

[I.D. 012302C]

**Submission for OMB Review;
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Reporting Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0349.

Type of Request: Regular submission.

Burden Hours: 850.

Number of Respondents: 550.

Average Hours Per Response: 5 minutes per day for a logbook when fishing; and 1 minute per negative report.

Needs and Uses: Vessels licensed under the High Sea Fishing Compliance Act are required to report their catch and effort when fishing on the high seas. Monthly negative reports are required if not fishing. These logbooks are not required if the vessel is already reporting catches and effort under other

NOAA regulations. The information is needed for fishery management and to provide data to international organizations.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-2002 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Census Bureau

Current Retail Sales and Inventory Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instruments(s) and instructions should be directed to Nancy Piesto, U.S. Census Bureau, Room 2654-FOB 3, Washington, DC 20233-6500, (301) 457-2708.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Current Retail Sales and Inventory Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Current Retail Sales and Inventory Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

As of April 2001 (June data month), we started publishing retail sales and inventory estimates on the North American Industry Classification System (NAICS). Prior to that period, estimates were published on the Standard Industrial Classification (SIC) basis. As a result of NAICS, we will continue to collect monthly sales on food services and publish a retail trade and food services total in addition to a retail trade total. NAICS provides a better way to classify individual businesses, and is widely adopted throughout both the public and private sectors. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico in order to produce comparable data between neighboring countries.

In 2000, we redesigned our current retail forms to incorporate a new series of form numbers, and to include the e-commerce screening or data request as a separate item. The content of the forms did not change; therefore there was no change in reporting burden.

Listed below are the new series of retail form numbers, old form numbers, and the description:

New Series	Old Series	Description
SM-44(00)S	B-111(97)S	Non Department Store/Sales Only/WO E-Commerce.
SM-44(00)SE	B-111(97)S	Non Department Store/Sales Only W E-Commerce.
SM-44(00)SS	B-111(97)S	Non Department Store/Sales Only/Screeener.
SM-44(00)B	B-111(97)B	Non Department Store/Sales and Inventory/WO E-Comm.
SM-44(00)BE	B-111(97)B	Non Department Store/Sales and Inventory/W E-Comm.
SM-44(00)BS	B-111(97)B	Non Department Store/Sales and Inventory/Screeener.
SM-44(00)L	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/WO E-Comm.
SM-44(00)LE	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/W E-Comm.
SM-44(00)LS	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/Screeener.
SM-45(00)S	B-101(97)S	Department Store/Sales Only/WO E-Commerce.
SM-45(00)SE	B-101(97)S	Department Store/Sales Only/W E-Commerce.
SM-45(00)SS	B-101(97)S	Department Store/Sales Only/Screeener.
SM-45(00)B	B-101(97)B	Department Store/Sales and Inventory/WO E-Commerce.
SM-45(00)BE	B-101(97)B	Department Store/Sales and Inventory/W E-Commerce.
SM-45(00)BS	B-101(97)B	Department Store/Sales and Inventory/Screeener.
SM-72(00)S	B-111(97)S	Food Services/Sales Only/WO E-Commerce.
SM-20(00)I	B-113(97)I	Non Department and Department Store/Inventory Only.
SM-20(00)L	B-113(97)L	Non Department and Department Store/Inventory Only/LIFO.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607-0717.

Form Number: SM-44(00)S, SM-44(00)SE, SM-44(00)SS, SM-44(00)B, SM-44(00)BE, SM-44(00)BS, SM-44(00)L, SM-44(00)LE, SM-44(00)LS, SM-45(00)S, SM-45(00)SE, SM-45(00)SS, SM-45(00)B, SM-45(00)BE, SM-45(00)BS, SM-72(00)S, SM-20(00)I, and SM-20(00)L.

Type of Review: Regular Submission.

Affected Public: Retail and Food Services firms in the United States.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 7.8 minutes.

Estimated Total Annual Burden Hours: 16,000.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2002 is estimated to be \$306,560 based on the median hourly salary of \$19.16 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics 1999 National Occupational Employment and Wage Estimates, \$19.16 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors)

http://www.bls.gov/oes/1999/oes_13Bu.htm

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on:(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimates of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 22, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.

[FR Doc. 02-2049 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-832, A-122-840, A-428-832, A-560-815, A-201-830, A-841-805, A-274-804, A-823-812]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle (Brazil, Canada, Mexico, and Trinidad and Tobago), Robert James (Germany), Steve Bezirgianian (Indonesia), Dana Mermelstein

(Moldova), and James Doyle (Ukraine) at (202) 482-0650, (202) 482-0649, (202) 482-1131, (202) 482-1391, and (202) 482-0159, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

The deadline for issuing the preliminary determinations in these investigations is now March 13, 2002.

On January 17, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, petitioners), requested a 30-day postponement of the preliminary determinations in these investigations, in accordance with section 351.205(b)(2) of the Department's regulations, to permit the Department to fully analyze and consider the information and argument presented by the parties to these investigations, and to permit issuance and receipt of supplemental questionnaires and responses by the Department in this preliminary phase of these proceedings. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing these determinations by 30 days (*i.e.*, until March 13, 2002).

Dated: January 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-2034 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-827

Certain Cased Pencils from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Rescission of Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY:

The Department of Commerce (the Department) is preliminarily rescinding the antidumping duty new shipper review requested by Wuxi Andi Civilization PE Gift Give Away Co., Ltd. (Wuxi or respondent), the exporter, and Safety Touch & Javithon Inc., the importer, of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The period of the requested review is December 1, 2000 through May 31, 2001.

The Department invites interested parties to comment on the preliminary results.

DATES: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Paul Stoltz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1009 and (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On December 28, 1994, the Department published in the Federal Register (59 FR 66909) the antidumping duty order on certain cased pencils from the People's Republic of China. On May 31, 2001, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, the Department received a timely request from Wuxi to conduct a new shipper review of that order.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) a statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; (iii) in an antidumping proceeding involving imports from a non-market economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government; and (iv) documentation establishing: (a) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Wuxi's May 31, 2001 request for review included certifications from both Wuxi and Shanghai Anli Stationary Sporting Goods Co. Ltd. (Anfong), the company that supplied Wuxi with semi-finished pencils. The certifications stated that neither company exported the subject merchandise to the United States during the POI nor is affiliated with any company which did so. In addition, pursuant to 19 CFR 351.214(b)(2)(iii)(B), Wuxi's request certified that the export activities of both companies are not controlled by the central government of the PRC. Wuxi's new shipper review request also included information regarding the date on which the company's subject merchandise was first entered for consumption in the United States, the volume of the shipment, and the date of the first sale to an unaffiliated customer in the United States.

On July 24, 2001, the Department initiated a new shipper review of Wuxi covering the period December 1, 2000, through May 31, 2001. See Certain Cased Pencils From the People's Republic of China: Initiation of Antidumping New Shipper Review, 66 FR 39732 (August 1, 2001) (Initiation Notice). On August 7, 2001, the Department issued its antidumping questionnaire to Wuxi. After granting Wuxi three extensions of time to respond to section A of the antidumping questionnaire, the Department received Wuxi's timely section A response on September 17, 2001. The Department also granted Wuxi an extension of time to respond to sections C and D of the antidumping questionnaire until September 28, 2001. However, Wuxi failed to respond to these sections of the Department's questionnaire.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Rescission of the Review

In our Initiation Notice we stated the following:

If the respondent provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of certain cased pencils, this review will proceed. If, on the other hand, Wuxi does not meet its burden to demonstrate its eligibility for a separate rate, then Wuxi will be deemed to be affiliated with other companies that exported during the POI. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

See Initiation Notice (66 FR 39732).

In its September 17, 2001 response to section A of the Department's

questionnaire, Wuxi stated that it is not under the control of the PRC government. After submitting its section A response, Wuxi failed to submit any other information to the Department including its response to sections C and D of the antidumping questionnaire. Because Wuxi terminated its participation in this review, we have preliminarily determined that Wuxi is not entitled to a separate rate. Thus, we are preliminarily rescinding this new shipper review.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 21 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs,

within 90 days from the date of this preliminary result, unless the time limit is extended.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

January 18, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-2033 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012302B]

Proposed Information Collection; Comment Request; Seafood Inspection and Certification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rita Creitz, F/SF6, Room 15341, 1315 East-West Highway, Silver Spring, MD 20910-3282 (phone 301-713-2355, ext. 155).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970.

The regulations for the Program are contained in 50 CFR Part 260. The program offers inspection grading and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. In addition, the NMFS inspection program is the only Federal entity that establishes quality grade standards for seafood marketed in the United States. Qualified participants are permitted to use the program's official quality grade marks on their products to facilitate trade of fishery products.

Participants in the inspection program are requested to submit specific information pertaining to the type of inspection service requested [Sec. 260.15]. In all cases, applicants provide the program information regarding the type of products to be inspected, the quantity, and location of the product. There are also application requirements if there is an appeal of previous inspection results [Sec. 260.36]. Participants requesting regular inspection services on a contractual basis also submit a contract [Sec. 260.96]. Participants interested in using official grade marks are required to submit product labels and specifications for review and approval to ensure compliance with mandatory labeling regulations established by the U.S. Food and Drug Administration as well as proper use of the Program's marks [Sec. 260.97 (c)(12) and (13)].

Current regulations state requirements for approval of drawings and specifications prior to approval of facilities [Sec. 260.96 (b) and (c)]. There are no respondents under this section. The Program will amend this part of the regulations in a future action.

In July 1992, NMFS announced new inspection services, which were fully based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP). The information collection requirements fall under Sec. 260.15 of the regulations. These guidelines required that a facility's quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. HACCP requires continuing monitoring and recordkeeping by the facility's personnel.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based program is not a self-certification program. It relies on unannounced system audits by NMFS. The frequency of audits is determined

by the ability of the firm to monitor its operation. By means of these audits, NMFS reviews the records produced through the program participant's self-monitoring. The audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential consume risk associated with the product and/or the firm's history of compliance with the program's criteria.

The information collected is used to determine a participant's compliance with the program. The reported information, a HACCP plan, is needed only once. Other information is collected and kept by the participant as part of its routine monitoring activities. NMFS audits the participant's records on unannounced frequencies to further determine compliance.

II. Method of Collection

Information will be obtained via telephone, fax, hard-copy submission, or audit conducted by NMFS personnel.

III. Data

OMB Number: 0648-0266.

Form Number: NOAA Forms 89-800, 89-814, and 89-819.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,082.

Estimated Time Per Response: 5 minutes for an application of inspection services; 5 minutes for an application for an appeal; 5 minutes for submitting a contract; 30 minutes to submit a label and specification; 105 hours for a Hazard Analysis Critical Control Point (HACCP) plan; and 80 hours for HACCP monitoring and recordkeeping.

Estimated Total Annual Burden Hours: 13,065.

Estimated Total Annual Cost to Public: \$3,579.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2001 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012202B]

Proposed Information Collection; Comment Request; Highly Migratory Species Vessel Marking and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers at the National Marine Fisheries Service (NMFS) Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301-713-2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under regulations at 50 CFR 635.6 fishing vessels permitted for Atlantic Highly Migratory Species must display their official vessel numbers on their vessels to assist law enforcement in monitoring fishing and other activities. Flotation devices attached to certain fishing gear must also be marked with the vessel's number to identify catch that is buoyed. This requirement is also necessary for law enforcement purposes.

II. Method of Collection

There is no form under this requirement. Official vessel numbers or permit numbers issued to vessel operators are marked on the vessel and on flotation gear.

III. Data

OMB Number: 0648-0373.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 8,051.

Estimated Time Per Response: 45 minutes to mark a vessel, 15 minutes to mark a float.

Estimated Total Annual Burden Hours: 7,176.

Estimated Total Annual Cost to Public: \$161,020.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2003 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 012202A]

Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).**ACTION:** Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301-713-2347.

SUPPLEMENTARY INFORMATION:**I. Abstract**

Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear may be required to install and operate vessel monitoring systems. Automatic position reports would be submitted on an hourly basis whenever the vessel is at sea. The information aids in the enforcement of fishery regulations. Vessel operators may also be required to follow an equipment installation checklist and to then submit it to NOAA. The checklist provides information on the hardware and communications service selected by each vessel. NOAA will use the returned checklists to ensure that position reports are received and to aid NOAA in troubleshooting problems.

II. Method of Collection

Checklists are submitted in paper form. Position reports are automatically sent electronically by the vessel monitoring system units.

III. Data

OMB Number: 0648-0372.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 320.

Estimated Time Per Response: 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.033 seconds per automated position report from the automated equipment; and 5 minutes to complete and return an installation checklist.

Estimated Total Annual Burden Hours: 883.

Estimated Total Annual Cost to Public: \$754,500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2004 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S**COMMODITY FUTURES TRADING COMMISSION****Request of the Kansas City Board of Trade for Approval of Amendments to Its Hard Red Winter Wheat Futures Contract Lowering the Price Discount for Delivery at Hutchinson, KS, Increasing the Price Discount for Delivery of U.S. No. 3 Hard Red Winter Wheat, and Modifying the Maximum Permissible Amount of Wheat of Other Classes Deliverable as U.S. No. 3 Hard Red Winter Wheat****AGENCY:** Commodity Futures Trading Commission.**ACTION:** Notice of availability of terms and conditions of proposed amendments to commodity futures contract.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has requested that the Commission approve amendments to its hard red winter wheat futures contract, pursuant to the provisions of section 5c(c)(2)(B) of the Commodity Exchange Act as amended. The proposed amendments would reduce to 9 from 12 cents per bushel the discount for delivery at Hutchinson, Kansas, increase to 5 from 3 cents per bushel the discount for delivery of U.S. No. 3 hard red winter wheat, and reduce the maximum permissible amount of wheat of other classes deliverable as No. 3 hard red winter wheat. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 12, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418-5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the KCBT hard red winter wheat futures contract amendments.

FOR FURTHER INFORMATION CONTACT: Please contact Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC

(202) 418-5276. Facsimile number:
(202) 418-5527. Electronic mail:
mmurray@cftc.gov.

SUPPLEMENTARY INFORMATION: The KCBT hard red winter wheat futures contract calls for the par delivery of 5,000 bushels of U.S. No. 2 hard red winter wheat in Exchange-licensed warehouses located in Kansas City (in both Missouri and Kansas). The Exchange also permits delivery of U.S. No. 1 and U.S. No. 2 hard red winter wheat as well as delivery at Exchange-licensed warehouses in Hutchinson, Kansas, at specified price differentials.

The Exchange is proposing to reduce the price discount for delivery at Hutchinson, Kansas, to 9 cents from 12 cents per bushel per bushel. The Exchange is also proposing to amend the contract's quality specifications for the delivery of U.S. No. 3 hard red winter wheat by restricting the maximum permissible amount of wheat of other classes included in delivery wheat. Currently, the futures contract provides that deliverable wheat must meet the official standards specified for U.S. No. 3 hard red winter wheat, which sets a maximum limit of 10 percent for wheat of other classes. Finally, the Exchange proposes to increase the price discount for delivery of U.S. No. 3 hard red winter wheat to 5 cents per bushel from 3 cents per bushel.

The Exchange proposes to apply the proposed amendments to existing futures contract months, beginning with the July 2003 contract month, and to all newly listed contract months. In this regard, the Exchange has established a limited period during which holders of Exchange-registered warehouse receipts for U.S. No. 3 hard red winter wheat that does not reflect the proposed 5% maximum tolerance for wheat of other classes may present such receipts to the issuing warehouse for replacement with receipts for wheat that reflects the proposed 5% maximum tolerance. Specifically, the Exchange proposes that the period for exchanging such receipts will extend from the first business day prior to the first notice day through the third business day following notice day of the July 2003 contract month. As part of the implementation plan, the Exchange proposes to establish a maximum fee of 5 cents per bushel, which warehouse receipt issuers may charge receipt holders for the replacement receipts.

Copies of the amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the

terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the KCBT in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made of the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the KCBT should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on January 22, 2002.

Richard A. Shilts,

Acting Director.

[FR Doc. 02-1946 Filed 1-25-02; 8:45 am]

BILLING CODE 6351-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: February 5, 2002, 9:30 a.m.-12:30 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue NW., 8th Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- I. Chair's Opening Remarks
- II. Consideration of Prior Meeting's Minutes
- III. Status Report by Chief Executive Officer
- IV. Committee Reports
 - A. Executive Committee
 - B. Management, Budget, and Governance Committee
 - Inspector General Report
 - Audit Update
 - C. Planning and Evaluation Committee
- Department of Research and Policy

- Development
- Update on the Points of Light Foundation Initiative
- Serve Study Initiative
- D. Communications Committee
- Reauthorization of National Service Legislation
- V. National Service Reports and Discussions
 - A. Teaching Programs
 - Notre Dame's ACE Program
 - Teach for America
 - B. Learning In Deed Report
 - C. Survey of State Service Commissions
- VI. Discussion of President's Agenda
- VII. Future Board Meeting Dates
- VIII. Public Comment
- IX. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER

INFORMATION: Rhonda Taylor, Deputy Director of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606-5000 ext. 282. Fax (202) 565-2794. TDD: (202) 565-2799. E-mail: Rtaylor@cns.gov.

Dated: January 24, 2002.

Frank R. Trinity,

General Counsel, Corporation for National and Community Service.

[FR Doc. 02-2116 Filed 1-24-02; 12:44 pm]

BILLING CODE 6050-05-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Ninth Annual National Security Education Program Institutional Grants Competition

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The National Security Education Program (NSEP) announces the opening of its Ninth Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: The 2002 NSEP Grants Competition begins on Tuesday, February 5, 2002. Preliminary Proposals are due Monday, April 8, 2002.

ADDRESSES: Grants Solicitations (application, guidelines, and forms) will be available and may be downloaded from the NSEP home page beginning Tuesday, February 5, 2002. This is the address: <http://www.ndu.edu/nsep>. As an alternate method, you may obtain a copy of the solicitation package by

writing to: NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209-2248.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin J. Gormley, Grants Officer, National Security Education Program, Rosslyn P.O. Box 20010, 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209-2248; (703) 696-1991. This is his electronic mail address: gormleyk@ndu.edu.

Dated: January 18, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-1950 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Issuance of Record of Decision Regarding Initial F-22 Operational Wing of F-22 Raptors at Langley Air Force Base, VA

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Air Force issued a Record of Decision (ROD) on 15 Jan 2002. The ROD reflected the Air Force decision to base the Initial F-22 Operational Wing of F-22 Raptors at Langley Air Force Base, Virginia. The ROD was issued in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Regulations (40 CFR 1505.2). The ROD is based on information, analysis, and public comment contained in the Final Environmental Impact Statement for the Initial F-22 Operational Wing Beddown (Volume 66, **Federal Register**, Number 218: November 9, 2001 (Page 56673-56674)).

FOR FURTHER INFORMATION CONTACT: Brenda Cook (757) 764-5007.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02-1977 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 27, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601-4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 18, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF DP G

SYSTEM NAME:

Military Equal Opportunity and Treatment (October 18, 1999, 64 FR 56193).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and on computer and computer output products.'

RETRIEVABILITY:

Delete entry and replace with "Retrieved by complainant's name, Social Security Number, or case number."

* * * * *

F036 AF DP G

SYSTEM NAME:

Military Equal Opportunity and Treatment.

SYSTEM LOCATION:

Headquarters United States Air Force, headquarters of major commands, Numbered Air Forces, field operating agencies, direct reporting units; headquarters of combatant commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel (and family members), to include the National guard and Reserve Forces, and civilian employees who are involved in complaints or investigations relating to the Military Equal Opportunity and Treatment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incidents or complaint data, endorsement and recommendations, formal and informal complaints of unlawful discrimination or sexual harassment, and clarifications/investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013; Pub. L. 105-85, section 591; AFD 36-27, "Social Actions"; Air Force Instruction 36-2706, Military Equal Opportunity and Treatment Program; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate and resolve complaints of unlawful discrimination and sexual harassment under the Military Equal Opportunity and Treatment Program, and to maintain records created as a result of formal initial filing of allegations, and appeal actions of unlawful discrimination because of race, color, religion, sex, or national origin.

To report information as required by the FY 98 National Defense Authorization Act, and used as a data source for descriptive statistics.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(c) as follows:

In cases of confirmed sexual harassment, identification of complainant and offender will be

provided to congressional committees as required by the FY 98 National Defense Authorization Act.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on computer and computer output products.

RETRIEVABILITY:

Retrieved by complainant's name, Social Security Number, or case number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked desk drawers or locked offices. Records are accessed by personnel responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Human Resources Division, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330-1040.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Human Resources Division, 1040 Air Force Pentagon, Washington, DC 20330-1040, or social actions (Military Equal Opportunity) offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name and proof of identity to determine if the system contains a record about him or her.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Human Resources Division, 1040 Air Force Pentagon, Washington, DC 20330-1040, or social actions (Military Equal Opportunity) offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name and proof of identity such as military identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, investigative reports, witness statements, Air Force records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 02-1952 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a new category of individuals covered, i.e., qualified DoD civilians.

DATES: This proposed action will be effective without further notice on February 27, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601-4043 or DSN 329-4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, as submitted on January 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 17, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual) (April 14, 1999, 64 FR 18406).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Air Force Automated Education Management System (AFAEMS)".

* * * * *

CATEGORIES OF INDIVIDUALS COVERED:

Delete entry and replace with "All officers, airmen and qualified DoD Civilians who participate in the Education Services Program and the Tuition Assistance Program."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Pertinent education data maintained in an educational file folder may be forms for Air Force, Active Duty Service Commitment; Notice of Student Withdrawal/Non-completion; Individual Record-Education Services Program; Academic Education Data; Authority for Tuition Assistance—Education Services Program; Cash Collection for Voucher; Application for the Evaluation of Educational

Experiences During Military Service; Pay Adjustment Authorization; Department of Veterans Affairs Application for Educational Assistance; Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; and Educational test results from testing agencies."

* * * * *

STORAGE:

Delete entry and replace with "Student computer records are maintained on and, as necessary, reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings."

SAFEGUARDS:

Delete last three sentences.

RETENTION AND DISPOSAL:

Delete entry and replace with "Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting."

RECORDS ARE RETAINED AND DISPOSED OF IN THE FOLLOWING WAYS:

(1) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of noncompliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(2) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its "expired year" status and applicable fiscal year appropriation has been canceled.

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry "Education, training and personnel information is obtained from approved automated system interfaces."

* * * * *

F036 AF PC U

SYSTEM NAME:

Air Force Automated Education Management System (AFAEMS).

SYSTEM LOCATION:

Headquarters United States Air Force, Directorate of Personnel Force Development, 1040 Air Force Pentagon, Washington, DC 20330-1040;

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4703; and

Headquarters of major commands and field operating agencies; Air Force Base Education Services Flights. Official mailing addresses are published as an appendix to the Air Force's compilation of system(s) of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers, airmen and qualified DoD Civilians who participate in the Education Services Program and the Tuition Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pertinent education data maintained in an educational file folder may be forms for Air Force, Active Duty Service Commitment; Notice of Student Withdrawal/Non-completion; Individual Record-Education Services Program; Academic Education Data; Authority for Tuition Assistance—Education Services Program; Cash Collection for Voucher; Application for the Evaluation of Educational Experiences During Military Service; Pay Adjustment Authorization; Department of Veterans Affairs Application for Educational Assistance; Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; and Educational test results from testing agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36-2306, Operation and Administration of the Air Force Education Services Program and E.O. 9397 (SSN).

PURPOSE(S):

Counseling/Advisement Guide and Educational Registration Record used by Education Services Center staff personnel, Promotion and/or classification boards, and other authorized personnel such as military service schools, civilian schools, and supervisors of military personnel. The principle purpose is to provide a record of education endeavors and progress of Air Force personnel participating in Education Services Programs, to manage

the tuition assistance program and to track enrollments and funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to civilian schools for the purposes of ensuring correct enrollment and billing information.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Student computer records are maintained on and, as necessary, reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or tuition assistance document number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, and in computer storage devices and protected by computer system software.

RETENTION AND DISPOSAL:

Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting.

RECORDS ARE RETAINED AND DISPOSED OF IN THE FOLLOWING WAYS:

(1) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for

tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(2) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its "expired year" status and applicable fiscal year appropriation has been cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voluntary Education Branch, Education Division, Directorate of Personnel Force Development, Headquarters United States Air Force (HQ USAF/DPDE), 1040 Air Force Pentagon, Washington, DC 20330-1040.
Commander, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150-4750.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data gathered from the individual, data gathered from other personnel records, transcripts and/or evaluations from schools and test results from testing agencies. Education, training and personnel information is obtained from approved automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02-1953 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DELEWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, February 6, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include an update on the Comprehensive Plan (CP) and a proposed resolution concerning development of management strategies for implementing the goals and objectives of the CP; a Water Quality Advisory Committee proposal concerning the Delaware Riverkeeper's "Petition To Designate The Lower Delaware River As Special Protection Waters And Other Matters;" a report on the PCB TMDL development effort and proposal to modify the composition of the PCB Expert Panel within the previously approved budget authority; a report on Delaware Estuary Program activities; a proposal to fund a pilot Internet GIS interactive mapping application; a proposed resolution to enter into a contract with the Delaware Riverkeeper Network to provide support for the Little Neshaminy Watershed Study; a proposal to release for public comment the Draft Guidelines for Developing an Integrated Resource Plan Under the Delaware River Basin Commission Southeastern Pennsylvania Ground Water Protected Area Regulations; and a report on developments pursuant to Resolution No. 2001-32, declaring a drought emergency for the purpose of conservation of regional reservoir storage.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, a resolution adopting the 2002 Water Resources Program.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Philadelphia Suburban Water Company D-98-11 CP.* A project to withdraw up to 4.0 million gallons per day (mgd) from the East Branch Brandywine Creek for public water supply when streamflow exceeds 25 percent of the average daily flow and

is also greater than 90 mgd for the Brandywine River at Chadds Ford. The applicant proposes to serve portions of Wallace, East Brandywine and West Brandywine Townships, all in Chester County, Pennsylvania. The intake will be situated on the east bank of the East Branch Brandywine Creek just south of Marshall Road in Wallace Township. On a yearly use basis, withdrawal is expected to average approximately 0.76 mgd. When available, the raw water will be conveyed for storage in a nearby abandoned quarry (known as Cornog Quarry) with an estimated storage capacity of approximately 100 mg. Withdrawals ranging from 0.5 mgd to 1.0 mgd will then be made from the quarry, treated by a proposed new filter plant, and distributed to the project service area.

2. *Kiamesha Artesian Spring Water Company D-90-68 CP RENEWAL.* A ground water withdrawal renewal project to supply up to 9.8 mg/30 days of water to the applicant's public water distribution system from the existing Filtration Plant Well and Fraser Road Well in the Upper Devonian aquifer. No increase in allocation is proposed. The project is located in the Town of Thompson, Sullivan County, New York.

3. *Metachem Products LLC D-90-96 RENEWAL.* A ground water remediation withdrawal project to continue withdrawal of 10.8 mg/30 days of water from existing Wells Nos. RW-1, 2, 3, 4 and 5 in the Columbia Formation in the Red Lion Creek watershed. The project is located near the north side of Governor Lea Road approximately 1.4 miles north of the Routes 98-72 intersection near Delaware City, New Castle County, Delaware.

4. *Washington Township Municipal Utilities Authority D-98-6 CP.* A ground water withdrawal project to supply up to 248.2 mg/30 days of water to the applicant's distribution system and to permit new Wells Nos. 19 and 20. No increase in allocation is proposed. The project is located in Washington Township, Gloucester County, New Jersey.

5. *MBNA America D-2001-7.* A ground water withdrawal project to supply up to 412 mg/30 days from new Wells Nos. 10 and 14 to supplement supply from its White Clay Creek intake for irrigation of the applicant's Deerfield Golf & Tennis Club and to retain the existing total combined withdrawal from all sources to 6.75 mg/30 days. The project wells are located in the Wissahickon Formation in New Castle County, Delaware.

6. *Muhlenberg Township Authority D-2001-30 CP.* A ground water withdrawal project to supply up to 10.8 mg/30 days

of water to the applicant's public water supply system from new Well No. 15 in the Leithsville Formation and to increase the existing withdrawal from all wells to 168.5 mg/30 days. The project is located in the Willow Creek watershed in Ontelaunee Township, Berks County, Pennsylvania.

7. *Conectiv Mid-Merit, Inc. D-2001-31*. An electric power project which entails an average withdrawal of 3.5 mgd of water from the Lehigh River via a proposed new intake for cooling tower make-up. An average of 1.82 mgd of cooling tower blow-down will be discharged back to the Lehigh River via an outfall to be constructed downstream from the project intake. Two 550 MW natural gas-fired power modules will be constructed on a brownfield site in the southern part of the City of Bethlehem, Northampton County, Pennsylvania on land owned by the Bethlehem Steel Corp. The City of Bethlehem will supply an average of 0.31 mgd of potable water to the applicant for sanitary and process water requirements, of which approximately 0.02 mgd will be returned to Bethlehem's sewage treatment plant for treatment. The overall average water demand will be 3.81 mgd, and the overall consumptive use is projected at 52 percent or about 1.97 mgd. The power station will be designed to utilize low-sulfur distillate fuel as a secondary fuel supply and to provide electric power to the PJM grid.

8. *City of Dover D-2001-43 CP*. A ground water withdrawal project to supply up to 19.44 and 17.28 mg/30 days of water to the applicant's public water supply system from replacement Well No. 13 and from new Well No. 15, respectively, and retain the existing withdrawal from all wells at 438.24 mg/30 days. Both Well No. 13 and Well No. 15 are in the Cheswold Aquifer. The project is located in the St. Jones River watershed in Kent County, Delaware.

9. *Lejeune Properties, Inc. D-2001-45*. A project to construct a 0.086 mgd sewage treatment plant (STP) to serve the River Crest Residential Golf Course Community in Upper Providence Township, Montgomery County, Pennsylvania. The proposed STP is located on the applicant's 283-acre tract off Black Rock Road and State Route 29, in the Schuylkill River watershed. Following tertiary level, effluent will be used to spray irrigate the on-site golf course, but during the winter, STP effluent will be discharged to an unnamed tributary of the Schuylkill River.

10. *Little Washington Wastewater Company D-2001-46*. A project to construct a 0.085 mgd STP to serve the Somerset Development in Newtown

Township, Delaware County, Pennsylvania. The project is located along the western side of Newtown Road about a quarter-mile north of its intersection with Gradyville Road. The project is designed to provide tertiary treatment via an anoxic/oxic process and features chemical addition and effluent filtration. The proposed STP will discharge to an unnamed tributary of Hunter Run in the Crum Creek watershed.

11. *Municipal Authority of the Township of Branch D-2001-47 CP*. A project to construct a 0.45 mgd STP to serve the predominantly residential service area of Branch and Cass Townships, both in Schuylkill County, Pennsylvania. The proposed plant is designed to provide advanced secondary treatment and will discharge to the West Branch Schuylkill River. The project is located just south of U.S. Route 209 off Railroad Avenue in Branch Township, Schuylkill County, Pennsylvania.

12. *Superior Water Company D-2001-48 CP*. A ground water withdrawal project to supply up to 4.5 mg/30 days of water to the applicant's public water supply system from new Well No. 1 in the Hammer Creek Formation. The project is located in the Schuylkill River watershed in North Coventry Township, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area.

13. *Citizens Utilities Water Company of Pennsylvania D-2001-49 CP*. An application for approval of a ground water withdrawal project to supply up to 5.18 mg/30 days of water to the applicant's public water supply system from new Well No. DG-12A in the Brunswick Formation and to increase the existing withdrawal from all wells to 29.14 mg/30 days. The project is located in the Magneton Creek watershed in Amity Township, Berks County, Pennsylvania.

14. *Village of Beach Lake D-2001-52*. A project to construct a 0.09 mgd STP to serve residents of Beach Lake Village in Berlin Township, Wayne County, Pennsylvania. The existing subsurface grainfield system will be replaced by an intermittent cycle extended aeration system, which is designed to provide advanced secondary level of treatment prior to discharge to Beach Lake Creek in the Masthope Creek Watershed. The proposed plant will be constructed about one mile east of Beach Lake, just south of State Route 652 and is located in the drainage area to the DRBC Special Protection Waters.

15. *Mountainside Farms, Inc. D-2001-53*. A project to upgrade and expand a 0.036 mgd industrial waste treatment

plant (IWTP) to process 0.051 mgd from the Mountainside Farms, Inc. milk processing facility located about one quarter mile off State Route 30, in the Town of Roxbury, Delaware County, New York. The project is located in the drainage area to the DRBC Special Protection Waters. Following tertiary treatment, the IWTP effluent will continue to percolate to ground water through six exfiltration ponds in the East Branch Delaware River Watershed.

16. *The Ace Center D-2001-57*. A ground water withdrawal project to supply up to 12.7 mg/30 days of water to the applicant's golf course irrigation system from new Wells Nos. 1 and 4 in the Wissahickon Formation. The project is located in the Schuylkill River watershed in Whitemarsh Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

In addition to the public hearing items, the Commission will address the following at its 1:00 p.m. business meeting: Minutes of the December 18, 2001 business meeting; announcements; a report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; action on an untimely request for hearing by Mr. Gary Eckenrode concerning Docket D-2001-13 CP of the Northampton Bucks County Municipal Authority; a directed appearance by Delaware Estuary point source dischargers Motiva Enterprises LLC, Metachem Products, LLC and AFG Industries, Inc. to report on their progress toward submitting overdue PCB monitoring data required by the Commission; a resolution concerning the development of management strategies for implementing the goals and objectives of the Comprehensive Plan; a resolution to fund a pilot Internet GIS interactive mapping application; a resolution to enter into a contract with the Delaware Riverkeeper Network to provide support for the Little Neshaminy Watershed Study; a resolution for the minutes expanding the Watershed Advisory Council to include as many as 40 members; and public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609-883-9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609-883-9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who

wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609-883-9500 ext. 203 or through the New Jersey Relay Service at 1-800-852-7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: January 22, 2002.

Robert Tudor,

Commission Secretary and, Assistant General Counsel.

[FR Doc. 02-1973 Filed 1-25-02; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting, and partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202-357-6938 or at Munira.Mwalimu@ed.gov not later than February 8, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Date: March 1-March 2, 2002.

Time: March 1—Full Board 8:30 a.m.–10:15 a.m.; Assessment Development Committee 10:15 a.m.–12:15 p.m.; Committee on Standards, Design and Methodology, 10:15 a.m.–12:15 p.m.; Reporting and Dissemination Committee, 10:15 a.m.–12:15 p.m.; Full Board—Closed Meeting, 12:30 p.m.–1:45 p.m.; Open Meeting 1:45 p.m.–4:30p.m.; March 2—Nominations Committee—8 a.m.–8:45 a.m.; Full Board, 9:00 a.m.–12 p.m.

Location: The Ritz Carlton New Orleans, 921 Canal Street, New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite

825, Washington, DC 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2002) (Public Law 103-382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On March 1, 2002 the full Board will convene in open session from 8:30 a.m.–10:15 a.m. The Board will approve the agenda after which Secretary Rod Paige will administer the oath of office to a new Board member and address the Board. Welcome remarks and comments will then be made by Cecil Picard, the Louisiana Superintendent of Education, followed by an update on the NAEP Program by Deputy Commissioner of the National Center for Education Statistics, Gary Phillips. From 10:15 a.m. to 12:15 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in closed session on March 1, 2002 from 12:30 p.m.–1:45 p.m. to receive results of the NAEP 2001 U.S. History Assessment. This meeting must be closed because the Secretary of Education has not officially released results from the NAEP U.S. History Assessment to the public and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552(b)(c) of Title 5 U.S.C.

The full Board will reconvene in open session on March 1, from 1:45 p.m. to 4:30 p.m. to discuss implications of the No Child Left Behind Act of 2002 for NAEP; to hear a final report and take action on recommendations of the Ad Hoc Committee on Confirming Test Results; and to hear a final report and take action on the NAEP Reading Framework. The Board will also receive

a briefing on the 2005 NAEP Economics Framework project, upon which the March 1, 2002 session of the Board meeting will adjourn.

On March 2, 2002, the Nominations Committee will meet from 8 a.m. to 8:45 a.m. The full Board will meet in open session from 9 a.m. to 12 a.m. The Board will receive and view reading results of the Program for International Student Assessment (PISA). The Board will then hear and take action on Committee reports from 9:30 a.m. to 12 p.m., whereupon the meeting will adjourn.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552(b)(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC from 8:30 a.m. to 5 p.m. Eastern Standard Time

Dated: January 23, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02-1985 Filed 1-25-02; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. This notice announces the sixth meeting of FEMAC, an advisory committee authorized under Executive Order 13123—"Greening the Government through Efficient Energy Management."

DATES: Tuesday, February 12, 2002; 9 a.m. to 4:30 p.m.; Wednesday, February 13, 2002; 8:30 a.m. to 12 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Rick Klimkos, Acting Designated Federal

Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586-8287.

SUPPLEMENTARY INFORMATION:

Purpose of meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussions on the following topics:

Tuesday, February 12, 2002 and
Wednesday, February 13, 2002

- FEMAC participation in Energy 2002
- FEMAC Strategic Plan Working Group report
- FEMP FY 2003 budget
- Pending legislation affecting energy management in Federal facilities
- Update on FEMP program activities
- Other energy management issues and topics of interest to committee members
- Public comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Rick Klimkos at (202) 586-8287 or Rick.Klimkos@ee.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E-190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 23, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02-2050 Filed 1-25-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-453-001]

Conectiv Bethlehem, Inc.; Notice of Filing

January 22, 2002.

Take notice that on January 16, 2002, Conectiv Bethlehem, Inc. (CBI) withdraws the Tolling Agreement which it tendered for filing on November 30, 2002 as a service agreement under its market-based tariff which was also filed in this docket on that date.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 28, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1994 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-3017-000 and ER01-3017-001]

Coral Canada US Inc.; Notice of Issuance of Order

January 22, 2002.

Coral Canada US Inc. (Coral Canada) submitted for filing a rate schedule

under which Coral Canada proposed to sell electric capacity and energy at negotiated rates to any purchaser that is not a franchised public utility affiliate. Coral Canada also requested waiver of various Commission regulations. In particular, Coral Canada requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Coral Canada.

On January 15, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Coral Canada should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Coral Canada is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Coral Canada, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Coral Canada's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1992 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER02-388-000]

HC Power Marketing LLC; Notice of Issuance of Order

January 22, 2002.

HC Power Marketing LLC (HC Power Marketing) submitted for filing a proposed tariff that provides for sales of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity. HC Power Marketing also requested waiver of various Commission regulations. In particular, HC Power Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by HC Power Marketing.

On January 17, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by HC Power Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, HC Power Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of HC Power Marketing, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of HC Power Marketing's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 19, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may

also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 02-1993 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EG02-41-000, et al.]

FPL Energy Marcus Hook, L.P., et al.; Electric Rate and Corporate Regulation Filings

January 22, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. FPL Energy Marcus Hook, L.P.

[Docket No. EG02-41-000]

Take notice that on January 17, 2002, FPL Energy Marcus Hook, L.P., with its principal office at 700 Universe Boulevard, Juno Beach, FL 33408, filed with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its application for determination of exempt wholesale generator status.

Comment Date: February 7, 2002.**2. Southern Company Services, Inc.**

[Docket No. ER01-602-013]

Take notice that on January 16, 2002, Southern Company Services, Inc. (SCS) as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company, tendered an additional sheet to Southern Operating Companies First Revised Rate Schedule FERC No. 78 as a supplement to a filing made on November 16, 2001 in order to make such rate schedule Order No. 614 compliant.

Comment Date: February 6, 2002.**3. American Transmission Systems, Incorporated**

[Docket No. ER02-132-001]

Take notice that on January 17, 2002, in compliance with the Commission's December 18, 2001 Order in this docket

(American Transmission Systems, Incorporated, 97 FERC ¶61,273 (2001)), American Transmission Systems, Inc. (ATSI) tendered for filing a revised Generator Interconnection and Operating Agreement between ATSI and Fremont Energy Center, L.L.C. (Fremont). The Agreement has been redesignated First Revised Service Agreement No. 312 under the ATSI Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 1.

Copies of this filing have been served on the Ohio and Pennsylvania utility commissions and Fremont.

Comment Date: February 7, 2002.**4. New York Independent System Operator, Inc.**

[Docket No. ER02-194-001]

Take notice that on January 16, 2002, the New York Independent System Operator, Inc. (NYISO) submitted to the Federal Energy Regulatory Commission (Commission) a compliance filing in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that are included on the Commission's service list in this proceeding and to the electric utility regulatory agencies in New York and Pennsylvania.

Comment Date: February 6, 2002.**5. Mirant Delta, LLC, Mirant Potrero, LLC**

[Docket No. ER02-198-002]

Take notice that on January 17, 2002 Mirant Delta, LLC and Mirant Potrero, LLC (collectively, Mirant) submitted to the Federal Energy Regulatory Commission (Commission) an amended filing in compliance with Commission's directive.

Comment Date: February 7, 2002.**6. Progress Energy Inc. on Behalf of Florida Power Corporation**

[Docket No. ER02-610-001]

Take notice that on January 16, 2002, Florida Power Corporation (FPC) amended the filing originally made in this docket.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.**7. American Transmission Company LLC**

[Docket No. ER02-624-000]

Take notice that on January 16, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Letter of Clarification related to its December 28, 2001 filing of OATT revisions to accommodate retail access in Michigan,

for which ATCLLC requested an effective date of January 1, 2002.

Comment Date: February 6, 2002.

8. Delmarva Power & Light Company

[Docket No. ER02-634-002]

Take notice that on January 17, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised cover sheet and a revised page 1 to the execution date of an executed Interconnection Agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC).

Delmarva respectfully requests that the Interconnection Agreement with the revised cover sheet and revised page 1 become effective on December 31, 2001, the date on which Delmarva originally requested the Interconnection Agreement become effective. Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: February 7, 2002.

9. Illinois Power Company

[Docket No. ER02-775-000]

Take notice that on January 16, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Third Revised Network Integration Transmission Service Agreement entered into by Illinois Power and Dynegy Power Marketing, Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2002, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: February 6, 2002.

10. Entergy Services, Inc.

[Docket No. ER02-776-000]

Take notice that on January 16, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and AIG Energy Trading, Inc.

Comment Date: February 6, 2002.

11. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER02-777-000]

Take notice that on January 16, 2002, Progress Energy Service Company (Progress Energy), on behalf of Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Florida Power & Light Company (FP&L). Service to FP&L will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

Progress Energy is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: February 6, 2002.

12. Tampa Electric Company

[Docket No. ER02-778-000]

Take notice that on January 16, 2002, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on January 8, 2002, and gives notice of its cancellation as of February 1, 2002.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment Date: February 6, 2002.

13. Virginia Electric and Power Company

[Docket No. ER02-779-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Dominion Retail, Inc., designated as Service Agreement No. 349, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Dominion Retail, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

14. Virginia Electric and Power Company

[Docket No. ER02-780-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Pepco Energy Services, Inc., designated as Service Agreement No. 350, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Pepco Energy Services, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

15. Virginia Electric and Power Company

[Docket No. ER02-781-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Dominion Energy Direct Sales, Inc., designated as Service Agreement No. 351, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Dominion Energy Direct Sales, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

16. PacifiCorp

[Docket No. ER02-787-000]

Take notice that on January 16, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of Rate Schedule FERC No. 243 for the Storage Agreement entered on September 5, 1985 between Snohomish Public Utility Department and PacifiCorp.

Copies of this filing were served on the Washington Utilities and

Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: February 6, 2002.

17. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER02-790-000]

Take notice that on January 17, 2002, Progress Energy Service Company, on behalf of Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Tampa Electric Company (Tampa). Service to Tampa will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

CP&L is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: February 7, 2002.

18. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02-791-000]

Take notice that on January 17, 2002, Wolverine Power Supply Cooperative, Inc., submitted for filing four revised Amended and Consolidated Wholesale Power Contracts (Contract) between Wolverine Power Supply Cooperative, Inc. (Wolverine) and: Cherryland Electric Cooperative (Cherryland), HomeWorks Tri-County Electric Cooperative (HomeWorks), Great Lakes Energy Cooperative (Great Lakes), and Presque Isle Electric and Gas Co-op, Inc. (Presque Isle), respectively.

Wolverine requests an effective date of March 15, 2002, or 60 days after this filing, for these Contracts.

Wolverine states that a copy of this filing has been served upon its member cooperatives: Cherryland Electric Cooperative, Great Lakes Energy, Presque Isle Electric & Gas Cooperative, HomeWorks Tri-County Electric Cooperative, Wolverine Power Marketing Cooperative, and the Michigan Public Service Commission.

Comment Date: February 7, 2002.

19. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02-792-000]

Take notice that on January 18, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the

Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into The Detroit Edison Company.

Ameren Energy seeks Commission acceptance of these service agreements effective December 20, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: February 8, 2002.

20. Lyon Rural Electric Cooperative

[Docket No. ER02-793-000]

Take notice that on January 17, 2002, Lyon Rural Electric Cooperative (Lyon) submitted for filing under section 205 of the Federal Power Act a change in rate regarding its Rate Schedule FERC No. 1, the Agreement for Purchase Of Power and Maintenance of System Between Lyon Rural Electric Cooperative and Town of Larchwood, Iowa. The rate change, designated First Revised Rate Schedule FERC No. 1, provides for a change in the components of the existing rate such that the resulting overall rate is increased approximately \$10,000.00 per year over the existing rate. The proposed rate sheets replace existing Rate Schedule FERC No. 1 and all supplements thereto.

Lyon asks the rate change to become effective March 1, 2002.

A copy of Lyon's filing is available during normal business hours at their corporate offices in Rock Rapids, Iowa.

Comment Date: February 7, 2002.

21. Xcel Energy Services Inc.

[Docket No. ER02-794-000]

Take notice that on January 18, 2002, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement between Southwestern and Public Service Company of New Mexico. XES requests that this agreement become effective on January 1, 2002.

Comment Date: February 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1991 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-1263-002, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 18, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Portland General Electric Company

[Docket Nos. ER99-1263-002 ER98-1643-005]

Take notice that on January 15, 2002, Portland General Electric Company (PGE) filed a notice of status change with the Federal Energy Regulatory Commission (Commission) in connection with the pending acquisition of PGE by a newly formed holding company currently identified as Northwest Natural Holding Company.

Copies of the filing were served upon all parties on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Comment Date: February 5, 2002.

2. PSI Energy, Inc.

[Docket No. ER02-591-001]

Take notice that on January 15, 2002, PSI Energy, Inc. (PSI) submitted for filing the Transmission and Local Facilities Agreement between PSI,

Indiana Municipal Power Agency and Wabash Valley Power Association, Inc.

Comment Date: February 5, 2002.

3. American Transmission Company LLC

[Docket No. ER02-772-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Mirant Portage County, LLC.

ATCLLC requests an effective date of January 11, 2002.

Comment Date: February 5, 2002.

4. American Transmission Company LLC

[Docket No. ER02-773-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing an executed Generation-Transmission Interconnection Agreement between ATCLLC and Manitowoc Public Utilities.

ATCLLC requests an effective date of June 25, 2001.

Comment Date: February 5, 2002.

5. American Transmission Company, L.L.C.

[Docket No. ER02-774-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Mirant Neenah, LLC.

ATCLLC requests an effective date of January 14, 2002.

Comment Date: February 5, 2002.

6. Florida Power & Light Company

[Docket No. ER02-782-000]

Take notice that on January 16, 2002, Florida Power & Light Company (FPL) filed, pursuant to Section 205 of the Federal Power Act, an executed Interconnection & Operation Agreement between FPL and CPV Gulfcoast, Ltd.

Comment Date: February 6, 2002.

7. EPCOR Merchant and Capital (US) Inc.

[Docket No. ER02-783-000]

Take notice that on January 15, 2002, EPCOR Merchant and Capital (US) Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 5, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02-784-000]

Take notice that on January 15, 2002, Virginia Electric and Power Company, tendered for filing under the provisions of 205 of the Federal Power Act (FPA) a Wholesale Cost-Based Rate Tariff (Tariff) providing for sales of capacity, energy and resale of transmission rights, together with a pro-forma service agreement under that Tariff. Dominion Virginia Power asks that the proposed Tariff be made effective January 16, 2002, the day after it is filed.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: February 5, 2002.

9. Wisconsin Electric Power Company

[Docket No. ER02-785-000]

Take notice that on January 15, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing the 2001 inputs to the formula rates in Exhibit No. 4 of two Generation-Transmission Must Run Agreements with American Transmission Company, LLC (ATLLLC). The inputs are reflected in an updated Exhibit No. 4.4 for Wisconsin Electric's Oak Creek Power Plant and the Presque Isle Power Plant and Upper Peninsula of Michigan Hydroelectric Plants. By the terms of the Must Run Agreements, the inputs to the formula rate took effect on January 1, 2002.

Wisconsin Electric requests that the updates to Exhibit Nos. 4.4 of the Must Run Agreements be made effective on January 1, 2002.

Comment Date: February 5, 2002.

10. AmerGen Energy Company, LLC

[Docket No. ER02-786-000]

Take notice that on January 15, 2002, AmerGen Energy Company, LLC, tendered for filing a service agreement under its market-based rate wholesale power sales tariff under which it will make sales of energy and capacity to Exelon Generation Company, LLC.

Comment Date: February 5, 2002.

11. Desert Power, L.P.

[Docket No. ER02-789-000]

Take notice that on January 14, 2002, Desert Power, L.P. and Enron Power Marketing tender for filing a Service Agreement.

Comment Date: February 4, 2002.

12. Hot Spring Power Company, LLC

[Docket No. EG02-68-000]

Take notice that on January 15, 2002, Hot Spring Power Company, LLC

(Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own and operate a 800MW generating facility near the city of Malvern, in Hot Spring County, Arkansas, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a total nominal output of 800 MW.

Comment Date: February 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1954 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 11541-001]

Atlanta Power Company—Idaho; Notice of Availability of Final Environmental Assessment

January 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Atlanta Power Station Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The operating project is located on the Middle Fork Boise River near the town of Atlanta (75 miles from the nearest populated area), in Elmore County, Idaho. Water to operate the run-of-river project is diverted at Kirby dam which is owned and operated by the U.S. Forest Service (FS). The project occupies about 3.3 acres of land within the Boise National Forest, administered by the FS.

On August 3, 2000, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed by the FS, the United States Department of the Interior (Fish and Wildlife Service), Idaho Department of Fish and Game, and Idaho Rivers United and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Rm. 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection and may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02-1995 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Sunshine Act Meeting Notice**

January 23, 2002.

The following notice of meeting is published pursuant to section 3(A) of the government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 30, 2002, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda
*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 208-0400, for a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

783rd—Meeting January 30, 2002 Regular Meeting 10:00 A.M.**Administrative Agenda**

A-1.

DOCKET# AD02-1, 000, Agency Administrative Matters

A-2.

DOCKET# AD02-7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E-1.

DOCKET# AD02-6, 000, Infrastructure Discussion in the Northeast

E-2.

DOCKET# AD01-3, 000, California Infrastructure Update

E-3.

DOCKET# EX02-8, 000, Market Power

E-4.

DOCKET# EX02-10, 000, Report on the Economic Impacts on Western Utilities and Ratepayers of Price Caps on Spot Market Sales

E-5.

DOCKET# ER02-485, 000, Midwest Independent Transmission System Operator, Inc.

E-6.

OMITTED

E-7.

DOCKET# ER02-479, 000, Pacific Gas and Electric Company

OTHER#S ER02-250, 000, California Independent System Operator Corporation
ER02-527, 000, California Independent System Operator Corporation

E-8.

DOCKET# ER01-3142, 000, Midwest Independent Transmission System Operator, Inc.

OTHER#S ER01-3142, 001, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 002, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 003, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 004, Midwest Independent Transmission System Operator, Inc.

E-9.

DOCKET# ER02-239, 000, Duke Energy South Bay LLC

OTHER#S ER02-239, 001, Duke Energy South Bay LLC

ER02-239, 002, Duke Energy South Bay LLC

E-10.

DOCKET# ER02-540, 000, Michigan Electric Transmission Company

E-11.

DOCKET# ER01-1107, 000, American Transmission Company LLC

E-12.

OMITTED

E-13.

DOCKET# ER01-2758, 000, Sierra Pacific Power Company and Nevada Power Company

OTHER#S ER01-2754, 000, Nevada Power Company

ER01-2754, 001, Nevada Power Company

ER01-2755, 000, Nevada Power Company

ER01-2758, 001, Sierra Pacific Power Company and Nevada Power Company

ER01-2759, 000, Sierra Pacific Power Company and Nevada Power Company

ER01-2759, 001, Sierra Pacific Power Company and Nevada Power Company

E-14.

OMITTED

E-15.

DOCKET# RT01-98, 002, PJM Interconnection, L.L.C. and Allegheny Power

E-16.

OMITTED

E-17.

DOCKET# EC02-28, 000, International Transmission Company

E-18.

DOCKET# EC02-5, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

OTHER#S ER02-211, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

EL02-53, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

E-19.

OMITTED

E-20.

OMITTED

E-21.

DOCKET# ER01-3034, 002, Duke Energy Oakland, LLC

- E-22.
DOCKET# ER01-3009, 001, New York Independent System Operator, Inc.
OTHER#S EL00-90, 001, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.
ER01-3009, 002, New York Independent System Operator, Inc.
ER01-3153, 001, New York Independent System Operator, Inc.
ER01-3153, 002, New York Independent System Operator, Inc.
EL00-90, 002, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.
- E-23.
DOCKET# ER01-3003, 001, Mid-Continent Area Power Pool
- E-24.
DOCKET# ER01-3047, 001, California Independent System Operator Corporation
- E-25.
DOCKET# EL01-94, 001, Rumford Power Associates, LP v. Central Maine Power Company
- E-26.
DOCKET# OA97-24, 006, Central Power and Light Company
OTHER#S ER97-881, 003, West Texas Utilities Company
ER98-4609, 003, Southwestern Electric Power Company
ER98-4611, 004, Public Service Company of Oklahoma
- E-27.
DOCKET# ER01-2126, 004, Michigan Electric Transmission Company
OTHER#S ER01-2375, 003, Michigan Electric Transmission Company
ER01-3075, 002, Michigan Electric Transmission Company
- E-28.
DOCKET# EL00-73, 003, Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company
- E-29.
OMITTED
- E-30.
DOCKET# EL00-62, 040, ISO New England Inc.
- E-31.
DOCKET# EC01-151, 001, Otter Tail Power Company
- E-32.
DOCKET# EC01-49, 002, PG&E National Energy Group, LLC and PG&E National Energy Group, Inc., on behalf of Themselves and Their Public Utility Subsidiaries
OTHER#S EC01-41, 002, PG&E National Energy Group, Inc., PG&E Enterprises, and PG&E Shareholdings, Inc., on behalf of Themselves and Their Public Utility Subsidiaries
- E-33.
DOCKET# ER01-2536, 002, New York Independent System Operator, Inc.
- E-34.
OMITTED
- E-35.
DOCKET# EL00-95, 054, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
- E-36.
DOCKET# ER01-702, 001, American Transmission Company LLC
OTHER#S OA01-7, 000, Edison Sault Electric Company
OA01-8, 000, Wisconsin Electric Power Company
- E-37.
DOCKET# EL01-121, 000, Wheelabrator Lassen Inc.
OTHER#S QF81-21, 004, Wheelabrator Lassen Inc.
- E-38.
DOCKET# EL01-65, 000, CALifornians for Renewable Energy, Inc. v. British Columbia Hydro and Power Authority, Powerex Corporation, Southern Energy Marketing Company (Mirant) and Bonneville Power Administration
- E-39.
DOCKET# EL02-42, 000, Dynegy Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Mirant California, LLC and Williams Energy Marketing & Trading Company v. California Independent System Operator Corporation
- E-40.
OMITTED
- E-41.
DOCKET# EL00-95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
OTHER#S EL00-98, 042, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation
- E-42.
DOCKET# ER02-199, 000, Mississippi Power Company
OTHER#S EL02-50, 000, Southern Company Services, Inc.
ER02-218, 000, Southern Company Services, Inc.
ER02-219, 000, Southern Company Services, Inc.
ER02-220, 000, Southern Company Services, Inc.
ER02-221, 000, Southern Company Services, Inc.
ER02-222, 000, Southern Company Services, Inc.
ER02-223, 000, Southern Company Services, Inc.
ER02-224, 000, Southern Company Services, Inc.
ER02-225, 000, Southern Company Services, Inc.
ER02-226, 000, Southern Company Services, Inc.
ER02-227, 000, Georgia Power Company
ER02-228, 000, Georgia Power Company
ER02-229, 000, Alabama Power Company
ER02-230, 000, Alabama Power Company
ER02-498, 000, Gulf Power Company
- E-43.
DOCKET# ER02-484, 000, Midwest Independent Transmission System Operator, Inc.
- E-44.
DOCKET# ER01-2644, 000, Colton Power, L.P.
- OTHER#S ER01-2644, 001, Colton Power, L.P.
ER01-2644, 002, Colton Power, L.P.
ER01-2644, 003, Colton Power, L.P.
- E-45.
DOCKET# ER02-489, 000, Midwest Independent Transmission System Operator, Inc.
- E-46.
DOCKET# ER01-2685, 001, PacifiCorp Power Marketing, Inc.
- E-47.
DOCKET# EL01-105, 000, The New Power Company v. PJM Interconnection L.L.C. (Closed Meeting Item)
- E-48.
OMITTED
- E-49.
DOCKET# ER02-562, 000, Michigan Electric Transmission Company
- Miscellaneous Agenda**
- M-1.
RESERVED
- Markets, Tariffs and Rates—Gas**
- G-1.
DOCKET# RP02-136, 000, Colorado Interstate Gas Company
- G-2.
DOCKET# RP02-137, 000, Kern River Gas Transmission Company
- G-3.
DOCKET# RP02-129, 000, Southern LNG Inc.
- G-4.
DOCKET# RP02-132, 000, Viking Gas Transmission Company
- G-5.
DOCKET# IS02-92, 000, Chevron Pipe Line Company
- G-6.
DOCKET# IS02-109, 000, Platte Pipe Line Company
- G-7.
DOCKET# RP01-190, 000, Kern River Gas Transmission Company
- G-8.
DOCKET# RP00-334, 000, K N Wattenberg Transmission Limited Liability Company
OTHER#S RP00-334, 001, K N Wattenberg Transmission Limited Liability Company
RP00-630, 000, K N Wattenberg Transmission Limited Liability Company
- G-9.
DOCKET# RP00-339, 000, Arkansas Western Pipeline, L.L.C.
- G-10.
DOCKET# RP02-125, 000, Gulf South Pipeline Company, LP
- G-11.
OMITTED
- G-12.
DOCKET# RP01-259, 000, ANR Pipeline Company
OTHER#S RP01-259, 001, ANR Pipeline Company
- G-13.
DOCKET# PR00-17, 000, Transok, LLC
OTHER#S PR00-17, 001, Transok, LLC
- G-14.
DOCKET# PR01-6, 000, Enogex, Inc.
OTHER#S PR01-6, 001, Enogex, Inc.
- G-15.
DOCKET# PR01-11, 000, PanEnergy Louisiana Intrastate, LLC

- OTHER#S RP01-11, 001, PanEnergy Louisiana Intrastate, LLC
- G-16. DOCKET# RP01-246, 003, Natural Gas Pipeline Company of America
- G-17. DOCKET# RP01-76, 002, Northern Natural Gas Company
OTHER#S RP00-404, 001, Northern Natural Gas Company
RP01-76, 003, Northern Natural Gas Company
RP01-76, 004, Northern Natural Gas Company
RP01-382, 008, Northern Natural Gas Company
RP01-396, 002, Northern Natural Gas Company
- G-18. DOCKET# RP00-152, 001, Northern Natural Gas Company
- G-19. DOCKET# RP01-503, 001, Natural Gas Pipeline Company of America
- G-20. DOCKET# RP00-325, 006, Colorado Interstate Gas Company
OTHER#S RP01-38, 003, Colorado Interstate Gas Company
- G-21. DOCKET# RP00-399, 006, National Fuel Gas Supply Corporation
OTHER#S RP00-399, 007, National Fuel Gas Supply Corporation
RP01-2, 002, National Fuel Gas Supply Corporation
- G-22. DOCKET# RP01-622, 001, Mississippi River Transmission Corporation
OTHER#S RP01-623, 001, Mississippi River Transmission Corporation
RP01-623, 002, Mississippi River Transmission Corporation
- G-23. DOCKET# RP00-407, 001, High Island Offshore System, L.L.C.
OTHER#S RP00-407, 002, High Island Offshore System, L.L.C.
RP00-619, 002, High Island Offshore System, L.L.C.
RP00-619, 003, High Island Offshore System, L.L.C.
- G-24. DOCKET# RP01-624, 001, Gulf South Pipeline Company, LP
- G-25. DOCKET# RP02-39, 001, Columbia Gulf Transmission Company
OTHER#S RP02-39, 002, Columbia Gulf Transmission Company
- G-26. OMITTED
- G-27. DOCKET# RP02-99, 000, Shell Offshore Inc. (Closed Meeting Item)
- G-28. DOCKET# RP00-469, 001, East Tennessee Natural Gas Company
OTHER#S RP00-469, 000, East Tennessee Natural Gas Company
RP00-22, 000, East Tennessee Natural Gas Company
RP00-22, 002, East Tennessee Natural Gas Company
- G-29. DOCKET# RP00-394, 000, KO Transmission Company
- G-30. DOCKET# IS00-436, 000, Colonial Pipeline Company
- G-31. DOCKET# RP01-17, 000, Raptor Natural Pipeline LLC
- G-32. DOCKET# RM01-9, 000, Reporting of Natural Gas Sales to the California Market
- G-33. DOCKET# RP02-144, 000, Superior Natural Gas Corporation and Walter Oil & Gas Corporation v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company and Williams Gulf Coast Gathering Company, L.L.C. (Closed Meeting Item)
- G-34. The Possible Initiation of Investigation (Closed Meeting Item)
- Energy Projects—Hydro**
- H-1. DOCKET# AD02-5, 000, Hydro Licensing Status Workshop
- H-2. DOCKET# P-11944, 001, Symbiotics, LLC
- H-3. DOCKET# P-5, 067, PPL Montana, LLC and Confederated Salish and Kootenai Tribes of the Flathead Nation
- H-4. DOCKET# P-1962, 038, Pacific Gas & Electric Company
OTHER#S P-1962, 040, Pacific Gas & Electric Company
- H-5. DOCKET# P-11925, 001, Symbiotics, LLC
OTHER#S P-12064, 001, Ochoco Irrigation District
- H-6. DOCKET# UL97-11, 002, PacifiCorp
- H-7. DOCKET# P-11959, 001, Symbiotics, LLC
- H-8. OMITTED
- H-9. DOCKET# P-2145, 040, Public Utility District No. 1 of Chelan County, Washington
- H-10. DOCKET# P-2413, 046, Georgia Power Company
- H-11. OMITTED
- H-12. DOCKET# DI98-2, 002, Alaska Power & Telephone Company
- H-13. DOCKET# P-2436, 154, Consumers Energy Company
OTHER#S P-2447, 144, Consumers Energy Company
P-2448, 148, Consumers Energy Company
P-2449, 127, Consumers Energy Company
P-2450, 124, Consumers Energy Company
P-2451, 129, Consumers Energy Company
P-2452, 134, Consumers Energy Company
P-2453, 154, Consumers Energy Company
P-2468, 130, Consumers Energy Company
P-2580, 172, Consumers Energy Company
P-2599, 141, Consumers Energy Company
- Energy Projects—Certificates**
- C-1. DOCKET# AD02-9, 000, Pipeline Expansion During 2001
- C-2. DOCKET# CP01-417, 000, Transcontinental Gas Pipe Line Corporation
- C-3. DOCKET# CP93-253, 004, El Paso Natural Gas Company
- C-4. DOCKET# CP01-45, 001, Colorado Interstate Gas Company
OTHER#S CP01-45, 000, Colorado Interstate Gas Company
- C-5. DOCKET# CP01-79, 001, ANR Pipeline Company
- C-6. DOCKET# CP01-389, 002, Transcontinental Gas Pipe Line Corporation
OTHER#S CP01-389, 001, Transcontinental Gas Pipe Line Corporation
- C-7. DOCKET# CP00-412, 001, Cross Bay Pipeline Company, L.L.C. and Transcontinental Gas Pipe Line Corporation
OTHER#S CP00-413, 001, Cross Bay Pipeline Company, L.L.C.
CP00-414, 001, Cross Bay Pipeline Company, L.L.C.
- C-8. DOCKET# CP01-153, 000, Tuscarora Gas Transmission Company
OTHER#S CP01-153, 001, Tuscarora Gas Transmission Company
- C-9. DOCKET# CP01-46, 000, National Fuel Gas Supply Corporation (Closed Meeting Item)

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-2065 Filed 1-23-02; 4:24 pm]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission; Notice of Meeting; Sunshine Act

January 23, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 30, 2002, (Two Hours Following Regular Commission Meeting).

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

G-27 Docket No. RP02-99-000, Shell Offshore Inc. v. Transcontinental Gas Pipe Line Corporation, Williams Gas

Processing—Gulf Coast Company, L.P. and Williams Field Services Company.

G-33 Docket No. RP02-144-000, Superior Natural Gas Corporation and Walter Oil & Gas Corporation v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company and Williams Gulf Coast Gathering Company, L.L.C.

E-47 Docket No. EL01-105-000, New Power Company v. PJM Interconnection, LLC.

C-9 Docket No. CP01-46-000, National Fuel Gas Supply Corporation.

G-34 The possible initiation of investigation.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 208-0400.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02-2066 Filed 1-23-02; 4:24 pm]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-4]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92-463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet three times annually. This is an open meeting. The theme will be "In-Use Testing" and will include presentations from EPA and other outside organizations. The preliminary agenda for this meeting will be available on the Subcommittee's website in early February. Draft minutes from the previous meetings are available on the Subcommittee's website now at: www.epa.gov/oar/caaac/mobile_sources-caaac.html.

DATES: Wednesday, February 13 from 9:00 am. to 3:30 pm. Registration begins at 8:30 am.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: For technical information: Ms. Cheryl L. Hogan, Alternate Designated Federal Officer, Certification and Compliance Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/

214-4402, FAX: 734/214-4053, e-mail: hogan.cheryl@epa.gov.

For logistical and administrative information: Ms. Mary F. Green, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734/214-4411, Fax: 734/214-4053, e-mail: green.mary@epa.gov.

Background on the work of the Subcommittee is available at: <http://transaq.ce.gatech.edu/epatac>.

For more current information: www.epa.gov/oar/caaac/mobile_sources-caaac.html.

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Hogan at the address above by January 31, 2002. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: January 22, 2002.

Donald E. Zinger,

Assistant Director, Office of Transportation and Air Quality.

[FR Doc. 02-2011 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-5]

Draft Particulate Matter Risk Analysis Methodology Document Available for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On January 23, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft document, Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas (hereafter, draft PM Risk Analysis Methodology). This document outlines the analyses and methods proposed for the quantitative risk assessment for fine particles that will be conducted as part of the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM) that is being conducted under sections 108 and 109 of the Clean Air Act (CAA).

DATES: Comments on the Draft PM Risk Analysis Methodology document should be submitted on or before February 27, 2002.

ADDRESSES: Comments on the draft PM Risk Analysis Methodology document should be submitted (in duplicate if possible) to Mr. Harvey Richmond, Office of Air Quality Planning and Standards (C539-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; for comments sent via any overnight delivery service: U.S. EPA, Attn: Mail Code C539-01, 4930 Old Page Road, Research Triangle Park, NC 27709; e-mail: richmond.harvey@epa.gov; telephone: (919) 541-5271; fax: (919) 541-0237.

Availability of Related Information:

Single copies of the draft PM Risk Analysis Methodology document may be obtained without charge by contacting Harvey Richmond at the address or telephone number listed above. Please include name, address, telephone number, e-mail if available, and delivery preference (mail or e-mail delivery).

Electronic Availability:

The draft PM Risk Analysis Methodology document can also be obtained online at the Agency's OAQPS Technology Transfer Network (TTN) under the technical area of Office of Air and Radiation Policy and Guidance (OAR P&G), and under the heading of "Staff Papers" at the following internet web site: <http://www.epa.gov/ttn/oarpg/t1sp.html>. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Richmond at (919) 541-5271.

SUPPLEMENTARY INFORMATION: The EPA is currently reviewing the NAAQS for PM. Sections 108 and 109 of the CAA require that EPA carry out a periodic review and revision, where appropriate, of the scientific criteria and the NAAQS for "criteria" air pollutants such as PM. Details of EPA's plans for review of the NAAQS for PM were announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997). The second external review draft of the Air Quality Criteria for Particulate Matter and the preliminary draft Staff Paper were made available for public review and comment (66 FR 18929, April 12, 2001 and 66 FR 32621, June 15, 2001, respectively).

The draft PM Risk Analysis Methodology document describes EPA's plans and approach for conducting PM health risk analyses for fine particles that will be summarized and discussed

in the next draft of the Staff Paper. The risk analysis will be performed to assist in the preparation of the OAQPS Staff Paper, which is to evaluate the policy implications of the key scientific and technical information contained in the Air Quality Criteria document and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to "bridge the gap" between the scientific review contained in the Air Quality Criteria document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

The draft PM Risk Analysis Methodology will be reviewed at an upcoming public teleconference of the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. A future **Federal Register** notice will inform the public of the date and details of that meeting. Following the CASAC meeting, EPA will revise the draft Risk Analysis Methodology taking into account public and CASAC comments, and proceed with the risk analyses.

Dated: January 22, 2002.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02-2013 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Liberty Industrial Finishing Site, Brentwood, Suffolk County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with Liberty Industrial Finishing Corporation, for recovery of past response costs concerning the Liberty Industrial Finishing Site ("Site") located at 550 Suffolk Avenue, Brentwood, Suffolk

County, New York. The settlement requires the settling party to pay \$370,000 in reimbursement of EPA's past costs at the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for its payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007-1866.

DATES: Comments must be submitted on or before February 27, 2002.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007-1866. Comments should reference the Liberty Industrial Finishing Site located in Brentwood, Suffolk County, New York, Index No. CERCLA-02-2002-2005. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT:

Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3168.

Dated: December 18, 2001.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02-2009 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment—Asbestos Dump Superfund Site.

SUMMARY: The United States Environmental Protection Agency

("EPA") is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response and Liability Act of 1980, as amended ("CERCLA"). Notification is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the liability of the owners of the White Bridge Road property within the Asbestos Dump Superfund Site ("White Bridge Road Site") for certain response costs incurred by EPA at the White Bridge Road Site in Long Hill Township, Morris County, New Jersey.

DATES: Comments must be provided on or before February 27, 2002.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007, and should refer to: In the Matter of the Asbestos Dump Superfund Site: Administrative Settlement, U.S.E.P.A. Index No. 02-2001-2017.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007; Attention: Virginia A. Curry, Esq. (212) 637-3134 or curry.virginia@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 122(h) of CERCLA, notification is hereby given of a proposed administrative settlement with Joyce and David Major, the owners of a property within the Asbestos Dump Site. David Major arranged for the disposal of asbestos waste on his property. This settlement, in which the Majors will pay EPA \$5000 toward its unreimbursed costs at the Site, is based on the Majors' demonstrated limited ability to pay the full amount of the unreimbursed costs. Section 122(h) authorizes EPA to compromise claims with the approval of the Attorney General and the Attorney General has approved the settlement.

Dated: January 11, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02-2012 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 12:33 p.m. on Wednesday, January 23, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 23, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02-2084 Filed 1-24-02; 11:22 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3170-EM]

New York; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA-3170-EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those

areas determined to have been adversely affected by the catastrophe declared an emergency disaster by the President in his declaration of December 31, 2001:

The counties of Cattaraugus, Chautauqua, Wyoming, and Genesee for emergency protective measures under the Public Assistance program for a period of 120 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-1978 Filed 1-25-02; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to section 10(a) of the Federal Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of this public meeting is to convene the Commission to discuss possible Federal policy regarding complementary and alternative medicine (CAM). The main focus of the meeting is the discussion of key issues before the Commission and the development of the Recommendations, Action Items, and the Draft Final Report of the White House Commission on Complementary and Alternative Medicine Policy. Major issue areas to be considered by the Commission prior to completion of its Final Report include the following: Coordination of CAM Research; Access to and Delivery of CAM Practices and Products; Coverage and Reimbursement for CAM Practices and Products; Training and Education of Health Care Practitioners in CAM; Development and Dissemination of CAM Information for Health Care Providers and the Public; CAM in Wellness, Health Promotion, and Disease Prevention; Coordinating and Centralizing Private Sector and Federal Sector CAM Efforts; and the Definition of CAM and the Commission's Guiding

Principles. Comments received at the meeting may be used by the Commission to prepare the Final Report of the President as required by the Executive Order.

Opportunities for oral statements by the public will be provided on February 22, from 3 p.m.—4 p.m. (Time approximate).

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: February 21–22, 2002.

Time: February 21 8 a.m.—6 p.m., February 22 8 a.m.—5 p.m.

Place: Double Tree Hotel Rockville, Plaza I and II Conference Rooms, 1750 Rockville Pike, Rockville, MD 20852, Telephone: 301-468-1100.

Contact Persons: Michele M. Chang, CMT, MPH, Executive Secretary, or Stephen C. Groth, Pharm.D., Executive Director, 6707 Democracy Boulevard, Room 880, MSC-5467, Bethesda, MD 20892-5467, Phone: (301) 435-7592, Fax: (301) 480-1691, E-mail: WHCCAMP@mail.nih.gov.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

SUPPLEMENTARY INFORMATION: The White House Commission on Complementary and Alternative Medicine Policy was established on March 7, 2000 by Presidential Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to present oral comments may register by faxing a request to register at 301-480-1691 or by accessing the web site of the Commission at <http://whccamp.hhs.gov> no later than February 12, 2002.

Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Commission members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be

limited by the number of registrants. Priority may be given to participants who have not yet addressed the Commission at previous meetings. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or issue to be addressed:

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed above no later than February 12, 2002.

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2028 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-16-02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Outcome Evaluation of CDC's Youth Media Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). CDC, working in collaboration with the Health Resources and Services Administration (HRSA), the National Center for Child Health and Human Development (NICHD), and the Substance Abuse and Mental Health Services Administration (SAMHSA), is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime. The Campaign will be based on

principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

For the Campaign to be successful, a thorough understanding of tweens (youth ages 9-13), the health behaviors promoted, and the barriers and motivations for adopting and sustaining them is essential. Additionally, a thorough understanding of those who can influence the health behaviors of tweens is important. This understanding will facilitate the development of messages, strategies, and tactics that resonate with tweens, parents and other influencers.

Research for the national and minority audience components of the Youth Media Campaign will identify the target audience(s) using standard market research techniques and will address geographic and demographic diversity to the extent necessary to assure appropriate audience representation.

The intent of this audience research is to solicit input and feedback from audiences on a national level and from audiences within targeted populations. Information gathered from both audiences will be used to modify/refine and/or revise Campaign messages and strategies and evaluate Campaign effectiveness. The annual burden for this data collection is 3,584 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hours)
Screening	73,885	1	1/60
Child Youth Media Survey	5,939	1	10/60
Parent Youth Media Survey	6,293	1	13/60

Dated: January 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02-1959 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-15-02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the

Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Pilot Study of the U.S. Action Plan for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and

Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild polio virus will be in biomedical laboratories. Prevention of inadvertent transmission of polio viruses from the laboratory to the community is crucial.

The first step toward prevention is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild polio virus infectious and potentially infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed

of polio eradication progress and notified, when necessary, to implement bio-safety requirements appropriate for the risk of working with such materials.

An estimated 15,000 biomedical laboratories, in six categories of institutions: Academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the final survey. We propose conducting pilot studies in 525 biomedical laboratories representing the above six categories. Specific survey strategies for each category will be refined through these pilot surveys. Three types of biomedical laboratories within each institutional category will be targeted by the pilot

survey: Those most likely to possess wild polio virus materials; those least likely to possess wild polio virus materials; and those that may possess wild polio virus materials.

The survey instruments will ask laboratories to indicate whether or not they possess wild polio virus infectious and/or potentially infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO web page, and institutions will be encouraged to submit completed survey forms electronically. The total burden for this data collection is 350 hours.

Respondents	Number of respondents	Responses/respondent	Average burden/response (in hours)
Labs most likely to possess	175	1	30/60
Labs least likely to possess	175	1	30/60
Labs that may possess	175	1	60/60

Dated: January 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02-1960 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02027]

Cooperative Agreement for the American Academy of Pediatrics; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program with the American Academy of Pediatrics (AAP). This program addresses the "Healthy People 2010" focus areas of Maternal, Infant and Child Health and Disability and Secondary Conditions.

The purpose of the program is to enhance public health practices related to birth defects and developmental disabilities by (1) promoting the professional development of pediatricians; (2) providing expert guidance on special topics on pediatric research and services; and (3) disseminating to practicing pediatricians information on birth

defects, developmental disabilities, and health promotion for children with disabilities.

Research involving human participants will not be supported under this cooperative agreement.

B. Eligible Applicants

Assistance will be provided only to the American Academy of Pediatrics (AAP). No other applications are solicited.

The AAP is regarded as the most influential and prestigious professional association for pediatricians in the United States, and is the only national professional association for general pediatricians in the United States. The recommendations produced by the AAP are considered among the most reliable and up-to-date information available to the pediatric community. Because of their strong reputation and large pediatric provider audience, the AAP can rapidly and efficiently disseminate information about birth defects and developmental disabilities issues to pediatricians across the country. The AAP's unparalleled ability to convey information to a large number of American pediatricians would make them an extremely useful asset in enhancing communications among practicing pediatricians. Because of their relationships with pediatricians and the mission of the organization, the AAP is a unique position to carry-out the work being proposed and is the only national organization that has the capacity and established provider network to conduct this project.

The AAP has a long-standing position as a trusted leader in the birth defects, developmental disabilities, and childhood disabilities fields.

AAP has a chapter in each state and territory that facilitates grass-roots interventions. In addition to its preeminence as a national organization of pediatricians, AAP is represented in all U.S. regions. This regional presence makes AAP the natural leader when local action is needed.

Note: Title 2 of the United States Code, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately \$200,000 is available in FY 2002 to fund this award. It is expected that the award will begin on or about June 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Sheryl

Heard, Grants Management Specialist, Acquisition and Assistance Branch B., Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02027, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2723, E-mail: slh3@cdc.gov.

For program technical assistance, contact: Jack Stubbs, National Center on Birth Defects and Developmental Disabilities, 4770 Buford Highway, Mail Stop F-15, Atlanta, Georgia 30341, Telephone number: 770-488-7096, E-mail: jbs2@cdc.gov.

Dated: January 22, 2002.

Robert L. Williams,

Chief, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02-1975 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N-0590]

Agency Information Collection Activities; Proposed Collection; Comment Request; Salmonella Discovery System Pilot Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's burden estimates to construct and utilize a database from which FDA and pharmaceutical companies can share information based on their proprietary toxicology study data to predict the mutagenic response, mutagenic potency, and mechanism of mutagenesis of test chemicals in *Salmonella typhimurium*.

DATES: Submit written or electronic comments on the collection of information by March 29, 2002.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of

information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Karen Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA's Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Informatics and Computational Safety Analysis Staff intends to conduct a *Salmonella* Discovery System Pilot Study (the pilot study). The primary goal of the pilot study is to construct and execute a mutually beneficial process by which FDA and pharmaceutical companies can share information based on their proprietary toxicology study data and thereby expand their own knowledge databases. This process will be designed and

conducted using procedures that do not compromise the identity and chemical structures of the individual collaborator's proprietary chemicals.

The three major objectives of the pilot study are to:

- Build a joint and comprehensive FDA/pharmaceutical industry database for compounds tested in the *Salmonella t.* reverse mutagenicity assay;
- Use these data to construct a new enhanced *Salmonella t.* mutagenicity assay database module for the *Mu1tiCASE* quantitative structure activity relationship software program; and
- Employ the recently developed *Mu1tiCASE* expert system (*MCASE-ES*) to predict the mutagenic response, mutagenic potency, and mechanism of mutagenesis of test chemicals in *Salmonella t.*

The pilot study will be a joint venture designed to maximize the benefits and minimize the risks to all collaborators. FDA intends to send letters to companies that have purchased either *MultiCASE* or *CASETOXII* software programs to invite them to become a collaborator in the project.

FDA intends to request that each collaborator submit the following data electronically: (1) Test compound chemical structures; and (2) assay data, identifying the type of *Salmonella* mutagenicity assay used in the studies, the source and concentration of any exogenous activation system used, and the average number of revertants/plate for the negative control, positive control, and each of the test compound treatment groups. Although there is no minimum requirement for the number of test compounds to be submitted to FDA, the agency would expect to receive at least 200 compounds from each collaborator. Each company will be able to identify its own compounds in the resulting discovery system, and the more data submitted, the greater the coverage will be for each company's molecular universe.

FDA intends to act as the broker for the pilot study and will be responsible for the confidentiality and integrity of each collaborator's proprietary data. The number of compounds in the database module will depend upon the number of collaborators and the size of the data sets they contribute to the pilot study. After the enhanced *Salmonella* discovery system has been constructed and tested, FDA intends to custom prepare individual discovery systems for each collaborator.

The anticipated benefits to collaborators include:

- Receipt of a new expanded

- Salmonella in silico* discovery tool at no cost;
- Access to proprietary molecular fragment data derived from *Salmonella t.* mutagenicity studies from FDA and other collaborator archives;
 - Comprehensive lists of molecular structural alerts correlated with mutagenicity in *Salmonella t.*, including previously uncharacterized alerts derived from heretofore inaccessible

undeveloped lead pharmaceutical test data; and

- A *Salmonella* discovery system that should provide high coverage and high predictive performance for organic chemicals in each company's combinatorial and lead chemical data sets.

The *Salmonella* discovery system provided by FDA will be compatible with each company's current *MCASE* software program and will supplement

current *Salmonella* modules purchased from MultiCASE, Inc.

Participation in this pilot study will be voluntary. FDA estimates that approximately 12 companies will participate and that it will take each company approximately 8 hours to compile the information from electronic archives and submit the requested data and information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12	1	12	8	96

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1989 Filed 1–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0589]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for development of residue detection methodology for human or animal drugs prescribed for extralabel use in animals when the agency has determined there is reasonable probability this use may present a risk to public health due to residues exceeding a safe level.

DATES: Submit written or electronic comments on the collection of information by March 29, 2002.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26; Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below. With respect

to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control No. 0910–0325)—Extension

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Public Law 103–396) amended the Federal Food, Drug, and Cosmetic Act to permit licensed veterinarians to prescribe extralabel use in animals of approved human and animal drugs. Regulations implementing provisions of AMDUCA are codified under part 530 (21 CFR part 530). A new provision under these regulations in § 530.22(b) permits FDA to establish a safe level for extralabel use in animals of an approved human or animal drug when the agency determines there is reasonable probability that this use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding a safe level is considered an unsafe use of a drug. In conjunction with the establishment of a safe level, the new provision permits FDA to

request development of an acceptable residue detection method for an analysis of residues above any safe level established under part 530. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and perhaps

a third party (e.g., a State agency or a professional association), may negotiate a cooperative arrangement to develop the methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug. The

respondents may be sponsors of new animal drugs, State or Federal government, or individuals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22 (b)	2	1	2	4,160	8,320

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The Center for Veterinary Medicine (CVM) has not found circumstances to require the establishment of a safe level and subsequent development of an analytical methodology. However, CVM believes there will be instances when an analytical methodology will be required. Thus, we are estimating the reporting burden on one methodology being required annually.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-2051 Filed 1-25-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7056 ext. 285; fax: 301/402-0220; e-mail: shinnm@od.nih.gov. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Novel Vectors for Identifying Transgenic and Gene Targeting Animals

Dr. Dan Buchholz et al. (NICHD)

DHHS Reference No. E-319-01/0—
Research tool

Advances in vertebrate genetics have led to the development of gene knockout animals that allow for the study of gene function and transgenic analysis. This has also encouraged the development of gene-based therapies through introduction of exogenous genes to enhance and/or replace dysfunctional or missing genes. Yet, although the advances have been many, the analysis remains complicated with tedious screening of animals containing the desired genotype.

The NIH announces a double-promoter plasmid that carries a transgene under the control of any preferred promoter and the Green Fluorescent Protein (GFP) under the control of the eye-specific crystalline-promoter for transgenesis. This construct creates a green fluorescence in the eyes of the transgenic animals thus allowing for easy identification. Companies that work in the transgenic or gene targeting areas would find this plasmid useful in quickly and efficiently identifying desired transgenic animals with biological functionality of their gene of interest.

Combined Inhibition of Phosphodiesterase-4 (PDE-4) and Phosphodiesterase-3 (PDE-3) as a Therapy for Th1 Mediated Autoimmune Diseases

Dr. Bibiana Bielekova et al. (NINDS)

DHHS Reference Nos. E-077-00/0 filed 22 Dec 2000 and E-077-00/1 filed 21 Dec 2001

Hyperactive Th1-mediated immune responses are thought to be involved in

the pathogenesis of many autoimmune diseases, including rheumatoid arthritis, diabetes, inflammatory bowel disease, vitiligo, and multiple sclerosis among others. Immune cells are known to produce primarily two classes of phosphodiesterases (PDE), the PDE4 and the PDE3 classes. Inhibitors of these PDEs have been shown to down-regulate the expression or production of Th1 cytokines and have either no effect or augment the production of Th2 cytokines, therefore making them good candidates for the treatment of Th1-mediated autoimmune diseases.

The NIH announces a new technology wherein PDE-4 and PDE-3 inhibitors are used in combination and a synergistic enhancement of therapeutic activity is achieved. This results in a more potent immunomodulatory effect on the immune cells and could lead to the administration of lower dose rate of the inhibitors. This new form of treatment will alleviate side effects through the use of a lower dose rate for each and will make for a more effective therapy.

Dated: January 17, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02-2029 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with

35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HGC-1, A Gene Encoding a Member of the Olfactomedin-Related Protein Family

Griffin P. Rodgers, Wen-Li Liu, Jiachang Zhang (NIDDK)

DHHS Reference No. E-166-01/0 filed 07 Dec 2001

Licensing Contact: Kai Chen; 301/496-7736 ext. 247; e-mail: chenk@od.nih.gov

The current technology embodies a newly identified gene, Human Granulocyte Colony-Stimulating Factor-Stimulated-Clone-1 (hGC-1), that has been cloned and characterized, and its protein sequence has been deduced. The gene is expressed in the bone marrow, prostate, small intestine, colon, and stomach, and has been mapped to chromosome 13 in a region that contains a tumor suppressor gene cluster. The gene is found to be selectively present in normal human myeloid lineage cells and is believed to play a role in allowing lymphocytes to differentiate properly. It is believed that the gene may be used as a selective marker for human prostate cancer, multiple myeloma, B-cell chronic lymphocytic leukemia and other types of cancer and can be used diagnostically as well as in therapeutic screening activities.

Mitochondrial Topoisomerase I

Yves Pommier and Hong-Liang Zhang (NCI)

DHHS Reference No. E-099-01/0 filed 16 Feb 2001

Licensing Contact: Matthew Kiser; 301/496-7056 ext. 224; e-mail: kiserm@od.nih.gov

The subject technology is an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence encoding mitochondrial topoisomerase I (top1mt), a variant

top1mt, or a fragment of either of the foregoing, an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence that is complementary to a nucleotide sequence encoding top1mt, a variant top1mt, or a fragment of either of the foregoing, a vector comprising such an isolated or purified nucleic acid molecule, a cell comprising such a vector, an isolated or purified polypeptide molecule consisting essentially of an amino acid sequence encoding top1mt or a variant top1mt, a conjugate comprising such an isolated or purified polypeptide molecule and a cell-surface targeting moiety, a hybridoma cell line that produces a monoclonal antibody that is specific for an aforementioned isolated or purified polypeptide molecule, the monoclonal antibody produced by the hybridoma cell line, a polyclonal antiserum raised against an aforementioned isolated or purified polypeptide molecule, a method of altering the level of top1mt in a cell, and a method of identifying an inhibitor or an activator of top 1 mt.

Dated: January 17, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02-2030 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and

personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 5, 2002.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report of the Director on updates and an overview of new FIC programs and initiatives. In addition, a discussion of CDC plans, present and future, for international programs and global health concerns.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Closed: 1:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301-496-2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: www.nih.gov/fic/about/advisory.html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2025 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: February 19, 2002.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda—Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-19G, Bethesda, MD 20892-6200, (301) 594-2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2022 Filed 1-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Centers of Excellence in Complex Biomedical Systems Research.

Date: March 19-20, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13H, Bethesda, MD 20892, 301-594-3998, *moenl@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2023 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

Date: March 13, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13, Bethesda, MD 20892, (301) 594-3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2024 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: March 20-22, 2002.

Time: 7:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chase Park Plaza, 212-232 N. Kingshighway Blvd., St. Louis, MO 63108.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13, Bethesda, MD 20892, 301-594-2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2026 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Medical Rehabilitation Research Subcommittee.

Date: March 5, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301-435-6908.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2027 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4736-N-01]

Announcement of OMB Approval Number for the Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting Lists, Exemption of Police Officers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the requirements for admission and tenant selection policies, verification, notification, preference, waiting lists, and exemption of police officers for occupancy in public housing developments.

FOR FURTHER INFORMATION CONTACT:

Patricia Arnaudo, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0614, extension 4250. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the admission and occupancy of public housing, tenant selection, verification, notification, preference, waiting lists, and exemption of police officers. The OMB approval number for this information collection is 2577-0220, which expires November 30, 2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: January 18, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02-1937 Filed 1-25-02; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Sultan & Kahn Amendment # 1) for Incidental Take of the Bone Cave Harvestman

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Sultan & Kahn Partnership, Ltd., (Applicant) has requested an amendment to an incidental take permit issued March 9, 2001 by the U.S. Fish and Wildlife Service (Service), pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit amendment number TE-035525-1. The requested amendment would authorize the incidental take of the endangered Bone Cave harvestman (*Texella reyesi*) which would occur as a result of the construction of three commercial developments on Lots 2, 3, and 5. This construction is in addition to the originally permitted and authorized construction on Lots 1 and 4 at R.R. 620 and Great Oaks Drive, Round Rock, Williamson County, Texas.

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4201, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 am to 4:30 pm) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE-035525-1 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Bone Cave harvestman. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the

purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Sultan & Kahn Partnership, Ltd., plans to construct three commercial establishments on portions of Lots 2, 3, and 5 in addition to current (originally permitted) construction on Lots 1 and 4 at R.R. 620 and Great Oaks Drive, Round Rock, Williamson County, Texas. This action will indirectly impact the habitat of the Bone Cave harvestman. The development will eliminate approximately 3.53 acres of habitat which supports the Beck Bat Cave ecosystem resulting in degradation of habitat and take of the Bone Cave harvestmen. The applicant proposes to compensate for this incidental take of Bone Cave harvestmen by providing mitigation funding sufficient to purchase, preserve, and maintain one cave (at least 70 acres in size) containing habitat for the Bone Cave harvestman; implementing a fire ant control program in the vicinity of Beck Bat Cave; Planting a 30 foot native vegetation buffer; and restricting the use of the lots to those that do not have the potential to pollute the underlying karst features.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 02-1974 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the

SUPPLEMENTARY INFORMATION.

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5:30 p.m., Thursday, February 28, 2002,

and 8:30 a.m. to 1:00 p.m. Friday, March 1, 2002.

ADDRESSES: The ANS Task Force meeting will be held at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703-358-2308 or by Fax at: (703) 358-2210.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting on Thursday and Friday include: participation in a plenary session entitled "Building consensus for regional policy for aquatic nuisance species prevention and control" at the 11th International Conference on Aquatic Invasive Species; a discussion on the reauthorization of Nonindigenous Aquatic Nuisance Prevention and Control Act-National Invasive Species Act; the development of a strategic plan for the ANS Task Force; an update of activities from the Task Force's regional panels; a report on research priorities from Ballast Water and Shipping Committee; status and updates from several other Task Force committees including the Green Crab Control Committee, the Caulerpa Prevention Committee, the Mitten Crab Control Committee, Risk Assessment and Management Committee, and the Communications, Education and Outreach Committee; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: January 18, 2002.

William B. Knapp,

Co-chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 02-2035 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-310-1310-02-PB-24 1A]

OMB Approval Number 1004-0184; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 3501 *et seq.*). On July 31, 2001, the BLM published a notice in the **Federal Register** (66 FR 39527) requesting comments on the collection. The comment period ended October 1, 2001. No comments were received. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-0184), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630) 1849 C St., N.W., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;
3. Ways to enhance the quality, utility, and clarity of the information collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Onshore Oil and Gas Leasing and Operations, 43 CFR Part 3100.

OMB Approval Number: 1004-09184.

Abstract: Federal and Indian (except Osage) oil and gas lessees and operators or operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored. Respondents are oil

and gas companies, lessees, operators, operating rights owners, and individuals.

Form Number: None.

Frequency: On occasion; nonrecurring.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: For ease of reference, this table summarizes the burden items in this information collection request:

Information collection	Requirement	Total respondents	Reporting hours per respondent	Total burden hours
3121.12	Competitive leasing nomination	1,400	.25	350
3124.32	Lease consolidation	10	2	20
3125.11	Lease exchange	25	.25	6.25
3103.10(aa); 3153.37	LACT meter proving report	200	¹ 10	33.33
3103.10(bb); 3154.33	Gas charts; meter proving reports	1,000	.25	250
3103.10(dd)	Meter proving or calibration	5,000	15	416.67
3103	Oral notification	6,000	15	500
3103.10(i)	• Construction start-up.			
3103.10(j)	• Spud notice.			
3103.10(m)	• Running surface casing; BOP test.			
3103.10(o)	• Reserve pit closure.			
3103.10(x)	• Theft; production mishandling.			
3103.10(z)	• LACT meter proving.			
3103.10(ee)	• Leak detection system.			
3103.10(ff)	• Produced water pit completion.			
3103.10(gg)	• Spill; accident.			
3103.10(ii)	• Well abandonment.			
3103.10(ll)	• Concentrations of H ₂ S.			
3145.43.				
3136.10	Drainage agreement	5	10	50
3137.13	Unit Agreement	60	40	2,400
3137.64	Participating Area	45	12	540
3145.18	Notice of Staking	1,500	.25	375
3145.51(a)(3)	Remediation	100	5	500
3151.10(c)	Off-lease measurement	300	1	300
3151.10(d)	Commingling	500	.5	250
3164.15	Civil penalties	100	.5	50
3107.53	Bond decrease	100	1	100
3107.56 and 3145.23	Bond increase	6,600	.5	3,300
Total		22,945		9,441.25

¹ In minutes.

Annual Responses: 22,945.

Annual Burden Hours: 9,441.

Bureau Clearance Officer: Michael H. Schwartz (202) 452-5033.

Dated: December 21, 2001.

Michael H. Schwartz,

*Information Collection Clearance Officer,
Bureau of Land Management.*

[FR Doc. 02-2021 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-1320-EL, WYW154900]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as

amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Jacobs Ranch Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

- T. 42 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 7-10, 15, 16, N½ of Lot 17,
N½ of Lot 18;
Sec. 2: Lots 5-16;
- T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 23: Lots 1-16;
Sec. 25: Lots 3-6;
Sec. 26: Lots 1, 2, 7-10, 15, 16;
Sec. 35: Lots 1-16.

Containing 2533.98 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the

exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW154900): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of December 10, 2001, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Jacobs Ranch Coal Company no later than

thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Jacobs Ranch Coal Company, Attn: Darryl Maunder, Caller Box 3013, Gillette, WY 82717-3013, and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: November 21, 2001.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02-1943 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-912-02-1120-PG-24-1A]

Call for Nominations on Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Call for Nominations on Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to solicit public nominations for two (2) vacancies which have occurred on the Utah Resource Advisory Council (RAC). Nominations are being accepted for positions which fill Category 1 (Holders of Federal grazing permits, representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation); and, Category 2 (Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups).

Utah residents are being sought to fill these vacancies on the 15-person Council which have occurred due to the resignations of two of its members. The individuals selected will serve out the remaining balances of the 3-year terms that will continue through September 2002 (Category 1) and September 2003 (Category 2), respectively. These candidates would also be eligible for reappointment of additional 3-year terms on the Council.

Nominees will be evaluated based on their experience or knowledge of the geographic area; education, training and experience; and, their experience in working with disparate groups to achieve collaborative solutions. All nominations must be accompanied by

letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The Bureau of Land Management will forward the nominations to the Secretary of the Interior, who will make the appointments to the Council.

Resource Advisory Councils were established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on management of public lands.

FOR FURTHER INFORMATION CONTACT: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, Special Programs Coordinator, 324 South State Street, Salt Lake City, 84111; phone (801) 539-4195. All nominations must be received no later than close of business February 28, 2002.

Dated: January 8, 2002.

Sally Wisely,

State Director.

[FR Doc. 02-1940 Filed 1-25-02; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-030-1020-00]

Notice of Intent To Amend Plan

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent to prepare a plan amendment for the Grand Staircase-Escalante National Monument (GSENM) Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan with an associated Environmental Assessment (EA).

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR 1600) this notice advises the public that the BLM, GSENM is considering amending the GSENM Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan to reallocate forage on the Last Chance grazing allotment and amending the GSENM Management Plan and Escalante Management Framework Plan to reallocate forage on the Big Bowns Bench grazing allotment. The planning area is located in southern Utah; portions of the area are jointly

administered by GSENM and Glen Canyon National Recreation Area.

This amendment will be addressed through an EA. This notice initiates a 30-day comment period on the planning criteria and draft plan amendment/EA. If you have information, data, or concerns related to the potential impacts of reallocating forage on the Big Bowns Bench grazing allotment and the Last Chance grazing allotment, have comments on the planning criteria, or suggestions for alternatives, please submit them to the address below.

ADDRESSES: Written comments should be sent to: Monument Manager, Grand Staircase-Escalante National Monument, 190 East Main, Kanab, Utah 84741, (435-644-4300). Planning documents and letters received, including names and street addresses of respondents, will be available for public review at the GSENM Office in Kanab, Utah during regular business hours (8 a.m. to 5 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. If you are not currently on our mailing list and wish to receive a copy of future planning documents, please send your name and address to the address listed above.

SUPPLEMENTARY INFORMATION: The permittee has voluntarily relinquished all of the existing grazing privileges on the Big Bowns Bench grazing allotment and some of the existing grazing privileges on the Last Chance allotment. The amendment to the GSENM Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan will consider a proposal to re-allocate all or part of the forage on the Big Bowns Bench allotment and the Last Chance allotment for wildlife, watershed conservation, and riparian values. The EA will be prepared by an interdisciplinary team to analyze the impacts of these proposals and alternatives.

The BLM has identified the following planning criteria, which will guide development of the amendments:

1. The plan amendment/EA is initiated in response to the voluntary

relinquishment of the sole grazing preference/permit for the Big Bowns Bench allotment and the Last Chance grazing allotment. Analysis and decisions in the plan amendment/EA apply only to those allotments.

2. The plan amendment/EA will be completed in compliance with the Federal Land Policy and Management Act, the National Environmental Policy Act, and all other applicable laws.

3. The plan amendment/EA will be developed using an interdisciplinary approach (e.g., a team approach using a variety of skills and perspectives such as rangeland management specialists, riparian specialists, etc.), with input from interested public, the State of Utah, local governments, and other Federal agencies and entities.

4. Decisions in the plan amendment/EA will provide for the balance of long-term sustainability with short-term uses.

5. This plan amendment/EA will incorporate and comply with the Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

Elena Daly,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 02-2131 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-01-134-1610-241A]

Colorado Canyons National Conservation Area Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The initial meeting of the Colorado Canyons National Conservation Area (CCNCA) Advisory Council will begin at 3 p.m. on Thursday, February 14, 2002, at White Hall, 300 North 6th Street, Grand Junction, Colorado. The CCNCA was established on October 24, 2000 when the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (the Act) was signed by the President. The Act required that the CCNCA Advisory Council be established to provide advice in the preparation and implementation of the CCNCA management plan, which must be completed by October, 2003.

DATES: The meeting will be held on February 14, 2002.

ADDRESSES: For further information or to provide written comments, please

contact Greg Gnesios, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244-3049; e-mail Gregory_Gnesios@co.blm.gov.

SUPPLEMENTARY INFORMATION: The CCNCA Advisory Council will meet on Thursday, February 14, 2002, at White Hall, 300 N. 6th Street, Grand Junction, Colorado beginning at 3 p.m. The agenda topics for this meeting are:

- (1) The election of council officials
- (2) Discussion of rules of engagement
- (3) Definition of roles and responsibilities
- (4) Discussion of planning issues related to the preparation of the CCNCA management plan
- (5) Discussion on previous planning efforts in the CCNCA area

(6) Plan for Advisory Council tour of the CCNCA and future council meetings

(7) Public comment period

(8) Agenda for next meeting

CCNCA Advisory Council meetings will be held monthly on the second Thursday of each month at the same time and location. The dates for these meetings are March 14, 2002; April 11, 2002; May 9, 2002; June 13, 2002; July 11, 2002; August 8, 2002; September 12, 2002; October 10, 2002; November 14, 2002 and December 12, 2002.

Topics of discussion for future meetings will include travel management, recreation, land health assessments, fire management, mining claims, use authorizations, rights-of-way, grazing, natural resource management, wilderness stewardship, the Black Ridge communication site, education, cultural resources, wildlife, partnerships, interpretation, adaptive management, socioeconomic, and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the CCNCA Advisory Council, can be obtained from the CCNCA web site at: <http://www.co.blm.gov/gjra/ccnca/ccncahome.htm>, which will be updated following each Advisory Council meeting.

Dated: December 20, 2001.

Greg Gnesios,

Colorado Canyons National Conservation Area Manager.

[FR Doc. 02-1942 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO-934-5700]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC54775

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas leases, COC54775, for lands in Moffat county, Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and Bureau of Land Management is proposing to reinstate leases COC59690 & COC 59692 effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Supervisory, Land Law Examiner, Oil and Gas Lease Management.

[FR Doc. 02-1941 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1310-01; WYW150376]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW150376 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW150376 effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 02-1938 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1310-01; WYW 129462]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW129462 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW129462 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 02-1939 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1-89]

Intertek Testing Services, NA, Inc.; Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Intertek Testing Services, NA, Inc. (ITSNA), for expansion of its recognition to use an additional site.

EFFECTIVE DATE: This recognition becomes effective on January 28, 2002 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ITSNA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Intertek Testing Services, NA, Inc. (ITSNA), as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion covers the use of an additional site. The NRTL's scope of recognition may be found in the following informational Web page: <http://www.osha-slc.gov/dts/otpca/nrtl/its.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two

notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** (see 66 FR 55208, November 1, 2001). The notice requested submission of any public comments by November 16, 2001. OSHA received no comments concerning the application. ITSNA had submitted its application for recognition of the Stockholm site in February 1997 (see Exhibit 35), and in the November 1 preliminary notice we explain the delay in processing the application. The NRTL Program staff performed the on-site review (assessment) of the facility on September 24-25, 1998, and provided a positive recommendation on the expansion in their report (see Exhibit 36).

The most recent notice published by OSHA for ITSNA's recognition, prior to the November 1 preliminary notice, covered its renewal of recognition, which OSHA granted on May 29, 2001 (66 FR 29178).

OSHA is recognizing the additional ITSNA site listed below. This site may use the supplemental programs included under ITSNA's scope of recognition. However, recognition of this site is limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites.

Under its current operations as an NRTL, ITSNA authorizes the use of the "ETL" certification mark or certifications only from its Cortland location. In addition, only the Vancouver, Antioch, and Madison sites identified below authorize the use of the "WHI" (Warnock Hersey) certification mark or certifications. Therefore, OSHA currently does not recognize any other ITSNA site, including the Stockholm site, for certifying products under ITSNA's NRTL operations.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to docket No. NRTL 1-

89, the permanent record of public information on the ITSNA recognition.

The current address of the additional ITSNA testing site recognized through this expansion of recognition is:

Intertek Testing Services NA Sweden
AB, Box 1103, S-164 #22, Kista,
Stockholm, Sweden

The current address of the ITSNA testing facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way,
Antioch, California 94509

ITSNA Atlanta, 1950 Evergreen Blvd.,
Suite 100, Duluth, Georgia 30096

ITSNA Boxborough, 70 Codman Hill
Road, Boxborough, Massachusetts
01719

ITSNA Cortland, 3933 U.S. Route 11,
Cortland, New York 13045

ITSNA Los Angeles, 27611 LaPaz Road,
Suite C, Laguna Niguel, California
92677

ITSNA Madison, 8431 Murphy Drive,
Middleton, Wisconsin 53562

ITSNA Minneapolis, 7250 Hudson
Blvd., Suite 100, Oakdale, Minnesota
55128

ITSNA San Francisco, 1365 Adams
Court, Menlo Park, CA 94025

ITSNA Totowa, 40 Commerce Way, Unit
B, Totowa, New Jersey 07512

ITSNA Vancouver, 211 Schoolhouse
Street, Coquitlam, British Columbia,
V3K 4X9 Canada

ITSNA Hong Kong, 2/F., Garment
Centre, 576 Castle Peak Road,
Kowloon, Hong Kong

ITSNA Taiwan, 14/F., Huei Fung
Building, 27, Chung Shan North Road,
Sec. 3, Taipei 10451, Taiwan

Existing Conditions

Currently, OSHA imposes certain conditions on its recognition of ITSNA. These conditions will apply also to the recognition of the Stockholm site. As mentioned in previous notices, these conditions apply solely to ITSNA's operations as an NRTL, and are in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL. These conditions are listed first under the "Conditions" section below.

In the preliminary notice, condition 2 below contained the ending phrase "including Compliance Design." However, after publication of that notice, ITSNA informed OSHA that it has ceased operation of this unit, which it had owned. As a result, the condition below has been revised for this final notice to eliminate the reference to Compliance Design.

(1) ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has

recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

(2) ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Intertek Testing Services NA, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the above additional site subject to the limitations and conditions set forth in this notice. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to these limitations and conditions.

Limitations

Recognition of Facilities

OSHA hereby expands the recognition of ITSNA to include the testing site in Stockholm, Sweden. Similar to other NRTLs that operate multiple sites, the Agency's recognition of any ITSNA testing site is limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs.

Conditions

ITSNA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports;

ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either

owned in excess of 2% by ITSLtd, or affiliated organizationally with ITSNA;

OSHA must be allowed access to ITSNA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITSNA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,
Assistant Secretary.

[FR Doc. 02-1935 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL3-92]

TUV Rheinland of North America, Inc.; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's

preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than February 15, 2002.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL3-92, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693-1648. Submit request for extension of the comment period for this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc. (TUV), has applied for renewal of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV requests renewal for its existing scope of recognition. OSHA's current scope of recognition for TUV may be found in the following informational Web page: <http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix

requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

The most recent notice published by OSHA for TUV's recognition covered a modification to its scope of recognition, which became effective on September 12, 2001 (66 FR 47505). The following Federal Register notices related to TUV's recognition have also been published by OSHA to address an expansion of their recognition for additional standards or programs: a request announced on March 2, 2000 (65 FR 11197) and granted on June 8, 2000 (65 FR 39946); requests announced on December 12, 1997 (62 FR 65446) and January 8, 1998 (63 FR 1127) and granted on April 2, 1998 (63 FR 16280).

The current address of the testing facility (site) that OSHA recognizes for TUV is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Applicant and the Application

TUV Rheinland of North America, Inc., is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. TUV is wholly owned by TUV Rheinland e. V. of Cologne, Germany. TUV is a U.S. corporation incorporated in the state of Delaware in 1983.

TUV received its recognition as an NRTL on August 16, 1995 (60 FR 42594), for a period of five years ending August 16, 2000. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. TUV submitted a request to renew its recognition on November 16, 1999 (see Exhibit 23), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

TUV's request covers only renewal of its existing scope of recognition, which includes the facility listed above, and 126 test standards and 5 supplemental programs.

Test standards

TUV seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the

following 126 test standards, all of which OSHA has determined are appropriate, within the meaning of 29 CFR 1910.7(c).

- UL 22 Amusement and Gaming Machines
- UL 48 Electric Signs
- UL 67 Panelboards
- UL 73 Motor-Operated Appliances
- UL 82 Electric Gardening Appliances
- UL 122 Photographic Equipment
- UL 130 Electric Heating Pads
- UL 136 Pressure Cookers
- UL 141 Garment Finishing Appliances
- UL 153 Portable Electric Lamps
- UL 174 Household Electric Storage Tank Water Heaters
- UL 197 Commercial Electric Cooking Appliances
- UL 250 Household Refrigerators and Freezers
- UL 298 Portable Electric Hand Lamps
- UL 430 Waste Disposers
- UL 469 Musical Instruments and Accessories
- UL 471 Commercial Refrigerators and Freezers
- UL 474 Dehumidifiers
- UL 482 Portable Sun/Heat Lamps
- UL 499 Electric Heating Appliances
- UL 506 Specialty Transformers
- UL 507 Electric Fans
- UL 508 Industrial Control Equipment
- UL 508C Power Conversion Equipment
- UL 541 Refrigerated Vending Machines
- UL 544 Electric Medical and Dental Equipment
- UL 561 Floor Finishing Machines
- UL 583 Electric-Battery-Powered Industrial Trucks
- UL 621 Ice Cream Makers
- UL 696 Electric Toys
- UL 697 Toy Transformers
- UL 745-1 Portable Electric Tools
- UL 745-2-1 Particular Requirements of Drills
- UL 745-2-2 Particular Requirements for Screwdrivers and Impact Wrenches
- UL 745-2-3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
- UL 745-2-4 Particular Requirements for Sanders
- UL 745-2-5 Particular Requirements for Circular Saws and Circular Knives
- UL 745-2-6 Particular Requirements for Hammers
- UL 745-2-8 Particular Requirements for Shears and Nibblers
- UL 745-2-9 Particular Requirements for Tappers
- UL 745-2-11 Particular Requirements for Reciprocating Saws
- UL 745-2-12 Particular Requirements for Concrete Vibrators

- UL 745-2-14 Particular Requirements for Planers
- UL 745-2-17 Particular Requirements for Routers and Trimmers
- UL 745-2-30 Particular Requirements for Staplers
- UL 745-2-31 Particular Requirements for Diamond Core Drills
- UL 745-2-32 Particular Requirements for Magnetic Drill Presses
- UL 745-2-33 Particular Requirements for Portable Bandsaws
- UL 745-2-34 Particular Requirements for Strapping Tools
- UL 745-2-35 Particular Requirements for Drain Cleaners
- UL 745-2-36 Particular Requirements for Hand Motor Tools
- UL 745-2-37 Particular Requirements for Plate Jointers
- UL 749 Household Dishwashers
- UL 751 Vending Machines
- UL 763 Motor-Operated Commercial Food Preparing Machines
- UL 775 Graphic Arts Equipment
- UL 778 Motor Operated Water Pumps
- UL 826 Household Electric Clocks
- UL 858 Household Electric Ranges
- UL 859 Household Electric Personal Grooming Appliance
- UL 867 Electrostatic Air Cleaners
- UL 875 Electric Dry Bath Heaters
- UL 921 Commercial Electric Dishwashers
- UL 923 Microwave Cooking Appliances
- UL 935 Fluorescent-Lamp Ballasts
- UL 961 Electric Hobby and Sports Equipment
- UL 982 Motor-Operated Household Food Preparing Machines
- UL 984 Hermetic Refrigerant Motor-Compressors
- UL 987 Stationary and Fixed Electric Tools
- UL 1004 Electric Motors
- UL 1005 Electric Flatirons
- UL 1012 Power Units Other than Class Two
- UL 1017 Vacuum Cleaning Machines and Blower Cleaners
- UL 1018 Electric Aquarium Equipment
- UL 1026 Electric Household Cooking and Food-Serving Appliances
- UL 1028 Hair Clipping and Shaving Appliances
- UL 1042 Electric Baseboard Heating Equipment
- UL 1081 Swimming Pool Pumps, Filters and Chlorinators
- UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
- UL 1083 Household Electric Skillets and Frying-Type Appliances
- UL 1230 Amateur Movie Lights
- UL 1236 Battery Chargers for Charging Engine-Starter Batteries
- UL 1240 Electric Commercial Clothes-Drying Equipment
- UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
- UL 1310 Class 2 Power Units
- UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
- UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
- UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
- UL 1419 Professional Video and Audio Equipment
- UL 1431 Personal Hygiene and Health Care Appliances
- UL 1445 Electric Water Bed Heaters
- UL 1459 Telephone Equipment
- UL 1559 Insect-Control Equipment, Electrocuting Type
- UL 1561 Dry Type General Purpose and Power Transformers
- UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
- UL 1564 Industrial Battery Chargers
- UL 1570 Fluorescent Lighting Fixtures
- UL 1571 Incandescent Lighting Fixtures
- UL 1572 High Intensity Discharge Lighting Fixtures
- UL 1573 Stage and Studio Lighting Units
- UL 1574 Track Lighting Systems
- UL 1585 Class 2 and Class 3 Transformers
- UL 1594 Sewing and Cutting Machines
- UL 1598 Luminaries
- UL 1647 Motor-Operated Massage and Exercise Machines
- UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
- UL 1727 Commercial Electric Personal Grooming Appliances
- UL 1776 High-Pressure Cleaning Machines
- UL 1786 Nightlights
- UL 1795 Hydromassage Bathtubs
- UL 1838 Low Voltage Landscape Lighting Systems
- ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
- UL 1995 Heating and Cooling Equipment
- UL 2021 Fixed and Location-Dedicated Electric Room Heaters
- UL 2157 Electric Clothes Washing Machines and Extractors
- UL 2158 Electric Clothes Dryers
- UL 2601-1 Medical Electrical Equipment; Part 1: General Requirements for Safety
- UL 3101-1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
- UL 3111-1 Electrical Measuring and Test Equipment; Part 1: General Requirements
- UL 3121-1 Process Control Equipment
- UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
- UL 8730-1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
- UL 8730-2-3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
- UL 8730-2-4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
- UL 8730-2-8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
- UL 60335-1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements

Note—Testing and certification of gas operated equipment is limited to equipment for use with “liquefied petroleum gas” (“LPG” or “LP-Gas”).

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA’s recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL’s scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1028) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1028). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in the list of test standards found in OSHA’s informational web page for the NRTL. Contact ANSI or the ANSI web site (www.ansi.org) and click “NSSLN” to find out whether or not a standard is currently ANSI-approved.

Programs and Procedures

TUV's renewal also would cover use of the supplemental programs listed below. OSHA has described these "supplemental" programs in a March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. An NRTL's initial recognition will always include the first or basic program, which requires that all of these activities be performed in-house by the NRTL that will certify the product. OSHA previously granted TUV recognition to use these programs, which currently are listed on OSHA's informational Web page for TUV's recognition (see: <http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html>)

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7.

However, these programs are one of the three elements that define the scope of that recognition.

Existing Condition

Currently, OSHA imposes the following condition on its recognition of TUV as an NRTL. This condition would apply to the renewal of recognition.

TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and

must use these procedures in testing and certifying those products.

Preliminary Finding on the Application

TUV has submitted an acceptable request for renewal of its recognition as an NRTL. While processing this request, OSHA performed an on-site review of TUV's NRTL testing facilities. TUV has addressed any discrepancies noted by the assessor following the on-site evaluation, and the assessor has recommended renewal of TUV's recognition (see Exhibit 24).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to TUV the renewal of its recognition as an NRTL to use the facilities, test standards, and programs listed above, subject to the condition noted. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Agency has made a preliminary finding that TUV Rheinland of North America, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of its recognition, subject to the condition noted. This preliminary finding, however, does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUV has met the requirements of 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above see **ADDRESSES**) no later than the last date for comments see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of TUV's request, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL3-92, the

permanent record of public information on TUV's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUV's application for renewal of recognition. The Agency will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02-1934 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting Notice

TYPE: Quarterly Meeting Location Change.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedules and proposed agenda of the upcoming quarterly meeting of the National Council on Disability (NCD). Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94-409). On December 6, 2001, NCD published a Sunshine Act Meeting notice in the **Federal Register**, indicating that the meeting would take place in Los Angeles, California, at Los Angeles Marriott Hotel Downtown. The meeting will not be held at that location. It will now be held at the National Council on Disability office in Washington, DC. The dates and times are the same.

QUARTERLY MEETING DATES: February 4-5, 2002, 8:30 a.m. to 5 p.m.

LOCATION: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC; 202-272-2004.

CONTACT INFORMATION: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse

backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to these meetings.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

OPEN MEETING: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings unless requested to do so by an NCD member and recognized by the NCD chairperson.

QUARTERLY MEETING AGENDA: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session (closed), Unfinished Business, New Business, Announcements, Adjournment.

Records will be kept of all National Council on Disability proceedings and will be available after the quarterly meeting for public inspection at the National Council on Disability.

Signed in Washington, DC on January 23, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02-2064 Filed 1-23-02; 4:23 pm]

BILLING CODE 6820-MA-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Graduate Teaching Fellows in K-12 Education (GK-12) Program
OMB Control No.: 3145-NEW.

Expiration Date of Approval: Not applicable.

1. *Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Graduate Teaching Fellows in K-12 Education (GK-12). GK-12 is a fellowship that offers graduate students and advanced undergraduates the opportunity to serve as resources for K-12 teachers of science and mathematics. The study design focuses on GK-12 projects funded during the period 1999-2002 and involves two types of studies. One consists of case studies of three cohorts of GK-12 projects. The second is a survey of all GK-12 projects funded in this time period. This OMB submission seeks clearance for data collection instruments for both studies.

2. *Expected Respondents:* The expected respondents are GK-12 Fellows, Cooperating Teachers in the school districts where the Fellows are placed, Principal Investigators, and other educators associated directly with the GK-12 Program.

3. *Burden on the Public:* The total estimate for this collection is 1,823 burden hours for a maximum of 3,645 participants assuming an 80-100% response rate. The average annual reporting burden is 2 hours per respondent. The burden on the public is negligible; the study is limited to project participants that have received funding from the NSF GK-12 program.

Dated: January 22, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02-1968 Filed 1-25-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-02384, License No. SMB-00602 EA-99-290]

In the Matter of Earthline Technologies (Previously RMI Environmental Services), Ashtabula, OH; Order Imposing Civil Monetary Penalty

I

Earthline Technologies (previously RMI Environmental Services) was the holder of Materials License No. SMB-00602, issued by the Nuclear Regulatory Commission (NRC or Commission) on June 8, 1962. The license authorized the Licensee, in part, to conduct

decontamination and decommissioning activities in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on September 29, 1999. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 24, 2001. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated October 17, 2001. In its response, the Licensee denied the violation and protested the civil penalty. The Licensee claimed the employment action was taken for legitimate business reasons, the manager was unaware that the complainant had contacted the NRC, and the complainant did not have a material loss of benefits because he was placed on paid medical leave.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$17,600 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in

writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 15th day of January 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 02-2020 Filed 1-25-02; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Order No. 1320; Docket No. C2001-3]

First-Class Mail Service Standards

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning complaint.

SUMMARY: The Commission has initiated a case to consider a complaint concerning the consistency of certain recent changes in First-Class Mail service standards with controlling statutory provisions. This will allow pertinent allegations to be reviewed. Rates are not affected. Notice of this

action has also been mailed to persons on the Commission's mailing list and has been posted on the Commission's Web site.

DATES: See Supplementary Information section.

ADDRESSES: Send correspondence regarding this document to the attention of Steven W. Williams, secretary, 1333 H Street NW., suite 300, Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202-789-6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

This order addresses Douglas F. Carlson's formal request for institution of a service complaint proceeding, under 39 U.S.C. 3662, to address certain recent changes in First-Class Mail service standards.¹ The referenced changes, implemented in 2000 and 2001, affect two- and three-day service standards for delivery of First-Class Mail.

Scope and Extent of Changes

Carlson asserts that these changes entail a net decrease in the volume of First-Class Mail subject to a two-day service standard, and a net increase in the volume of First-Class Mail subject to a three-day standard. Carlson Complaint at 11. Carlson also says the changes affect over 76,440 origin-destination three-digit ZIP Code pairs in all postal areas, and all states except Alaska and Hawaii. *Id.* at 2-3, 11. He asserts:

The changes in First-Class Mail standards result in a net increase of approximately 22,250 origin-destination three-digit ZIP Code pairs for which the service standards is two days. However, the net *volume* of First-Class Mail subject to a two-day delivery standard instead of a three-day delivery standard has decreased by approximately 1.5 billion pieces per year. Moreover, the changes in First-Class Mail service standards have shifted over 3.4 billion pieces of mail per year from a two-day delivery standard to a three-day delivery standard.

Id. at 11, paragraph 53 (emphasis in original).

Rationale for seeking to explore recent changes in a service complaint.

In brief, Mr. Carlson's theory is that the Service should have requested an advisory opinion from the Commission,

¹ Douglas F. Carlson Complaint on First-Class Mail service standards, June 15, 2001 (Carlson complaint). The complaint includes an appendix, and was accompanied by two library references. DFC-LR-1 consists of correspondence with the Postal Service under the Freedom of Information Act (FOIA). DFC-LR-2 consists of service commitment diskettes and a service standards CD-ROM. Douglas F. Carlson notice of filing of library references, June 15, 2001. This order does not address FOIA issues.

pursuant to 39 U.S.C. 3661(b), within a reasonable time prior to making the 2000–2001 changes, as these materially changed, departed from or abandoned the standards proposed by the Service in docket no. N89–1, and did so on a nationwide basis within the meaning of the Postal Reorganization Act. Although the Service did not request such an opinion, Carlson contends that the Commission nevertheless has jurisdiction to address the changes in the alternative setting of a service complaint proceeding—and should do so—as 39 U.S.C. 3662 provides:

“Interested parties * * * who believe they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission * * *.”

Policies in Issue

The policies allegedly implicated by the Service’s actions, and cited in Mr. Carlson’s original complaint, include 39 U.S.C. 3361(a), which requires the Service to provide “adequate postal services” and 39 U.S.C. 403(c), which proscribes undue and unreasonable discrimination among users of the mail. A proposed amendment to the complaint also alleges that the service standard changes violate 39 U.S.C. 101(e) and (f).² Douglas F. Carlson motion for leave to amend complaint, August 14, 2001 (Carlson motion to amend complaint).

Structure of the complaint and initial Commission action. Upon filing, Mr. Carlson’s complaint was designated as docket no. C2001–3 for administrative purposes, pending a decision on whether to proceed on the merits. Pursuant to Commission rules, the secretary of the Commission transmitted the complaint the Postal Service.

In conformance with Commission rules, Carlson’s complaint provides formal identification of the complainant and his mailing address (in paragraph 1); addresses Commission jurisdiction (paragraphs 2–8); and summarizes the complaint (paragraphs 9–21). It also describes why First-Class Mail service is inadequate under the recent changes (paragraphs 22–32); reviews criteria for two-day service standards (paragraphs 22–40); addresses undue and unreasonable discrimination (paragraphs 41–43); and notes the

purported lack of public input (paragraphs 33–48). The complaint discusses the scope of changes in service standards (paragraphs 49–61, noting appendix 1’s printouts of maps from the service commitment program and service standards program.) It also describes the class of persons affected (paragraphs 62–64) and identifies the relief that is sought (paragraph 65). Paragraph 66 (to be filed) supplements the postal policies identified in the original complaint by adding 39 U.S.C. 101(e) and (f).

Requested Relief

The relief Carlson seeks (in paragraph 65) includes a specific request that the Commission issue a public report documenting the following four matters: the inadequate First-Class Mail service that many customers are now receiving; the undue and unreasonable discrimination some mailers located in California and other western states are suffering; the change in, departure from, or abandonment of criteria the Service announced in docket no. N89–1 and the 2001 ZIP Code directory for two-day service standards for First-Class Mail; and the Service’s failure to seek an advisory opinion before the effective date of those changes.

Other Pleadings

The Service has filed a paragraph-by-paragraph answer to the complaint (along with a general denial), a motion to dismiss, and a declaration prepared by Postal Service employee Charles Gannon.³ See order no. 1318, issued July 13, 2001. Mr. Carlson and the Commission’s office of the consumer advocate (OCA) have each filed answers opposing the Service’s motion to dismiss.⁴ In addition, the Service has filed a reply to both of these answers, and Mr. Carlson has filed a response to this reply.⁵

³ Answer of the United States Postal Service [to Carlson’s docket no. C2001–3 complaint on First-Class Mail service standards], July 13, 2001 (Postal Service answer); Motion of the United States Postal Service to dismiss complaint, July 30, 2001 (motion to dismiss) and declaration of Charles M. Gannon, July 30, 2001 (Gannon declaration).

⁴ Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, August 11, 2001 (Carlson answer to motion to dismiss); answer of the office of the consumer advocate to United States Postal Service motion to dismiss complaint, August 14, 2001 (OCA answer to motion to dismiss).

⁵ Motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss (August 21, 2001) and reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the motion to dismiss (August 21, 2001). Douglas F. Carlson response to reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the

The instant complaint and related filings draw extensively on docket no. N89–1, change in service 1989, First-Class delivery standards realignment. In that docket, the Service proposed a phased realignment of First-Class Mail delivery, or service standards. The Gannon declaration provides a useful review of key aspects of that proposal, and of developments since issuance of the Commission’s advisory opinion.⁶

II. Status of Key Allegations

A review of the pleadings at this stage of the case indicates that several allegations related to the timing, scope, and effect of the underlying changes are undisputed. Specifically, the complainant and the Postal Service appear to be in agreement that the complained-of changes were implemented by the Postal Service in 2000 and 2001; affect more than 76,440 three-digit ZIP Code origin-destination pairs; and have the volume impact cited by the complainant. Postal Service answer at 2–3, and 11–15.

However, the pleadings have not resolved other important allegations and legal questions. For example, as framed by the Postal Service, a threshold question is the context in which the changes occurred. Carlson’s view is that the 2000–2001 changes were necessarily so different and so attenuated in time from the docket no. N89–1 delivery realignment plan that they required a new advisory opinion prior to implementation. In contrast, the Service contends that the changes were simply the long-delayed, but nevertheless related, implementation of “phase II” of the earlier proposal, and cites the Gannon declaration for support. Postal Service motion to dismiss at 4–5. In effect, the Service argues that the changes are part of a continuum that required no new advisory opinion.

Other legal questions center on whether the impact is nationwide within the meaning of the Postal Reorganization Act; whether the criteria and/or resulting service are unduly discriminatory and inadequate or implicate other statutory policies; whether the Commission should

motion to dismiss (August 29, 2001); see also Douglas F. Carlson response to reply of the United States Postal Service to the answers of the consumer office of the advocate and the complainant in opposition to the motion to dismiss—erratum (August 25, 2001). The erratum notes two errors, neither of which affect the substance of the reply. A previous Commission order (no. 1318, issued July 13, 2001) granted the Postal Service’s unopposed motion for an extension of time (from July 19, 2001) to file this motion and the referenced declaration.

⁶ The Commission’s docket no. N89–1 opinion advised against implementation of the service standard changes proposed at that time. PRC Op. N89–1 at 2.

² Section 101(e) provides that the Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. Section 101(f) provides that in selecting modes of transportation, the Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services.

exercise its jurisdiction to hear a complaint that entails alleged failure to comply with 39 U.S.C. 3661; and whether the Commission has the authority to grant relief on all of the requested terms.

III. Positions on the Service's Motion To Dismiss

Carlson's Answer

Mr. Carlson's answer to the Service's motion to dismiss cites four grounds justifying exercise of the Commission's jurisdiction. These include reiteration of the argument that the Service should have sought an advisory opinion prior to implementing the changes, given the nationwide scope of the 2000–2001 changes and the assertion that new standards depart from the original criteria. They also include claims that resulting First-Class Mail service is not adequate within the meaning of 39 U.S.C. 3661(a) for some customers, and that the standards unduly and unreasonably discriminate among users of the mail, contrary to 39 U.S.C. 403(c). Carlson answer at 2–3.

The OCA's answer. The OCA contends that the pleadings raise sufficient issues of law and fact to warrant the Commission's denial of the motion to dismiss. It proposes that the Commission establish "further procedures to allow participants to undertake a more detailed inquiry into the facts alleged in order to create a full record for the Commission to reach a reasoned decision as to the appropriate disposition of the complaint." OCA Answer at 2. In particular, the OCA suggests that the Commission should order the Postal Service to provide the results of "relevant and appropriate investigations of the cost consequences of changes in delivery standards" undertaken by the Postal Service in relation to the service standard changes in issue. It notes that the Commission previously recommended that the Service undertake such studies before implementing nationwide service standards. *Id.* at 2–3.

IV. Action on Proposed Amendment to Compliant

Carlson proposes an amendment to his complaint, based on his review of the Gannon declaration. He alleges that this "reveals that the Postal Service has changed the definition of two-day First-Class mail to exclude the use of air transportation for most or all mail for which a two-day delivery standard applies." Carlson motion to amend compliant at 1, citing paragraph 18 of the Gannon declaration. Carlson says he thus has formed a reasonable belief that

the new definition of the two-day First-Class Mail delivery area is consistent with 39 U.S.C. 101(e) and (f). *Id.* at 1–2.

The Commission finds that the proposed amendment of the complaint is consistent with the general framework of the original compliant; reflects information that is apparently newly-available to Mr. Carlson; and may foster efficiency in the review and administration of the complainant's concerns. Accordingly, the motion to amend is granted. The Commission directs Mr. Carlson to file a revised page 16 showing an additional paragraph (No. 66) containing this allegation, pursuant to the complainant's offer. The remaining discussion assumes this amendment.

V. Discussion

Further action on the instant complaint requires several preliminary decisions. One is a determination of whether Mr. Carlson has made a prima facie showing that his complaint has statutory merit. In terms of what has emerged as the threshold question—the context of the charges—the Commission must conclude that the decade-plus "gap" in implementation of the recent standards raises the possibility that the changes in issue may have legally fallen within the scope of 39 U.S.C. 3661(b). The Gannon declaration stands as an informative and impressive narration of decisions and events that have transpired since docket no. N89–1, but is not persuasive on the main point the Service presses here, which is that the changes can reasonably be considered, for purposes of the statute, as a continuum of the original plan. Instead, despite characterization of changes as "phase II," the Gannon declaration chronicles near-abandonment of the realignment at various times over the ensuing years. Thus, while front-line postal managers may have made a good-faith attempt to stay focused on the original plan, it is reasonable that Carlson (and others) may regard the "gap" as a break.

There is, as the Service notes, no explicit time limit in the statute for completion of changes subject to 39 U.S.C. 3661; however, reading out a "rule of reasonableness" effectively would nullify the provision, as one broad service change request could then arguably be deemed to operate essentially in perpetuity. It is unlikely the authors of this provision would have intended this result. A common-sense interpretation requires acknowledgement that passage of time, in some instances, may require the Service to request a new advisory

opinion. Where, as here, time has not simply passed, but has passed with several changes of postmasters general, several changes in Governors, several reorganizations, and numerous changes in operations, technology—and possibly public need—the case is even stronger. Accordingly, the Commission finds that Mr. Carlson has made a prima facie showing on this threshold question.

On certain other critical policy issues, such as whether the resulting postal service is adequate, whether there is undue or unreasonable discrimination, and whether the highest consideration has been given to certain considerations pertaining to delivery of First-Class Mail, no final answer can be discerned at this time. Indeed, these are points on which Mr. Carlson may need to provide more specific evidence, such as mail users' need for certain service standards. However, it again appears that the complainant has made a prima facie showing that the alleged policy violations have occurred as a result of the recent changes.

Related Jurisdictional Issues

The provisions in question here—39 U.S.C. 361 and 3662—are not mutually exclusive, so there is no automatic bar to Mr. Carlson's interest in pursuing certain service concerns under the service complaint proceedings. At the same time, the latter are not automatically available to remedy any perceived failure to seek an advisory opinion. Instead, exercise of complaint jurisdiction is discretionary, and the Commission must consider whether it is appropriate to proceed.

In addition to the conclusion above regarding the prima facie showing Mr. Carlson has made, the Commission has considered that public input is a hallmark of 39 U.S.C. 3661. Although the Gannon declaration indicates postal administrators apparently have been well-intentioned in implementing the changes, there is little, if any, indication of whether there was any direct public input. Instead, these changes, as Mr. Gannon notes, entailed many internal logistical decisions, including adoption of a maximum 12-hour drive time range to determine 2-day service destinations in place of the previous standard of a 600-mile radius. Gannon declaration at 9–10. As Mr. Gannon notes, the process of determining the changes to make in the "phase 2 finalization" also differed from that contemplated in docket no. N89–1: the organization management structure had changed significantly; a service standard mapping program had been developed (thereby allowing more centralization in deciding what changes to consider in implementing the new

“drive time” standard); and a preference for surface transportation had emerged in the face of less dependable air transportation for 2-day mail. *Id.* at 10–13.

Mr. Gannon acknowledges that as a result, “more western and Pacific area origin-destination First Class Mail shifted from 2-day to 3-day service, than occurred throughout the remainder of the country” and that within certain states (California, Nevada, Texas, Wyoming and Alaska) there are home state pairs that have a 3-day standard. *Id.* at 13. Moreover, in response to Mr. Carlson’s comments about a certain non-reciprocal origin-destination pair, Mr. Gannon suggests: “If we had included overnight standards as part of our recent adjustments, the originating service standards would, very likely, have ended up as being 3-days in both directions between Ashland, Oregon and Yreka, California, based on our processing network design.” *Id.* at 15. Overall, the net effect of the Service’s actions involve 48 states; affect service standards for more than 76,440 origin-destination three-digit ZIP Code pairs in all postal areas; and shift more than 3.4 billion pieces of mail annually to a three-day service standard from a two-day standard. Postal Service answer at 15–16.

Relief

The statute provides for a public hearing and if the complaint is found justified, for the Commission to issue a recommended decision or public report, as appropriate. Carlson seeks these remedies, as well as a change in service standards. In addition, the OCA suggests that cost data and information should be provided. It is reasonable to assume that if warranted, at least some of the relief Mr. Carlson has requested can be provided. This clearly constitutes a major, national service change. The issue of whether First-Class service continues to meet the policies established in the Act is important, and the Commission will hold hearings on this complaint.

Further Action

Information procedures do not appear likely to resolve these issues. The Commission hereby denies the Postal Service motion to dismiss and institutes a formal docket. The Commission therefore directs Mr. Carlson to provide, no later than September 24, 2001, an estimate of the amount of time he anticipates needing for discovery, the earliest date by which he could present evidence, and identification of any other procedural requests. Responses to Mr. Carlson’s filing will be due on October

1, 2001. Ted P. Gerarden, the director of the Commission’s office of the consumer advocate, is directed to represent the interests of the public in any further proceedings in this case. Others who believe they may be affected by this proceeding are invited to intervene. Notices of intervention shall be filed with the Commission no later than October 1, 2001. It is ordered:

1. The Douglas F. Carlson motion for leave to amend complaint, August 11, 2001, is granted.

2. The motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss, August 21, 2001, is granted.

3. The motion of the United States Postal Service to dismiss complaint, July 30, 2001, is denied.

4. The Commission institutes a formal service complaint proceeding to address the allegations raised in the captioned proceeding.

5. Complainant is directed to inform the Commission, no later than September 24, 2001, of the amount of time he believes is necessary to prepare his case.

6. Responses to Mr. Carlson’s filing are due October 1, 2001.

7. Ted P. Gerarden, director of the Commission’s office of the consumer advocate, is appointed to represent the interests of the general public.

8. Interested persons shall intervene no later than October 1, 2001.

9. The Secretary is directed to arrange for publication of this order in the **Federal Register**.

By the Commission.

Dated: September 12, 2001.

Steven W. Williams.

Acting Secretary.

[FR Doc. 02–1413 Filed 1–25–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45320: File No. SR–AMEX–2001 79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Technical Corrections to American Stock Exchange LLC Rules

January 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

notice is hereby given that on December 14, 2001, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change was filed by the Exchange as a “non-controversial” rule change under Rule 19b–4(f)(6)³ under the Act, which renders the proposal effective upon receipt of the filing by the Commission.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to correct Amex Rules 3(c) (Commentary .04), 7 (Commentary .01), 21(b), 22 (Commentary .03), 25(a), 60(h), 103(b), 111 (Commentary .12), 114 (Commentary .14), 154 (Commentary .15), 177(c), 235, 323, 950(f), 958(g) (Commentary .10), and 1202(d). The Exchange also proposes to correct Sections 101 (Commentary .01), 901(d), and 1203(a) of the Amex Listing Guidelines, and to relocate the section of the Exchange’s rule titled “Admission of Members and Member Organizations; Regular and Options Principal Memberships” to Section 4 of the Exchange’s “Office Rules.” The text of the proposed rule change is available from the Amex and from the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ 17 CFR 240.19b–4(f)(6).

⁴ The proposed rule change was originally filed on September 28, 2001 pursuant to Section 19(b)(2) of the Act. *See* 15 U.S.C. 78s(b)(2). The Amex filed an amendment on December 14, 2001, requesting that the proposed rule change be considered as filed pursuant to Section 19(b)(3)(A) of the Act. *See* 15 U.S.C. 78s(b)(3)(A). The Amex requested that the Commission waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

From time to time, the Exchange reviews its rules to ensure their accuracy. As the result of one of these reviews, the Amex is proposing a number of revisions to its rules. All of the proposed rule changes are technical rather than substantive in nature. The proposed amendments would (1) Clarify the Exchange's rules by making conforming changes to rules that were previously amended (with SEC approval) elsewhere in the Amex Constitution and Rules; and (2) revise language that might tend to mislead or confuse. The changes are described below:

- (1) The proposed amendment to Amex Rule 3(c) reflects organizational restructuring;
- (2) The proposed amendment to Amex Rule 7, Commentary .01 reflects revisions to SEC Rule 10a-1;
- (3) The proposed amendment to Amex Rule 22, Commentary .03 reflects organizational restructuring;
- (4) The proposed amendment to Amex Rule 25(a) reflects organizational restructuring;
- (5) The proposed amendment to Amex Rule 60(h) reflects organizational restructuring;
- (6) The proposed amendment to Amex Rule 103(b) reflects clarifying language;
- (7) The proposed amendment to Amex Rule 111, Commentary .12 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;
- (8) The proposed amendment to Amex Rule 114, Commentary .14 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;
- (9) With respect to the proposed revisions to Amex Rule 154: (a) the amendment to Commentary .01 reflects appropriate cross references to Amex Rules 153, 180 and 181; (b) the amendment to Commentary .06 reflects the use of the Electronic Display Book for all good-'til-canceled orders which eliminated the need for paper receipts; and (c) the amendment to Commentary .15 corrects a typographical error that was corrected in a similar New York Stock Exchange ("NYSE") rule change (NYSE Rule 123A.30) in 1999;
- (10) The proposed amendment to Amex Rule 177(c) reflects a prior revision to Amex Rule 103(a);

(11) The proposed amendment to Amex Rule 235(e) reflects organizational restructuring;

(12) The proposed amendment to Amex Rule 323 permits electronic access to the Amex Constitution and Amex Rules at member firm offices;

(13) The proposed amendment to Amex Rule 950(f) reflects a prior revision to the Commentary to Amex Rule 154 and corrects a cross reference;

(14) The proposed amendment to Amex Rule 958, Commentary .10 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;

(15) The proposed amendment to Amex Rule 1202(d) contains language from (rather than a cite to) rescinded Amex Listing Guidelines Section 811;

(16) The proposed amendment to Amex Listing Guidelines Section 101 reflects organizational restructuring;

(17) With respect to the proposed revision to Amex Listing Guidelines Section 910: (a) the proposed amendment to (d)(i) reflects a revision to Amex Rule 174; (b) the proposed amendment to (d)(iii) reflects language conforming to that of Amex Rule 175; and (c) the proposed amendment to the second (d)(iii) reflects a prior revision to Amex Rule 103(a);

(18) The proposed amendment to Amex Listing Guidelines Section 1203 reflects organizational restructuring;

(19) The proposed renumbering of paragraphs 9174 through 9181 of the Amex Rules to become Amex Rules 350 through 358 reflects clarifying references; and

(20) The proposed renaming of Amex Office Rules, Section 4 reflects the addition of Amex Rules 350 through 358 to that Section of the Amex Rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and the provisions of Section 6(b)(5) of the Act,⁶ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) was discussed by the Commission and the Exchange at least five days before filing of the same, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

The Amex has asked the Commission to designate that the proposed rule change become operative immediately. Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In this regard, the Amex believes that it would be consistent with the protection of investors and the public interest to institute immediately the technical changes that are contemplated in the proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately so that Amex can

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

implement the technical changes that are contemplated in the proposed rule change.¹² The Commission finds that permitting the proposal to become effective immediately is consistent with the protection of investors and the public interest because it will make Amex's rules more comprehensible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX-2001-79 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1956 Filed 1-25-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45319; File No. SR-NASD-2001-69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rule 4720 Relating to the Inclusion of UTP Exchanges in the Nasdaq National Market Execution System

January 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on October 5, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. On December 19, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.³ On January 16, 2002, the NASD submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4720 to delineate the use of SelectNet by UTP Exchanges. Proposed new language is in italics; proposed deletions are in brackets.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated December 18, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD removed from the proposed rule change language related to NASDAQ National Market Execution System ("NNMS") trading through the quotes of UTP exchanges that do not participate in the NNMS.

⁴ See letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated January 16, 2002 ("Amendment No. 2"). In Amendment No. 2, the NASD amended language that: (1) Incorrectly described SelectNet as being included within the rubric of the NNMS; (2) defined the term "Non-Participating UTP Exchange;" and (3) ambiguously referenced the "Nasdaq system."

⁵ The NASD requested that the Commission alter the originally proposed rule language of Rule 4720(c)(i) to reflect the current name of the Nasdaq OTC/UTP Plan. Telephone message left by

4720. *SelectNet Service*

(a)-(b) No Change.

(c) Prohibition Regarding the Entry of Certain Preferred Orders to Nasdaq National Market Execution System Market [Makers] *Participants*

(i) For purposes of this rule the term "Participating UTP Exchange" shall mean any registered national securities exchange that elects to participate in the Nasdaq National Market Execution System ("NNMS") and that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation And Dissemination Of Quotation And Transaction Information For Nasdaq-Listed Securities Traded On Exchanges On An Unlisted Trading Privileges Basis; and

(ii) Non-Participating UTP Exchanges are prohibited from sending SelectNet preferred orders. No member or Participating UTP Exchange shall direct a SelectNet preferred order to a Non-Participating UTP Exchange.

(iii) Participating UTP Exchanges must participate in SelectNet and the NNMS under the same conditions that apply to Nasdaq market makers, as set forth herein.

(iv) No member or Participating UTP Exchange shall direct a SelectNet preferred order to an NNMS [Nasdaq National Market Execution System ("NNMS")] market maker (as defined in NASD Rule 4701) [(including that market maker's Agency Quote (as defined in NASD Rule 4613)], to an ECN that provides automatic execution against its quote through the NNMS, or to a Participating UTP Exchange, unless that order is designated as:

(A) A non-liability order that is entered as an "All-or-None" order ("AON") and is at least one normal unit of trading (i.e. 100 shares) in excess of the displayed quote to which the preferred order is directed; or

(B) A non-liability order that is entered as a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferred order is directed; or

(C) A non-liability order that is entered at a price that is inferior to the displayed quote to which the preferred order is directed.

Katherine England, Assistant Director, Division of Market Regulation, Commission (January 18, 2002) for Jeffrey S. Davis, Assistant General Counsel, Office of General Counsel, Nasdaq (January 18, 2002), and response telephone message left by Jeffrey S. Davis for Katherine England (January 22, 2002).

¹² For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

(v) The prohibition of this paragraph shall not apply to:] *SelectNet preferred orders sent by a member, or a Participating UTP Exchange to an ECN that does not provide automatic execution against its quote through NNMS.*

[(A) Preferred orders sent by a UTP Exchange that does not elect to participate in the automatic execution functionality of the NNMS, to: (1) An NNMS market maker; (2) another UTP Exchange; (3) an ECN, regardless of whether the ECN provides an automatic execution against its quote through NNMS; or]

[(B) Preferred orders sent by an NNMS market maker to: (1) A UTP Exchange that does not participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS; or]

[(C) Preferred orders sent by an ECN that does not provide an automatic execution against its quote through NNMS, to: (1) A UTP Exchange that does not elect to participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS; or]

[(D) Preferred orders sent by a UTP Exchange that elects to participate in the automatic execution functionality of the NNMS, to: (1) Another UTP Exchange that does not participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS.]

[(iv) For purposes of this rule the term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation And Dissemination Of Quotation And Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan"). In addition, participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the NNMS system, the provisions of this subparagraph shall apply to UTP Exchanges that choose to participate in the NNMS.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 4720 to specify that a UTP Exchange will be permitted access to SelectNet on a similar basis that it is offered to NASD members. As a result, SelectNet will be available only in connection with participation in the Nasdaq National Market Execution System ("NNMS") (hereinafter referred to as "SuperSOES"). The rule change would bring Nasdaq market makers into parity with UTP Exchanges, as well as reduce the risk of dual liability for both Nasdaq market makers and UTP Exchanges participating in SuperSOES. As set forth in more detail below, Nasdaq believes that the rule would also limit the possibility of backing away from quotes by UTP Exchanges, and would limit the instances of locked/crossed markets among market participants that participate in a Nasdaq execution system.

The proposal is consistent with Nasdaq's long-standing goal to improve the quality of its market. Establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in that respect. Nasdaq believes that implementation of SuperSOES has significantly improved the Nasdaq Stock Market. In particular, Nasdaq's initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, SuperSOES has not had a significant negative impact on spreads, depth or volatility. According to Nasdaq, the ease with which the market reopened on September 17 appears to be directly connected to the efficiency of SuperSOES. In addition, SuperSOES has been voluntarily adopted by the Chicago Stock Exchange, Inc. ("CHX") and the Boston Stock Exchange, Inc. ("BSE"), which currently

represent the vast majority of the trading volume in Nasdaq-listed stocks by UTP Exchanges. CHX has participated in SuperSOES since it was implemented in July 2001.⁶ As SuperSOES becomes a more familiar feature in the Nasdaq market place, Nasdaq believes it will benefit Nasdaq market participants and public investors by making the operation of Nasdaq more efficient.

Nasdaq states that SuperSOES is improving the operation of the Nasdaq Stock Market, however, Nasdaq has identified two areas of concern that it believes must be addressed immediately to ensure the smooth functioning of Nasdaq's systems. Specifically, permitting UTP Exchanges to participate in Nasdaq without automatic execution functionality perpetuates the potential for "dual liability" that Nasdaq designed SuperSOES to eliminate. The potential for dual liability exists when market participants, such as UTP Exchanges, send SelectNet liability messages to Nasdaq market makers that simultaneously receive executions through SuperSOES. Additionally, permitting UTP Exchanges to access Nasdaq via SelectNet could disrupt and slow the market. To improve the trading environment for all of Nasdaq's valued market participants, and to avoid potential significant market disruptions, Nasdaq is proposing to require UTP Exchanges that choose to participate in Nasdaq to accept automatic executions through SuperSOES.

Background. On January 14, 2000, the Commission approved a rule change to establish SuperSOES,⁷ which was implemented for all Nasdaq National Market securities on July 30, 2001. SuperSOES is an automated execution system that allows the entry of retail as well as principal orders for up to 999,999 shares.⁸ By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet for NASD members was limited to certain types of non-liability orders that require negotiation with the receiving market participant.⁹

⁶ In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. See Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

⁷ See Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

⁸ SOES was limited to small agency orders for customers.

⁹ As originally developed, SuperSOES allowed market participants to enter into SelectNet only those orders that (1) specify a minimum acceptable quantity for a size that is at least 100 shares greater

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, a subset of Nasdaq market participants, Electronic Communications Networks ("ECNs"), as well as UTP Exchanges, continue to have their quotes in Nasdaq accessed through SelectNet and, as such, are not required to accept automatic executions.¹⁰ Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange.¹¹

According to Nasdaq, SuperSOES increases the speed of executions and improves the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Nasdaq states that while SelectNet was adequate as the primary means of UTP Exchange access in the past, this is no longer true. Market participants demand and require the ability to access liquidity at the best prices instantaneously. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to preferred SelectNet liability orders, continuing SelectNet liability functionality for UTP Exchanges is not a viable option.

Moreover, under the rules that established the NNMS, SelectNet became primarily a non-liability system for SuperSOES market participants. Nasdaq made SelectNet a non-liability system for SuperSOES market

participants to, among other reasons, provide protection for Nasdaq market participants that are required to (*i.e.*, Nasdaq market makers), or chose to (*i.e.*, Full Participant ECNs and participating UTP Exchanges¹²), take automatic execution against their quotes through SuperSOES by limiting the potential for dual liability.¹³ The current rules, however, do not offer sufficient protection, because they continue to allow UTP Exchanges that do not participate in SuperSOES to send preferred SelectNet liability orders to SuperSOES market participants. As a result, dual liability could occur if a SuperSOES market participant receives an order from a UTP Exchange through SelectNet to which it owes an obligation to execute under the NASD's and SEC's firm quote rule, and immediately thereafter receives an execution through SuperSOES against the same quote.

Proposed Amendment. To address these problems, Nasdaq is proposing to amend NASD Rule 4720 to require that UTP Exchanges that voluntarily choose to trade Nasdaq securities through Nasdaq market systems send and accept automatic executions through SuperSOES. A UTP Exchange that does not wish to use a Nasdaq market system would be accessible by telephone—the method of access specified in the Nasdaq UTP Plan—or via a mutually agreed upon bilateral link created by the UTP Exchange.¹⁴

Specifically, Nasdaq proposes to allow UTP Exchanges to choose whether or not they want to access Nasdaq market systems for order processing and execution purposes. If a UTP Exchange elects to participate in SuperSOES, the UTP Exchange, like Nasdaq market makers, will be permitted access to SelectNet in accordance with the proposed changes to paragraph (c) of Rule 4720. Through SuperSOES, UTP Exchanges will make their quotes accessible to other market participants, and will access the quotes of market

markers, Full Participant ECNs, and other UTP Exchanges participating in SuperSOES.

Under this option, UTP Exchanges will use SelectNet on the same terms as Nasdaq market makers and ECNs. First, Participating UTP Exchanges may direct non-liability orders (as set forth in subparagraph (c) of Rule 4720) to SuperSOES market participants. Second, Participating UTP Exchanges (similar to Nasdaq market makers) will receive via SelectNet only non-liability orders, in order to limit their potential for dual liability, as noted above.¹⁵ This will limit any potential dual liability. Third, UTP Exchanges may access quotes of Order Entry ECNs with preferred SelectNet liability orders.

If a UTP Exchange elects not to participate in SuperSOES, the UTP Exchange's quote will not be accessed through SuperSOES or SelectNet. In this case, SuperSOES will not include that UTP Exchange's quotation for order processing and execution purposes. UTP Exchanges that choose this option would be accessible by telephone as contemplated in the Nasdaq UTP Plan,¹⁶ or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.¹⁷ Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq is proposing these amendments for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. According to Nasdaq, the volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Consequently, market

than the posted quote of the receiving market participant or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

¹⁰ ECNs may choose whether or not to take automatic executions through SuperSOES. ECNs that choose to take automatic execution against their quotes through SuperSOES are referred to as "Full Participant ECNs." Full Participant ECNs are not required to take liability orders through SelectNet (a "liability order" imposes an obligation on the market participant that receives the order to respond to the order in a manner consistent with the Firm Quote Rule (Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1) (*e.g.* by executing the order for that market participant's displayed size). ECNs that choose not to take automatic execution against their quotes through SuperSOES must continue to take delivery of liability orders against their quotes through SelectNet. These ECNs are referred to as "Order-Entry ECNs."

¹¹ The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, it relies on the language in the UTP Plan and provides only telephone access to its quotes.

¹² Specifically, CHX and BSE have chosen to participate in SuperSOES.

¹³ Dual liability may occur when a market participant has simultaneous, multiple obligations with respect to orders that it receives from more than one venue. For instance, if a market maker is preferred through SelectNet for its displayed size at the same time that it receives an automatic execution order through SuperSOES, that market maker is exposed to dual liability for those orders. Dual liability can result in a market participant risking more capital than it might otherwise desire.

¹⁴ The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants "shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations." See Section IX, Market Access, of the Nasdaq UTP Plan.

¹⁵ The rules clarify that if a UTP Exchange participates in SuperSOES, orders preferred to the UTP Exchange's quotes must meet the Oversized Order Requirement. This restriction is intended to limit the potential for dual liability for UTP Exchanges. In addition, Nasdaq is proposing non-substantive changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the Oversized Order Requirement in the rule, while orders sent to Full Participant ECNs are subject to this requirement.

¹⁶ We note this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

¹⁷ This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of the NNMS Plan.

participants demand and require the ability to access liquidity at the best prices instantaneously. Nasdaq states that SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of its marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

According to Nasdaq, while SelectNet—which requires an affirmative response in order to trade—was adequate as the primary means of UTP Exchange access in the past, this is no longer true. In 1997, when Nasdaq made SelectNet available to UTP Exchanges for liability order processing, Nasdaq (inclusive of the only active UTP Exchange at the time, CHX) processed an average of 417,224 quote updates and 467,914 transactions per day.¹⁸ Over the first seven months of 2001, Nasdaq processed an average of 5,822,474 quote updates and 2,757,556 transactions per day. The need for immediate response by all participants who choose to access the Nasdaq market is very clear. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to preferred SelectNet liability orders, it can no longer offer SelectNet liability functionality as an option to UTP Exchanges.

Moreover, Nasdaq believes that this proposal, requiring a UTP Exchange to participate in SuperSOES if the UTP Exchange wishes to access Nasdaq via Nasdaq's own systems, is consistent with prior SEC statements in the context of alternative trading systems ("ATSs"). In the release adopting Regulation ATS, the Commission stated its concern that an ATS should respond to orders entered by non-participants (e.g., broker-dealers that access the ATS through a linkage like SelectNet) no slower than it responds to orders entered by subscribers.¹⁹ The Commission addressed this concern by establishing a principle that underscores the importance of each market establishing the parameters and automation of its system, specifically the Commission stated "[a]ny SRO to which alternative trading systems may be linked, may determine that it is necessary for the fair and orderly operation of its market to require that

publicly displayed alternative trading system orders be subject to automatic execution."²⁰ Nasdaq believes that the Commission should apply this principle to Nasdaq's current proposal for UTP Exchange participation in SuperSOES.

Second, Nasdaq believes it is appropriate to minimize the potential for dual liability in the Nasdaq market by requiring UTP Exchanges to participate in SuperSOES. The possibility of dual liability arising from a UTP Exchange that accesses the Nasdaq market through SelectNet was not a major concern at the time the SuperSOES rules were adopted. At that time, only CHX traded Nasdaq securities, CHX's volume was minimal, and CHX, in fact, chose to accept automatic execution by participating in SuperSOES. Recently, however, there has been renewed interest by other regional stock exchanges in trading Nasdaq-listed securities on a UTP basis. In fact, a number of new participants joined the Nasdaq UTP Plan subsequent to Nasdaq proposing SuperSOES, and these exchanges have indicated an interest in trading Nasdaq-listed securities in the coming weeks and months. According to Nasdaq, although CHX elected to participate in SuperSOES—temporarily eliminating the potential for dual liability—the imminent entry of other UTP Exchanges trading Nasdaq securities reintroduces the potential of dual liability to all SuperSOES market participants.

Third, participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq states that it is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, Nasdaq believes it is entirely appropriate to limit UTP Exchange access to Nasdaq's most efficient system. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it is appropriate to alter the terms under which a UTP Exchange participates in the Nasdaq market to address all of the concerns described in this proposal. Nasdaq is committed to operating a fair, orderly, efficient marketplace for the benefit of all investors in Nasdaq-listed securities, and this proposal is essential to Nasdaq's ability to meet that commitment.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)²¹ of the Act, which requires, among other things, that the NASD's rules be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that requiring a UTP Exchange that chooses to participate in the Nasdaq market also to participate in SuperSOES is necessary for the fair and orderly operation of the Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible and is alone at the best bid or best offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of

¹⁸ These figures are based on the average daily quote updates and trades reported over the first seven months (January through July) of 1997.

¹⁹ *Regulation of Exchanges and Alternative Trading Systems*, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at Section IV.2.c.(iii)(A).

²⁰ *Id.*

²¹ 15 U.S.C. 78o-3(b)(6).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-69 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1957 Filed 1-25-02; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45322; File No. SR-Phlx-2001-115]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Volume Thresholds for the Options Specialist Shortfall Fee and Corresponding Shortfall Credit

January 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 15, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing

this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the requisite volume thresholds associated with the options specialist 10 percent deficit fee ("shortfall fee")⁴ and corresponding options specialist 10 percent shortfall credit ("shortfall credit").⁵ The Exchange also proposes to amend the definition of a Top 120 Option, clarify who is eligible to receive the shortfall credit and make other minor, technical amendments to its fee schedule. The Exchange intends to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002.⁶

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Summary of Equity Option Charges (P. 1/2)

SPECIALIST [10%] DEFICIT (*Shortfall*) FEE I

\$.35 per contract for specialists trading any Top 120 Option if [at least 10% of] *the following* total national monthly contract volume for such Top 120 Option is not effected on the PHLX: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

Summary of Equity Option Charges (P. 2/2)

[OPTIONS] SPECIALIST [10%] DEFICIT (Shortfall) FEE CREDIT

A credit of \$.35 per contract may be earned by options specialists for all contracts traded in excess of the [10%] *following* volume thresholds in eligible

the Act. Finally, the Exchange requested that the proposed fee be approved as of January 2, 2002 and that the proposed rule change be approved on an accelerated basis in order to permit the Exchange to invoice its January fees in a timely manner by the middle of February.

⁴ See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

⁵ See Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR-Phlx-2001-83).

⁶ See Amendment No. 1, *supra* note 3. The Exchange states that the shortfall fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

* * * * *

I denotes fee eligible for monthly credit of up to \$1,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

According to the Exchange, the purpose of the proposed rule change is to increase the volume thresholds related to the options specialist shortfall fee and corresponding shortfall credit in order to encourage specialists to compete for order flow in the national market. The options traded by the specialist unit, and the transactions related thereto, may be especially valuable to that specialist unit and the Exchange due to their potential profitability. Therefore, the Exchange believes that the specialist should compete for order flow in the national market, because that specialist unit is the key party responsible for marketing and receiving order flow in that particular option.

Currently, the Exchange imposes a fee of \$0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not effected on the Exchange in that

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the statutory basis of the proposed rule change to include Section 6(b)(4) of the Act. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(2) of

month.⁷ In addition, a corresponding shortfall credit of \$0.35 per contract may be earned toward previously imposed shortfall fees for each contract traded in excess of the 10 percent volume threshold during a subsequent monthly time period. Thus, the Exchange states that options specialists may apply this credit when trading in their issues falls below the 10 percent volume threshold in one month, and exceeds the threshold in a subsequent month. Such a credit may be applied against shortfall fees imposed within the preceding six months for the same option, provided that, in the month the deficit occurred, the option traded in excess of 10 million contracts nationwide that month.⁸

The proposed fee amendments would increase the requisite volume thresholds by 1 percent per quarter over each quarter of 2002. Thus, the minimum trading volume requirements for total volume in the Top 120 Options would be in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002. The related shortfall credit will also be amended to correspond with the volume thresholds described above. Therefore, in order to qualify for the shortfall credit, specialists/specialist units must have total volume in the Top 120 Options (that otherwise qualify based on the 10 million contract volume requirement) in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.

The Exchange also proposes to amend the definition of a Top 120 Option to include the top 120 most actively traded equity options in terms of the total numbers of contracts in that option that were traded nationally for a specified month based on volume reflected by OCC.⁹

⁷ The Exchange states that at present a Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC") and which was listed on the Exchange after January 1, 1997.

⁸ The Exchange states that nationwide trading figures are based on the national monthly contract volume reflected by the OCC.

⁹ The Exchange states that previously, options listed on the Phlx before January 1, 1997 were excluded from the calculation of the Top 120 Options. The Phlx intends to continue to divide by two the total volume reported by OCC, which reflects both sides of an executed transaction, thus

Currently, the rate of \$0.35 per contract is paid to the Exchange if the requisite volume for such Top 120 Option is not effected on the Phlx in that month and a shortfall credit of \$0.35 may be earned against previously imposed shortfall fees, as discussed above. These rates will remain unchanged.

In order to avoid one specialist unit trying to claim the credit for volume deficits created by another specialist unit, the Exchange also proposes to clarify that the shortfall credit is available only to the same specialist unit or one associated with or related to that specialist unit to capture, for example, affiliates, subsidiaries and corporate mergers.

The Exchange states that other procedures relating to the specialist shortfall fee and shortfall credit remain unchanged.¹⁰ Finally, the Exchange proposes to make other minor, technical amendments to the headings of the shortfall fee and credit to make them more consistent.

The Exchange believes that this proposal is necessary to continue to attract order flow to the Exchange in order to remain competitive. According to the Exchange, the proposed fee should encourage specialists to vigorously compete for order flow, which not only enhances the specialists' role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that specialists' efforts to maintain the requisite volume thresholds as outlined above should contribute to deeper, more liquid markets and tighter spreads. Thus, the Exchange believes that competition should be enhanced, and important auction market principles preserved.

In conclusion, the Exchange proposes to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002. To that end, the Exchange has requested

avoiding one trade being counted twice for purposes of determining overall volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

¹⁰ The Exchange states that, for example, the previously imposed transition period for newly listed options would remain in effect. Therefore, the requisite volume threshold of three percent for the first full calendar month and six percent for the second full calendar month of trading will remain unchanged. The Exchange fee schedule continues to apply to all equity options transactions not covered by this options specialist shortfall fee. Also, the three-month differentiation to determine whether an equity option is considered a Top 120 Option will remain in effect, i.e., September's Top 120 Options are based on June's volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71). Any excess volume (over the total volume target) may not be carried over to a future month.

accelerated approval so that the proposed rule change may become effective as of January 2, 2002. The Exchange stated that approval of the proposed rule change on an accelerated basis would ensure that all of the applicable fees for January 2002 are integrated into the Exchange's routine billing cycle thus avoiding potential member confusion.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4)¹² and 6(b)(5)¹³ of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and it is intended to promote just and equitable principles of trade and protect investors and the public interest by attracting more order flow to the Exchange, which should result in increased liquidity and tighter markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2001-115 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1955 Filed 1-25-02; 8:45 am]

BILLING CODE 8010-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter Twenty Roster

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Invitation for Applications.

SUMMARY: Chapter Twenty of the North American Free Trade Agreement (NAFTA) establishes a mechanism for the settlement of disputes between the NAFTA Parties. A five-member panel conducts each dispute settlement proceeding. Article 2009 provides for the establishment of a roster of persons to serve on Chapter Twenty dispute settlement panels. USTR invites qualified persons to apply for consideration as a nominee to the roster of panelists.

DATES: Applications should be received no later than February 27, 2002.

ADDRESSES: USTR encourages applicants to submit their applications by email to naftapanel@ustr.gov or by fax to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, at (202) 395-3640. Alternatively, applicants may

submit their applications by first class mail to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. Submissions sent by hand delivery or messengers will not be accepted.

FOR FURTHER INFORMATION CONTACT: For information regarding the form of the application, contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, at (202) 395-3582. For other inquiries, contact Kent Shigetomi, Director for NAFTA, at (202) 395-3412 or David W. Oliver, Associate General Counsel, at (202) 395-3581.

SUPPLEMENTARY INFORMATION:

Dispute Settlement Under NAFTA Chapter Twenty

Chapter Twenty procedures apply to the avoidance or settlement of most types of disputes between the Parties arising under the NAFTA. If the NAFTA Parties cannot settle a dispute through consultations they may convene a dispute settlement panel to consider the matter.

Chapter Twenty Roster and Composition of Panels

Article 2009 of the NAFTA provides for a roster of up to 30 persons to serve on Chapter Twenty dispute settlement panels. A separate five-member panel is formed for each dispute. Panelists normally are selected from the roster (although non-roster panelists may be selected, for instance, when a dispute involves a matter for which a particular expertise not reflected on the roster would be helpful). For each case, roster members under consideration to serve as a panelist will be requested to complete a disclosure form, which is used to identify possible conflicts of interest or appearances of conflict. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of any clients the roster member may have and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter Twenty Roster

Article 2009 provides that roster members shall (a) have expertise or experience in law, international trade, other matters covered by the NAFTA or the resolution of disputes arising under trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment, (b) be independent of, and not be affiliated

with or take instructions from, any Party, and (c) comply with the code of conduct for Chapter Twenty panelists.

Procedures for Selection of Chapter Twenty Roster Members

Following the receipt of applications, USTR, in consultation with the Senate Committee on Finance and the House Committee on Ways and Means, selects persons that the United States will nominate for inclusion on the Chapter Twenty roster. Roster members are appointed by consensus of the three NAFTA Parties for terms of three years, and may be reappointed.

Remuneration and Expenses

Persons selected for service on a Chapter Twenty panel are remunerated at the rate of \$800 (Canadian) per day, plus expenses.

Applications

Qualified persons who wish to be included on the Chapter Twenty roster are invited to submit applications. Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter Twenty Roster." Applications should include the following information:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Spanish language fluency, written and spoken.
5. Current employment, including title, description of responsibilities, and name and address of employer.
6. Relevant education and professional training.
7. Post-education employment history, including the names and addresses of current and prior employers, positions held, dates of employment, and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, relevant to the subject matter of the NAFTA.
10. A list of international trade proceedings or domestic proceedings relating to international trade matters in which the applicant has provided advice to a party or otherwise participated.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States, Canada, or Mexico.
12. The names and nationalities of (a) all foreign principals for whom the applicant is currently or has previously

¹⁴ 17 CFR 200.30-3(a)(12).

been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods; and (b) all foreign entities for which the applicant (or the applicants' employer on behalf of the applicant) is currently or has previously been registered under the Lobbying Disclosure Act of 1995 (Pub.L. 104-65), and the dates of all registration periods.

13. A short statement of qualifications and availability for service on Chapter Twenty panels, including information relevant to the applicant's expertise or experience in law, international trade, other matters covered by the NAFTA, or the resolution of disputes arising under trade agreements, and willingness to make the necessary time commitments for service on panels.

14. On a separate page, the names, addresses, and telephone and fax numbers of three persons willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and expertise or experience in law, international trade, other matters covered by the NAFTA, or the resolution of disputes arising under trade agreements.

Current Roster Members and Prior Applicants

Current members of the Chapter Twenty roster who wish to remain on the roster are requested to submit updated applications. Persons who have previously applied but have not been selected may reapply.

Public Disclosure

Applications normally will be subject to public disclosure. An applicant who wishes to exempt information from public disclosure should follow the procedures set forth in 15 CFR 2003.6.

False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter Twenty roster or for appointment to Chapter Twenty panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that the Office of Management and Budget (OMB) has approved. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure

to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter Twenty roster. It is expected that the collection of information burden will be under two hours. This collection of information contains no annual reporting or record keeping burden. OMB approved this collection of information under OMB Control Number 0350-0010. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 106 of the NAFTA Implementation Act (19 U.S.C. 3316) and section 141 of the Trade Act of 1974, as amended (19 U.S.C. 2171). Provision of the information requested above is voluntary; however, failure to provide the information may preclude consideration as a candidate for the NAFTA Chapter Twenty roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." The information provided is needed, and will be used by USTR and other federal government trade policy officials concerned with NAFTA dispute settlement and by officials of the other NAFTA Parties, to select well-qualified persons for inclusion on the Chapter Twenty roster and for service on Chapter Twenty panels.

Peter B. Davidson,
General Counsel.

[FR Doc. 02-2032 Filed 1-25-02; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 11, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2002-11287.

Date Filed: January 8, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR-SASC 0084 dated 11 December 2001
Europe-South Asian Subcontinent Resolutions r1-r14
Minutes—PTC23 EUR-SASC 0085 dated 14 December 2001
Tables—PTC23 EUR-SASC FARES 0031 dated 14 December 2001
Intended effective date: 1 April 2002.

Docket Number: OST-2002-11290.

Date Filed: January 9, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PSC/Reso/112 dated 19 December 2001
Book of Finally Adopted Resolutions & RPs r1-40
Minutes—PSC/MINS/004 dated 19 December 2001
Intended effective date: 1 June 2002.

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 02-2041 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 11, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2002-11315.

Date Filed: January 11, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 2002.

Description

Joint Application of Aloha Airlines, Inc. and Hawaiian Airlines, Inc., pursuant to 49 U.S.C. 41105 and subpart B, requesting approval of the transfer of

their respective international certificate authority; and, pursuant to 49 U.S.C. 40109, requests transfer of their outstanding international exemption authority.

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 02-2042 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Burlington Northern and Santa Fe Railway Company

[Docket Number FRA-2001-10660]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain provisions of the *Railroad Operating Practices* regulations, 49 CFR part 218, regarding blue signal protection of workers. Specifically, to permit train and yard crew members, and utility employees to remove and replace batteries in two-way end-of-train telemetry devices (EOT), while the EOT is in place on the rear of the train the individual has been called to operate, without establishing any blue signal protection.

Section 218.5 defines worker as, any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning. Both §§ 218.25 and 218.27, requires blue signal protection when workers are on, under, or between rolling equipment on main track or

other than main track. Section 218.22(b) states in part: A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

BNSF contends that safety would be enhanced if the individual were allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual would be handling a battery pack that weighs less than 10 pounds, as opposed to lifting the EOT device that weighs 32-34 pounds. Also, it takes approximately five minutes to remove and then re-install the EOT device, as opposed to removing and replacing a battery pack that takes less than one minute. Coupling and uncoupling the air hose between the car and EOT also poses a risk of a striking injury from the air hose, if the air pressure has not been completely released. BNSF also believes that there is potential for reduction in train delays if this waiver is granted. In analyzing safety risks and benefits, BNSF believes that there are no adverse consequences or costs that will accrue from granting this petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2001-10660) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, DC on January 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02-2043 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 26, 2001 [66 FR 49253-49254].

DATES: Comments must be submitted on or before February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Louis Molino at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS-20), 202-366-1833, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirement.

OMB Number: 2127-0599.

Type of Request: Extension of a currently approved collection.

Abstract: 49 U.S.C. 30111, 30112, and 30117 authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data, which support their implementation. Using this authority, the agency issued a modification to FMVSS 208, Occupant Crash Protection, to require advanced air bags in accordance with the Transportation Equity Act of the 21st Century (TEA 21), which was enacted by the United States Congress in 1998.

A two-stage phase-in is included in FMVSS 208 to allow for the introduction of advanced air bags. Manufacturers must equip a certain percentage of their new vehicle fleets with advanced air bags and report their production to NHTSA. Each report will contain, in addition to the identity, addresses, etc., several numerical items of information. The information includes, but is not limited to, the following items.

Total number of vehicles manufactured for sale during the preceding production year; and total number of vehicles manufactured during the production year that are in compliance with the regulatory requirements.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 1,260

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 18, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02-2040 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34163]

Martin Marietta Materials, Inc.— Continuance in Control Exemption— Fredonia Valley Railroad, Inc.

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption to continue in control of Fredonia Valley Railroad, Inc. (FVRR) upon FVRR's becoming a rail carrier. MMM previously controlled Alamo Gulf Coast Railroad Company (AGCRC).¹ FVRR owns and operates approximately 9.65 miles of railroad line between milepost 87.60 near Fredonia and milepost 97.25 near Princeton in Caldwell County, KY; and AGCRC leases and operates a rail line from milepost 252 to milepost 257, near Beckmann Station, in Bexar County, TX.

FVRR became a carrier on or about December 17, 1998. Due to an apparent oversight, MMM did not file its verified notice of exemption with the Board until December 28, 2001. Thus, the effective date of the exemption is January 4, 2002 (7 days after the exemption was filed).²

MMM states that: (i) the railroads do not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the two railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and

¹ See *Fredonia Valley Railroad, Inc.—Acquisition and Operation Exemption—in Caldwell County, KY*, STB Finance Docket No. 33695 (STB served Jan. 6, 1999); and *Alamo Gulf Coast Railroad Company—Lease and Operation Exemption—Certain Lines of Southern Pacific Transportation Company*, Finance Docket No. 32855 (STB served Jan. 26, 1996).

² The class exemption invoked by MMM does not provide for retroactive effectiveness.

11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34163, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, N.W. 8th Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: January 22, 2002.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02-2036 Filed 1-25-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Written comments should be received on or before March 29, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Change in Accounting Method.

OMB Number: 1545-0152.

Form Number: 3115.

Abstract: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit organizations, and farms.

Estimated Number of Respondents: 6,400.

Estimated Time Per Respondent: 42 hrs., 31 min.

Estimated Total Annual Burden Hours: 272,046.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- the accuracy of the agency's estimate of the burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02-2048 Filed 1-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****FEDERAL RESERVE SYSTEM****Agency Information Collection****Activities: Discontinuance**

AGENCIES: Office of Thrift Supervision (OTS), Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Discontinuance of information collections.

SUMMARY: Notice is hereby given of the discontinuance by the Board and the OTS (collectively, the "agencies") of the following information collections, the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006), effective with the December 31, 2001 report. In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board and the OTS (collectively, the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

On October 12, 2001, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the **Federal Register** (66 FR 52186) requesting public comment on the discontinuance of the (FFIEC 001 and FFIEC 006) reports. The comment period for this notice expired on December 11, 2001. No comments were received. The agencies are now submitting requests to OMB for approval of the discontinuance of the (FFIEC 001 and FFIEC 006) reports.

DATES: Comments must be submitted on or before February 27, 2002.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the agencies. All comments should refer to the OMB control number(s) and will be shared between the agencies.

OTS: Submit any written comments concerning this notice to Information Collection Comments, Chief Counsel's

Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention: 1550-0026, FAX Number (202) 906-6518, or e-mail to infocollection.comments@ots.treas.gov. OTS will post any comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW, by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202-452-3819 or 202-452-3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP-500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 or by e-mail to ahunt@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Additional information or a copy of the collections may be requested from:

OTS: Sally W. Watts, OTS Clearance Officer, (202) 906-7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; e-mail address sally.watts@ots.treas.gov.

Board: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Users of Telecommunications Device for the Deaf (TDD) may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Discontinuation of the following reports:

Report Titles: Annual Report of Trust Assets and Annual Report of International Fiduciary Activities.

Form Numbers: FFIEC 001 and FFIEC 006.

Frequency of Response: Annual.

Affected Public: Business or other for profit.

For OTS:

OMB Number: 1550-0026.

Number of Respondents: 101 (FFIEC 001).

Estimated Average Time per Response: 4.08 burden hours (FFIEC 001).

Estimated Total Annual Burden: 412 burden hours.

For Board:

OMB Number: 7100-0031.

Number of Respondents: 22 (FFIEC 001), 0 (FFIEC 006).

Estimated Average Time per Response: 3.82 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Estimated Total Annual Burden: 84 burden hours.

General Description of Reports: This information collection (FFIEC 001 and FFIEC 006) is mandatory: 12 U.S.C. 1464 (for thrift institutions), and 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies). The data on the FFIEC 001 are publicly available with the exception of Schedule E—Fiduciary Income Statement. The FFIEC 006, collected by the Board, is given confidential treatment [5 U.S.C. 552(b)(8)]. Small businesses (i.e., small banks) are affected.

Abstract: These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes.

Current Actions: Financial institutions that exercise fiduciary powers and have fiduciary assets or accounts have reported information on their trust activities each December 31 in the Annual Report of Trust Assets (FFIEC 001). Institutions with trust operations in foreign offices also complete the Annual Report of International Fiduciary Activities (FFIEC 006). The agencies will discontinue the FFIEC 001 and the FFIEC 006 trust activities reports.

This discontinuance is prompted by the introduction of Schedule RC-T, "Fiduciary and Related Services," on the quarterly bank Consolidated Reports

of Condition and Income (Call Report) (FFIEC 031 and 041, OMB No. 7100-0036),¹ and Schedule T, "Fiduciary and Related Services" on the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002, OMB No. 7100-0032).² Schedules RC-T and T take effect as of December 31, 2001. The OTS is adding Schedule FS—Fiduciary and Related Services to the Thrift Financial Report (OMB No. 1550-0023) effective March 31, 2002.

The new trust schedule replaces the Annual Report of Trust Assets (FFIEC 001) in December 2001 for institutions that file Call Reports and the FFIEC 002 and in March 2002 for institutions that file Thrift Financial Reports. For national and state member banks, two items in the new schedule will replace the Annual Report of International Fiduciary Activities (FFIEC 006). However, federally supervised state-chartered nondeposit trust companies that are subsidiaries of holding companies do not file Call Reports or Thrift Financial Reports, but were previously required to complete the FFIEC 001. The agencies have determined that the information of supervisory interest on trust activities that these trust companies have reported on the FFIEC 001 can be monitored by other means.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared between the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

¹ Federal Register, March 5, 2001 (66 FR 13369).

² Federal Register, May 4, 2001 (66 FR 22556).

Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: January 18, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations & Legislation Division, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, January 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02-1988 Filed 1-25-02; 8:45 am]

BILLING CODE 6720-01-P and 6210-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0052]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from a claimant prior to undergoing a VA examination and to record the findings of the examining physician.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 29, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0052" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Medical Examination for Disability Evaluation, VA Form 21-2545.

OMB Control Number: 2900-0052.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21-2545 is used to gather information from a claimant prior to undergoing a VA examination and to record the findings of the examining physician.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden Per

Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 180,000.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1947 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0161]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to report medical expenses paid by claimants in connection with claims for pension and other income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 29, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0161" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Medical Expense Report, VA Form 21-8416.

OMB Control Number: 2900-0161.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's countable income for Improved Pension purposes can be reduced if the individual pays unreimbursed medical expenses. These expenses may be deducted from otherwise countable income in determining the rate of VA benefits payable. VA Form 21-8416 is used to report unreimbursed medical expenses paid by claimants.

Affected Public: Individuals or households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 96,400.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1948 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0179]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 27, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0179."

SUPPLEMENTARY INFORMATION:

Title: Application for Change of Permanent Plan (Medical) (Change to a

policy with a Lower Reserve Value), VA Form 29-1549.

OMB Control Number: 2900-0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at pages 54341-54342.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Send comments and recommendations concerning any

aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0179" in any correspondence.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1949 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01-034-1]

RIN 0579-AB30

Draft Action Plan for the Noxious Weeds Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are requesting comments on a draft document titled "Draft Action Plan for the Noxious Weeds Program" that we have developed. The draft document recommends specific changes to the noxious weeds regulatory program, including changes to the noxious weeds regulations. Because these recommendations may form the basis for future rulemaking, we are requesting public comments on the draft document so that we may consider any relevant public input before taking further action.

DATES: We invite you to comment on the draft document. We will consider all comments that we receive by March 29, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01-034-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 01-034-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

You may request a copy of the "Draft Action Plan for the Noxious Weeds Program" by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The draft action plan is also available in our reading room or on the Internet through APHIS' Noxious Weeds Home Page at <http://www.aphis.usda.gov:80/ppq/weeds/weedhome.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1237; (301) 734-5225.

SUPPLEMENTARY INFORMATION: The Plant Protection Act (7 U.S.C. 7701-7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation into the United States, and the interstate movement within the United States, of any plants and plant products to prevent the introduction into and dissemination in the United States of noxious weeds. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360 (referred to below as the regulations), which prohibit or restrict the importation and interstate movement of noxious weeds.

On March 20, 2000, we published in the **Federal Register** (65 FR 14927-14931, Docket No. 98-064-1) an advance notice of proposed rulemaking (ANPR) to gain information on ways in which we can increase the effectiveness of our noxious weeds regulatory program and regulations. We solicited comments on the ANPR for 90 days, ending June 19, 2000. By that date, we received 272 comments. They were from State departments of agriculture, representatives of the seed and nursery stock industries, and other interested persons. The commenters provided suggestions on weed categories and risk assessment and permitting issues, and offered recommendations for prioritizing funding resources for

existing and future noxious weeds programs. The commenters most frequently recommended that the following areas be priorities for our noxious weeds program: Exclusion, prevention, survey and early detection, and eradication of introduced weeds of limited distribution. The commenters also supported, but mentioned less frequently, risk assessment, public education, and cooperative integrated management, including biological control.

Immediately following the close of the comment period for our March 2, 2000, ANPR, the Plant Protection Act was signed into law. The Plant Protection Act repealed portions of the Federal Noxious Weed Act (7 U.S.C. 2801 [except 2801 note]-2813) and now provides us greater authority to regulate the importation and interstate movement of noxious weeds. The Plant Protection Act and its effect on our noxious weeds program are discussed in greater detail in the draft action plan. Many of the comments we received on the ANPR are relevant to the development of regulations under our new authority.

Based on those comments, we developed the draft document titled "Draft Action Plan for the Noxious Weeds Program." The draft document presents a draft plan for addressing the commenters' areas of concern and reflects our current thinking on the changes necessary to improve the design and conduct of the noxious weeds program. However, the draft document does not commit APHIS to making any changes to the noxious weeds regulations.

We are seeking public comment on the draft action plan. Public comments will help us decide whether the plan outlined in the draft document is needed and would be effective. We ask that comments on the draft action plan also suggest alternative approaches to updating our noxious weeds program, if appropriate. If, after we consider public comments on the draft document, we decide to propose changes to the noxious weeds regulations, we will publish a proposed rule in the **Federal Register**.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 7701-7772.

Done in Washington, DC, this 23rd day of January 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02-2018 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, February 21, 2002. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

- (1) Welcome, Introductions, Agenda
- (2) User Data
- (3) Public Survey for Planning
- (4) Area Planning—Public Participation Models
- (5) Trust Fund Financial Review
- (6) Discussion of Public Comments Received
- (7) FS Community Efforts

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by February 13, 2002, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on Thursday, February 21, 2002, 8:30 a.m. to 3 p.m., CST.

ADDRESSES: The meeting will be held at the Kenlake State Resort Park and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270-924-2002.

SUPPLEMENTARY INFORMATION: None.

Dated: January 22, 2002.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 02-1976 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[01-04-C]

Opportunity to Comment on the Applicants for the Central Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area assigned to Central Iowa Grain Inspection Service, Inc.

DATES: Comments must be postmarked, or electronically date stamped by February 27, 2002.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202-690-2755, attention: Janet M. Hart. Electronic mail users may send comments to: janhart@gipsadc.usda.gov. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202-720-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 4, 2001, **Federal Register** (66 FR 63015), GIPSA asked persons interested in providing official services in the Central Iowa area to submit an application for designation by January 2, 2002. There were two applicants: Central Iowa Grain Inspection Service, Inc., and Kevin D. Bredthauer and Sandra M. Bredthauer, Des Moines, Iowa, proposing to do business as Central Iowa Grain Inspection Corporation. Central Iowa Grain Inspection Service, Inc., and Central Iowa Grain Inspection Corporation both applied for designation to provide official services in the entire area currently assigned to

Central Iowa Grain Inspection Service, Inc.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above addresses. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 14, 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02-2019 Filed 1-25-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF COMMERCE

[I.D. 012302A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Marine Sport Fishing Economics Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 1,048.

Number of Respondents: 3,740.

Average Hours Per Response: 20 minutes to respond to a mail survey; and 5 minutes to respond to a follow-up phone survey.

Needs and Uses: The survey data is necessary to conduct required economic analyses of marine sport fisheries off Alaska. This data is currently not available for many areas and fisheries in Alaska. The survey data will be used to estimate the economic value of fishing to anglers, and how catch rates and fishery regulations affect that value. The respondents will be drawn from a random sample of U.S. residents who purchased an Alaska State sport fishing license in 2001. Follow-up calls will be

made to people not responding to a mail survey.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-2000 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

[I.D. 012302C]

**Submission for OMB Review;
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Reporting Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0349.

Type of Request: Regular submission.

Burden Hours: 850.

Number of Respondents: 550.

Average Hours Per Response: 5 minutes per day for a logbook when fishing; and 1 minute per negative report.

Needs and Uses: Vessels licensed under the High Sea Fishing Compliance Act are required to report their catch and effort when fishing on the high seas. Monthly negative reports are required if not fishing. These logbooks are not required if the vessel is already reporting catches and effort under other

NOAA regulations. The information is needed for fishery management and to provide data to international organizations.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-2002 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Census Bureau

Current Retail Sales and Inventory Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U. S. C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instruments(s) and instructions should be directed to Nancy Piesto, U.S. Census Bureau, Room 2654-FOB 3, Washington, DC 20233-6500, (301) 457-2708.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Current Retail Sales and Inventory Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Current Retail Sales and Inventory Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

As of April 2001 (June data month), we started publishing retail sales and inventory estimates on the North American Industry Classification System (NAICS). Prior to that period, estimates were published on the Standard Industrial Classification (SIC) basis. As a result of NAICS, we will continue to collect monthly sales on food services and publish a retail trade and food services total in addition to a retail trade total. NAICS provides a better way to classify individual businesses, and is widely adopted throughout both the public and private sectors. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico in order to produce comparable data between neighboring countries.

In 2000, we redesigned our current retail forms to incorporate a new series of form numbers, and to include the e-commerce screening or data request as a separate item. The content of the forms did not change; therefore there was no change in reporting burden.

Listed below are the new series of retail form numbers, old form numbers, and the description:

New Series	Old Series	Description
SM-44(00)S	B-111(97)S	Non Department Store/Sales Only/WO E-Commerce.
SM-44(00)SE	B-111(97)S	Non Department Store/Sales Only W E-Commerce.
SM-44(00)SS	B-111(97)S	Non Department Store/Sales Only/Screeener.
SM-44(00)B	B-111(97)B	Non Department Store/Sales and Inventory/WO E-Comm.
SM-44(00)BE	B-111(97)B	Non Department Store/Sales and Inventory/W E-Comm.
SM-44(00)BS	B-111(97)B	Non Department Store/Sales and Inventory/Screeener.
SM-44(00)L	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/WO E-Comm.
SM-44(00)LE	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/W E-Comm.
SM-44(00)LS	B-111(97)L	Non Department Store/Sales and Inventory/LIFO/Screeener.
SM-45(00)S	B-101(97)S	Department Store/Sales Only/WO E-Commerce.
SM-45(00)SE	B-101(97)S	Department Store/Sales Only/W E-Commerce.
SM-45(00)SS	B-101(97)S	Department Store/Sales Only/Screeener.
SM-45(00)B	B-101(97)B	Department Store/Sales and Inventory/WO E-Commerce.
SM-45(00)BE	B-101(97)B	Department Store/Sales and Inventory/W E-Commerce.
SM-45(00)BS	B-101(97)B	Department Store/Sales and Inventory/Screeener.
SM-72(00)S	B-111(97)S	Food Services/Sales Only/WO E-Commerce.
SM-20(00)I	B-113(97)I	Non Department and Department Store/Inventory Only.
SM-20(00)L	B-113(97)L	Non Department and Department Store/Inventory Only/LIFO.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607-0717.

Form Number: SM-44(00)S, SM-44(00)SE, SM-44(00)SS, SM-44(00)B, SM-44(00)BE, SM-44(00)BS, SM-44(00)L, SM-44(00)LE, SM-44(00)LS, SM-45(00)S, SM-45(00)SE, SM-45(00)SS, SM-45(00)B, SM-45(00)BE, SM-45(00)BS, SM-72(00)S, SM-20(00)I, and SM-20(00)L.

Type of Review: Regular Submission.

Affected Public: Retail and Food Services firms in the United States.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 7.8 minutes.

Estimated Total Annual Burden Hours: 16,000.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2002 is estimated to be \$306,560 based on the median hourly salary of \$19.16 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics 1999 National Occupational Employment and Wage Estimates, \$19.16 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors)

http://www.bls.gov/oes/1999/oes_13Bu.htm

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on:(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimates of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 22, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.

[FR Doc. 02-2049 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-832, A-122-840, A-428-832, A-560-815, A-201-830, A-841-805, A-274-804, A-823-812]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle (Brazil, Canada, Mexico, and Trinidad and Tobago), Robert James (Germany), Steve Bezirgianian (Indonesia), Dana Mermelstein

(Moldova), and James Doyle (Ukraine) at (202) 482-0650, (202) 482-0649, (202) 482-1131, (202) 482-1391, and (202) 482-0159, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

The deadline for issuing the preliminary determinations in these investigations is now March 13, 2002.

On January 17, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, petitioners), requested a 30-day postponement of the preliminary determinations in these investigations, in accordance with section 351.205(b)(2) of the Department's regulations, to permit the Department to fully analyze and consider the information and argument presented by the parties to these investigations, and to permit issuance and receipt of supplemental questionnaires and responses by the Department in this preliminary phase of these proceedings. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing these determinations by 30 days (*i.e.*, until March 13, 2002).

Dated: January 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-2034 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-827

Certain Cased Pencils from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Rescission of Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY:

The Department of Commerce (the Department) is preliminarily rescinding the antidumping duty new shipper review requested by Wuxi Andi Civilization PE Gift Give Away Co., Ltd. (Wuxi or respondent), the exporter, and Safety Touch & Javithon Inc., the importer, of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The period of the requested review is December 1, 2000 through May 31, 2001.

The Department invites interested parties to comment on the preliminary results.

DATES: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Paul Stoltz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1009 and (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On December 28, 1994, the Department published in the Federal Register (59 FR 66909) the antidumping duty order on certain cased pencils from the People's Republic of China. On May 31, 2001, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, the Department received a timely request from Wuxi to conduct a new shipper review of that order.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) a statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; (iii) in an antidumping proceeding involving imports from a non-market economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government; and (iv) documentation establishing: (a) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Wuxi's May 31, 2001 request for review included certifications from both Wuxi and Shanghai Anli Stationary Sporting Goods Co. Ltd. (Anfong), the company that supplied Wuxi with semi-finished pencils. The certifications stated that neither company exported the subject merchandise to the United States during the POI nor is affiliated with any company which did so. In addition, pursuant to 19 CFR 351.214(b)(2)(iii)(B), Wuxi's request certified that the export activities of both companies are not controlled by the central government of the PRC. Wuxi's new shipper review request also included information regarding the date on which the company's subject merchandise was first entered for consumption in the United States, the volume of the shipment, and the date of the first sale to an unaffiliated customer in the United States.

On July 24, 2001, the Department initiated a new shipper review of Wuxi covering the period December 1, 2000, through May 31, 2001. See Certain Cased Pencils From the People's Republic of China: Initiation of Antidumping New Shipper Review, 66 FR 39732 (August 1, 2001) (Initiation Notice). On August 7, 2001, the Department issued its antidumping questionnaire to Wuxi. After granting Wuxi three extensions of time to respond to section A of the antidumping questionnaire, the Department received Wuxi's timely section A response on September 17, 2001. The Department also granted Wuxi an extension of time to respond to sections C and D of the antidumping questionnaire until September 28, 2001. However, Wuxi failed to respond to these sections of the Department's questionnaire.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Rescission of the Review

In our Initiation Notice we stated the following:

If the respondent provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of certain cased pencils, this review will proceed. If, on the other hand, Wuxi does not meet its burden to demonstrate its eligibility for a separate rate, then Wuxi will be deemed to be affiliated with other companies that exported during the POI. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

See Initiation Notice (66 FR 39732).

In its September 17, 2001 response to section A of the Department's

questionnaire, Wuxi stated that it is not under the control of the PRC government. After submitting its section A response, Wuxi failed to submit any other information to the Department including its response to sections C and D of the antidumping questionnaire. Because Wuxi terminated its participation in this review, we have preliminarily determined that Wuxi is not entitled to a separate rate. Thus, we are preliminarily rescinding this new shipper review.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 21 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs,

within 90 days from the date of this preliminary result, unless the time limit is extended.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

January 18, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-2033 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012302B]

Proposed Information Collection; Comment Request; Seafood Inspection and Certification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rita Creitz, F/SF6, Room 15341, 1315 East-West Highway, Silver Spring, MD 20910-3282 (phone 301-713-2355, ext. 155).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970.

The regulations for the Program are contained in 50 CFR Part 260. The program offers inspection grading and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. In addition, the NMFS inspection program is the only Federal entity that establishes quality grade standards for seafood marketed in the United States. Qualified participants are permitted to use the program's official quality grade marks on their products to facilitate trade of fishery products.

Participants in the inspection program are requested to submit specific information pertaining to the type of inspection service requested [Sec. 260.15]. In all cases, applicants provide the program information regarding the type of products to be inspected, the quantity, and location of the product. There are also application requirements if there is an appeal of previous inspection results [Sec. 260.36]. Participants requesting regular inspection services on a contractual basis also submit a contract [Sec. 260.96]. Participants interested in using official grade marks are required to submit product labels and specifications for review and approval to ensure compliance with mandatory labeling regulations established by the U.S. Food and Drug Administration as well as proper use of the Program's marks [Sec. 260.97 (c)(12) and (13)].

Current regulations state requirements for approval of drawings and specifications prior to approval of facilities [Sec. 260.96 (b) and (c)]. There are no respondents under this section. The Program will amend this part of the regulations in a future action.

In July 1992, NMFS announced new inspection services, which were fully based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP). The information collection requirements fall under Sec. 260.15 of the regulations. These guidelines required that a facility's quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. HACCP requires continuing monitoring and recordkeeping by the facility's personnel.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based program is not a self-certification program. It relies on unannounced system audits by NMFS. The frequency of audits is determined

by the ability of the firm to monitor its operation. By means of these audits, NMFS reviews the records produced through the program participant's self-monitoring. The audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential consume risk associated with the product and/or the firm's history of compliance with the program's criteria.

The information collected is used to determine a participant's compliance with the program. The reported information, a HACCP plan, is needed only once. Other information is collected and kept by the participant as part of its routine monitoring activities. NMFS audits the participant's records on unannounced frequencies to further determine compliance.

II. Method of Collection

Information will be obtained via telephone, fax, hard-copy submission, or audit conducted by NMFS personnel.

III. Data

OMB Number: 0648-0266.

Form Number: NOAA Forms 89-800, 89-814, and 89-819.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,082.

Estimated Time Per Response: 5 minutes for an application of inspection services; 5 minutes for an application for an appeal; 5 minutes for submitting a contract; 30 minutes to submit a label and specification; 105 hours for a Hazard Analysis Critical Control Point (HACCP) plan; and 80 hours for HACCP monitoring and recordkeeping.

Estimated Total Annual Burden Hours: 13,065.

Estimated Total Annual Cost to Public: \$3,579.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2001 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012202B]

Proposed Information Collection; Comment Request; Highly Migratory Species Vessel Marking and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers at the National Marine Fisheries Service (NMFS) Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301-713-2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under regulations at 50 CFR 635.6 fishing vessels permitted for Atlantic Highly Migratory Species must display their official vessel numbers on their vessels to assist law enforcement in monitoring fishing and other activities. Flotation devices attached to certain fishing gear must also be marked with the vessel's number to identify catch that is buoyed. This requirement is also necessary for law enforcement purposes.

II. Method of Collection

There is no form under this requirement. Official vessel numbers or permit numbers issued to vessel operators are marked on the vessel and on flotation gear.

III. Data

OMB Number: 0648-0373.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 8,051.

Estimated Time Per Response: 45 minutes to mark a vessel, 15 minutes to mark a float.

Estimated Total Annual Burden Hours: 7,176.

Estimated Total Annual Cost to Public: \$161,020.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2003 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 012202A]

Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).**ACTION:** Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301-713-2347.

SUPPLEMENTARY INFORMATION:**I. Abstract**

Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear may be required to install and operate vessel monitoring systems. Automatic position reports would be submitted on an hourly basis whenever the vessel is at sea. The information aids in the enforcement of fishery regulations. Vessel operators may also be required to follow an equipment installation checklist and to then submit it to NOAA. The checklist provides information on the hardware and communications service selected by each vessel. NOAA will use the returned checklists to ensure that position reports are received and to aid NOAA in troubleshooting problems.

II. Method of Collection

Checklists are submitted in paper form. Position reports are automatically sent electronically by the vessel monitoring system units.

III. Data

OMB Number: 0648-0372.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 320.

Estimated Time Per Response: 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.033 seconds per automated position report from the automated equipment; and 5 minutes to complete and return an installation checklist.

Estimated Total Annual Burden Hours: 883.

Estimated Total Annual Cost to Public: \$754,500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-2004 Filed 1-25-02; 8:45 am]

BILLING CODE 3510-22-S**COMMODITY FUTURES TRADING COMMISSION****Request of the Kansas City Board of Trade for Approval of Amendments to Its Hard Red Winter Wheat Futures Contract Lowering the Price Discount for Delivery at Hutchinson, KS, Increasing the Price Discount for Delivery of U.S. No. 3 Hard Red Winter Wheat, and Modifying the Maximum Permissible Amount of Wheat of Other Classes Deliverable as U.S. No. 3 Hard Red Winter Wheat****AGENCY:** Commodity Futures Trading Commission.**ACTION:** Notice of availability of terms and conditions of proposed amendments to commodity futures contract.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has requested that the Commission approve amendments to its hard red winter wheat futures contract, pursuant to the provisions of section 5c(c)(2)(B) of the Commodity Exchange Act as amended. The proposed amendments would reduce to 9 from 12 cents per bushel the discount for delivery at Hutchinson, Kansas, increase to 5 from 3 cents per bushel the discount for delivery of U.S. No. 3 hard red winter wheat, and reduce the maximum permissible amount of wheat of other classes deliverable as No. 3 hard red winter wheat. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 12, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418-5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the KCBT hard red winter wheat futures contract amendments.

FOR FURTHER INFORMATION CONTACT: Please contact Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC

(202) 418-5276. Facsimile number:
(202) 418-5527. Electronic mail:
mmurray@cftc.gov.

SUPPLEMENTARY INFORMATION: The KCBT hard red winter wheat futures contract calls for the par delivery of 5,000 bushels of U.S. No. 2 hard red winter wheat in Exchange-licensed warehouses located in Kansas City (in both Missouri and Kansas). The Exchange also permits delivery of U.S. No. 1 and U.S. No. 2 hard red winter wheat as well as delivery at Exchange-licensed warehouses in Hutchinson, Kansas, at specified price differentials.

The Exchange is proposing to reduce the price discount for delivery at Hutchinson, Kansas, to 9 cents from 12 cents per bushel per bushel. The Exchange is also proposing to amend the contract's quality specifications for the delivery of U.S. No. 3 hard red winter wheat by restricting the maximum permissible amount of wheat of other classes included in delivery wheat. Currently, the futures contract provides that deliverable wheat must meet the official standards specified for U.S. No. 3 hard red winter wheat, which sets a maximum limit of 10 percent for wheat of other classes. Finally, the Exchange proposes to increase the price discount for delivery of U.S. No. 3 hard red winter wheat to 5 cents per bushel from 3 cents per bushel.

The Exchange proposes to apply the proposed amendments to existing futures contract months, beginning with the July 2003 contract month, and to all newly listed contract months. In this regard, the Exchange has established a limited period during which holders of Exchange-registered warehouse receipts for U.S. No. 3 hard red winter wheat that does not reflect the proposed 5% maximum tolerance for wheat of other classes may present such receipts to the issuing warehouse for replacement with receipts for wheat that reflects the proposed 5% maximum tolerance. Specifically, the Exchange proposes that the period for exchanging such receipts will extend from the first business day prior to the first notice day through the third business day following notice day of the July 2003 contract month. As part of the implementation plan, the Exchange proposes to establish a maximum fee of 5 cents per bushel, which warehouse receipt issuers may charge receipt holders for the replacement receipts.

Copies of the amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the

terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the KCBT in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made of the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the KCBT should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on January 22, 2002.

Richard A. Shilts,

Acting Director.

[FR Doc. 02-1946 Filed 1-25-02; 8:45 am]

BILLING CODE 6351-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: February 5, 2002, 9:30 a.m.-12:30 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue NW., 8th Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- I. Chair's Opening Remarks
- II. Consideration of Prior Meeting's Minutes
- III. Status Report by Chief Executive Officer
- IV. Committee Reports
 - A. Executive Committee
 - B. Management, Budget, and Governance Committee
 - Inspector General Report
 - Audit Update
 - C. Planning and Evaluation Committee
- Department of Research and Policy

- Development
- Update on the Points of Light Foundation Initiative
- Serve Study Initiative
- D. Communications Committee
- Reauthorization of National Service Legislation
- V. National Service Reports and Discussions
 - A. Teaching Programs
 - Notre Dame's ACE Program
 - Teach for America
 - B. Learning In Deed Report
 - C. Survey of State Service Commissions
- VI. Discussion of President's Agenda
- VII. Future Board Meeting Dates
- VIII. Public Comment
- IX. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER

INFORMATION: Rhonda Taylor, Deputy Director of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606-5000 ext. 282. Fax (202) 565-2794. TDD: (202) 565-2799. E-mail: Rtaylor@cns.gov.

Dated: January 24, 2002.

Frank R. Trinity,

General Counsel, Corporation for National and Community Service.

[FR Doc. 02-2116 Filed 1-24-02; 12:44 pm]

BILLING CODE 6050--\$-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Ninth Annual National Security Education Program Institutional Grants Competition

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The National Security Education Program (NSEP) announces the opening of its Ninth Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: The 2002 NSEP Grants Competition begins on Tuesday, February 5, 2002. Preliminary Proposals are due Monday, April 8, 2002.

ADDRESSES: Grants Solicitations (application, guidelines, and forms) will be available and may be downloaded from the NSEP home page beginning Tuesday, February 5, 2002. This is the address: <http://www.ndu.edu/nsep>. As an alternate method, you may obtain a copy of the solicitation package by

writing to: NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209-2248.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin J. Gormley, Grants Officer, National Security Education Program, Rosslyn P.O. Box 20010, 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209-2248; (703) 696-1991. This is his electronic mail address: gormleyk@ndu.edu.

Dated: January 18, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-1950 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Issuance of Record of Decision Regarding Initial F-22 Operational Wing of F-22 Raptors at Langley Air Force Base, VA

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Air Force issued a Record of Decision (ROD) on 15 Jan 2002. The ROD reflected the Air Force decision to base the Initial F-22 Operational Wing of F-22 Raptors at Langley Air Force Base, Virginia. The ROD was issued in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Regulations (40 CFR 1505.2). The ROD is based on information, analysis, and public comment contained in the Final Environmental Impact Statement for the Initial F-22 Operational Wing Beddown (Volume 66, **Federal Register**, Number 218: November 9, 2001 (Page 56673-56674)).

FOR FURTHER INFORMATION CONTACT: Brenda Cook (757) 764-5007.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02-1977 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 27, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601-4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 18, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF DP G

SYSTEM NAME:

Military Equal Opportunity and Treatment (October 18, 1999, 64 FR 56193).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and on computer and computer output products.'

RETRIEVABILITY:

Delete entry and replace with "Retrieved by complainant's name, Social Security Number, or case number."

* * * * *

F036 AF DP G

SYSTEM NAME:

Military Equal Opportunity and Treatment.

SYSTEM LOCATION:

Headquarters United States Air Force, headquarters of major commands, Numbered Air Forces, field operating agencies, direct reporting units; headquarters of combatant commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel (and family members), to include the National guard and Reserve Forces, and civilian employees who are involved in complaints or investigations relating to the Military Equal Opportunity and Treatment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incidents or complaint data, endorsement and recommendations, formal and informal complaints of unlawful discrimination or sexual harassment, and clarifications/investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013; Pub. L. 105-85, section 591; AFD 36-27, "Social Actions"; Air Force Instruction 36-2706, Military Equal Opportunity and Treatment Program; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate and resolve complaints of unlawful discrimination and sexual harassment under the Military Equal Opportunity and Treatment Program, and to maintain records created as a result of formal initial filing of allegations, and appeal actions of unlawful discrimination because of race, color, religion, sex, or national origin.

To report information as required by the FY 98 National Defense Authorization Act, and used as a data source for descriptive statistics.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(as follows:

In cases of confirmed sexual harassment, identification of complainant and offender will be

provided to congressional committees as required by the FY 98 National Defense Authorization Act.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on computer and computer output products.

RETRIEVABILITY:

Retrieved by complainant's name, Social Security Number, or case number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked desk drawers or locked offices. Records are accessed by personnel responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Human Resources Division, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330-1040.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Human Resources Division, 1040 Air Force Pentagon, Washington, DC 20330-1040, or social actions (Military Equal Opportunity) offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name and proof of identity to determine if the system contains a record about him or her.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Human Resources Division, 1040 Air Force Pentagon, Washington, DC 20330-1040, or social actions (Military Equal Opportunity) offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name and proof of identity such as military identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, investigative reports, witness statements, Air Force records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 02-1952 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a new category of individuals covered, i.e., qualified DoD civilians.

DATES: This proposed action will be effective without further notice on February 27, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601-4043 or DSN 329-4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, as submitted on January 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 17, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual) (April 14, 1999, 64 FR 18406).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Air Force Automated Education Management System (AFAEMS)".

* * * * *

CATEGORIES OF INDIVIDUALS COVERED:

Delete entry and replace with "All officers, airmen and qualified DoD Civilians who participate in the Education Services Program and the Tuition Assistance Program."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Pertinent education data maintained in an educational file folder may be forms for Air Force, Active Duty Service Commitment; Notice of Student Withdrawal/Non-completion; Individual Record-Education Services Program; Academic Education Data; Authority for Tuition Assistance—Education Services Program; Cash Collection for Voucher; Application for the Evaluation of Educational

Experiences During Military Service; Pay Adjustment Authorization; Department of Veterans Affairs Application for Educational Assistance; Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; and Educational test results from testing agencies."

* * * * *

STORAGE:

Delete entry and replace with "Student computer records are maintained on and, as necessary, reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings."

SAFEGUARDS:

Delete last three sentences.

RETENTION AND DISPOSAL:

Delete entry and replace with "Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting."

RECORDS ARE RETAINED AND DISPOSED OF IN THE FOLLOWING WAYS:

(1) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of noncompliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(2) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its "expired year" status and applicable fiscal year appropriation has been canceled.

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry "Education, training and personnel information is obtained from approved automated system interfaces."

* * * * *

F036 AF PC U

SYSTEM NAME:

Air Force Automated Education Management System (AFAEMS).

SYSTEM LOCATION:

Headquarters United States Air Force, Directorate of Personnel Force Development, 1040 Air Force Pentagon, Washington, DC 20330-1040;

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4703; and

Headquarters of major commands and field operating agencies; Air Force Base Education Services Flights. Official mailing addresses are published as an appendix to the Air Force's compilation of system(s) of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers, airmen and qualified DoD Civilians who participate in the Education Services Program and the Tuition Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pertinent education data maintained in an educational file folder may be forms for Air Force, Active Duty Service Commitment; Notice of Student Withdrawal/Non-completion; Individual Record-Education Services Program; Academic Education Data; Authority for Tuition Assistance—Education Services Program; Cash Collection for Voucher; Application for the Evaluation of Educational Experiences During Military Service; Pay Adjustment Authorization; Department of Veterans Affairs Application for Educational Assistance; Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; and Educational test results from testing agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36-2306, Operation and Administration of the Air Force Education Services Program and E.O. 9397 (SSN).

PURPOSE(S):

Counseling/Advisement Guide and Educational Registration Record used by Education Services Center staff personnel, Promotion and/or classification boards, and other authorized personnel such as military service schools, civilian schools, and supervisors of military personnel. The principle purpose is to provide a record of education endeavors and progress of Air Force personnel participating in Education Services Programs, to manage

the tuition assistance program and to track enrollments and funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to civilian schools for the purposes of ensuring correct enrollment and billing information.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Student computer records are maintained on and, as necessary, reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or tuition assistance document number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, and in computer storage devices and protected by computer system software.

RETENTION AND DISPOSAL:

Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting.

RECORDS ARE RETAINED AND DISPOSED OF IN THE FOLLOWING WAYS:

(1) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for

tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(2) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its "expired year" status and applicable fiscal year appropriation has been cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voluntary Education Branch, Education Division, Directorate of Personnel Force Development, Headquarters United States Air Force (HQ USAF/DPDE), 1040 Air Force Pentagon, Washington, DC 20330-1040.
Commander, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150-4750.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data gathered from the individual, data gathered from other personnel records, transcripts and/or evaluations from schools and test results from testing agencies. Education, training and personnel information is obtained from approved automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02-1953 Filed 1-25-02; 8:45 am]

BILLING CODE 5001-08-M

DELEWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, February 6, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include an update on the Comprehensive Plan (CP) and a proposed resolution concerning development of management strategies for implementing the goals and objectives of the CP; a Water Quality Advisory Committee proposal concerning the Delaware Riverkeeper's "Petition To Designate The Lower Delaware River As Special Protection Waters And Other Matters;" a report on the PCB TMDL development effort and proposal to modify the composition of the PCB Expert Panel within the previously approved budget authority; a report on Delaware Estuary Program activities; a proposal to fund a pilot Internet GIS interactive mapping application; a proposed resolution to enter into a contract with the Delaware Riverkeeper Network to provide support for the Little Neshaminy Watershed Study; a proposal to release for public comment the Draft Guidelines for Developing an Integrated Resource Plan Under the Delaware River Basin Commission Southeastern Pennsylvania Ground Water Protected Area Regulations; and a report on developments pursuant to Resolution No. 2001-32, declaring a drought emergency for the purpose of conservation of regional reservoir storage.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, a resolution adopting the 2002 Water Resources Program.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Philadelphia Suburban Water Company D-98-11 CP.* A project to withdraw up to 4.0 million gallons per day (mgd) from the East Branch Brandywine Creek for public water supply when streamflow exceeds 25 percent of the average daily flow and

is also greater than 90 mgd for the Brandywine River at Chadds Ford. The applicant proposes to serve portions of Wallace, East Brandywine and West Brandywine Townships, all in Chester County, Pennsylvania. The intake will be situated on the east bank of the East Branch Brandywine Creek just south of Marshall Road in Wallace Township. On a yearly use basis, withdrawal is expected to average approximately 0.76 mgd. When available, the raw water will be conveyed for storage in a nearby abandoned quarry (known as Cornog Quarry) with an estimated storage capacity of approximately 100 mg. Withdrawals ranging from 0.5 mgd to 1.0 mgd will then be made from the quarry, treated by a proposed new filter plant, and distributed to the project service area.

2. *Kiamesha Artesian Spring Water Company D-90-68 CP RENEWAL.* A ground water withdrawal renewal project to supply up to 9.8 mg/30 days of water to the applicant's public water distribution system from the existing Filtration Plant Well and Fraser Road Well in the Upper Devonian aquifer. No increase in allocation is proposed. The project is located in the Town of Thompson, Sullivan County, New York.

3. *Metachem Products LLC D-90-96 RENEWAL.* A ground water remediation withdrawal project to continue withdrawal of 10.8 mg/30 days of water from existing Wells Nos. RW-1, 2, 3, 4 and 5 in the Columbia Formation in the Red Lion Creek watershed. The project is located near the north side of Governor Lea Road approximately 1.4 miles north of the Routes 98-72 intersection near Delaware City, New Castle County, Delaware.

4. *Washington Township Municipal Utilities Authority D-98-6 CP.* A ground water withdrawal project to supply up to 248.2 mg/30 days of water to the applicant's distribution system and to permit new Wells Nos. 19 and 20. No increase in allocation is proposed. The project is located in Washington Township, Gloucester County, New Jersey.

5. *MBNA America D-2001-7.* A ground water withdrawal project to supply up to 412 mg/30 days from new Wells Nos. 10 and 14 to supplement supply from its White Clay Creek intake for irrigation of the applicant's Deerfield Golf & Tennis Club and to retain the existing total combined withdrawal from all sources to 6.75 mg/30 days. The project wells are located in the Wissahickon Formation in New Castle County, Delaware.

6. *Muhlenberg Township Authority D-2001-30 CP.* A ground water withdrawal project to supply up to 10.8 mg/30 days

of water to the applicant's public water supply system from new Well No. 15 in the Leithsville Formation and to increase the existing withdrawal from all wells to 168.5 mg/30 days. The project is located in the Willow Creek watershed in Ontelaunee Township, Berks County, Pennsylvania.

7. *Conectiv Mid-Merit, Inc. D-2001-31*. An electric power project which entails an average withdrawal of 3.5 mgd of water from the Lehigh River via a proposed new intake for cooling tower make-up. An average of 1.82 mgd of cooling tower blow-down will be discharged back to the Lehigh River via an outfall to be constructed downstream from the project intake. Two 550 MW natural gas-fired power modules will be constructed on a brownfield site in the southern part of the City of Bethlehem, Northampton County, Pennsylvania on land owned by the Bethlehem Steel Corp. The City of Bethlehem will supply an average of 0.31 mgd of potable water to the applicant for sanitary and process water requirements, of which approximately 0.02 mgd will be returned to Bethlehem's sewage treatment plant for treatment. The overall average water demand will be 3.81 mgd, and the overall consumptive use is projected at 52 percent or about 1.97 mgd. The power station will be designed to utilize low-sulfur distillate fuel as a secondary fuel supply and to provide electric power to the PJM grid.

8. *City of Dover D-2001-43 CP*. A ground water withdrawal project to supply up to 19.44 and 17.28 mg/30 days of water to the applicant's public water supply system from replacement Well No. 13 and from new Well No. 15, respectively, and retain the existing withdrawal from all wells at 438.24 mg/30 days. Both Well No. 13 and Well No. 15 are in the Cheswold Aquifer. The project is located in the St. Jones River watershed in Kent County, Delaware.

9. *Lejeune Properties, Inc. D-2001-45*. A project to construct a 0.086 mgd sewage treatment plant (STP) to serve the River Crest Residential Golf Course Community in Upper Providence Township, Montgomery County, Pennsylvania. The proposed STP is located on the applicant's 283-acre tract off Black Rock Road and State Route 29, in the Schuylkill River watershed. Following tertiary level, effluent will be used to spray irrigate the on-site golf course, but during the winter, STP effluent will be discharged to an unnamed tributary of the Schuylkill River.

10. *Little Washington Wastewater Company D-2001-46*. A project to construct a 0.085 mgd STP to serve the Somerset Development in Newtown

Township, Delaware County, Pennsylvania. The project is located along the western side of Newtown Road about a quarter-mile north of its intersection with Gradyville Road. The project is designed to provide tertiary treatment via an anoxic/oxic process and features chemical addition and effluent filtration. The proposed STP will discharge to an unnamed tributary of Hunter Run in the Crum Creek watershed.

11. *Municipal Authority of the Township of Branch D-2001-47 CP*. A project to construct a 0.45 mgd STP to serve the predominantly residential service area of Branch and Cass Townships, both in Schuylkill County, Pennsylvania. The proposed plant is designed to provide advanced secondary treatment and will discharge to the West Branch Schuylkill River. The project is located just south of U.S. Route 209 off Railroad Avenue in Branch Township, Schuylkill County, Pennsylvania.

12. *Superior Water Company D-2001-48 CP*. A ground water withdrawal project to supply up to 4.5 mg/30 days of water to the applicant's public water supply system from new Well No. 1 in the Hammer Creek Formation. The project is located in the Schuylkill River watershed in North Coventry Township, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area.

13. *Citizens Utilities Water Company of Pennsylvania D-2001-49 CP*. An application for approval of a ground water withdrawal project to supply up to 5.18 mg/30 days of water to the applicant's public water supply system from new Well No. DG-12A in the Brunswick Formation and to increase the existing withdrawal from all wells to 29.14 mg/30 days. The project is located in the Magneton Creek watershed in Amity Township, Berks County, Pennsylvania.

14. *Village of Beach Lake D-2001-52*. A project to construct a 0.09 mgd STP to serve residents of Beach Lake Village in Berlin Township, Wayne County, Pennsylvania. The existing subsurface grainfield system will be replaced by an intermittent cycle extended aeration system, which is designed to provide advanced secondary level of treatment prior to discharge to Beach Lake Creek in the Masthope Creek Watershed. The proposed plant will be constructed about one mile east of Beach Lake, just south of State Route 652 and is located in the drainage area to the DRBC Special Protection Waters.

15. *Mountainside Farms, Inc. D-2001-53*. A project to upgrade and expand a 0.036 mgd industrial waste treatment

plant (IWTP) to process 0.051 mgd from the Mountainside Farms, Inc. milk processing facility located about one quarter mile off State Route 30, in the Town of Roxbury, Delaware County, New York. The project is located in the drainage area to the DRBC Special Protection Waters. Following tertiary treatment, the IWTP effluent will continue to percolate to ground water through six exfiltration ponds in the East Branch Delaware River Watershed.

16. *The Ace Center D-2001-57*. A ground water withdrawal project to supply up to 12.7 mg/30 days of water to the applicant's golf course irrigation system from new Wells Nos. 1 and 4 in the Wissahickon Formation. The project is located in the Schuylkill River watershed in Whitemarsh Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

In addition to the public hearing items, the Commission will address the following at its 1:00 p.m. business meeting: Minutes of the December 18, 2001 business meeting; announcements; a report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; action on an untimely request for hearing by Mr. Gary Eckenrode concerning Docket D-2001-13 CP of the Northampton Bucks County Municipal Authority; a directed appearance by Delaware Estuary point source dischargers Motiva Enterprises LLC, Metachem Products, LLC and AFG Industries, Inc. to report on their progress toward submitting overdue PCB monitoring data required by the Commission; a resolution concerning the development of management strategies for implementing the goals and objectives of the Comprehensive Plan; a resolution to fund a pilot Internet GIS interactive mapping application; a resolution to enter into a contract with the Delaware Riverkeeper Network to provide support for the Little Neshaminy Watershed Study; a resolution for the minutes expanding the Watershed Advisory Council to include as many as 40 members; and public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609-883-9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609-883-9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who

wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609-883-9500 ext. 203 or through the New Jersey Relay Service at 1-800-852-7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: January 22, 2002.

Robert Tudor,

Commission Secretary and, Assistant General Counsel.

[FR Doc. 02-1973 Filed 1-25-02; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting, and partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202-357-6938 or at Munira.Mwalimu@ed.gov not later than February 8, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Date: March 1–March 2, 2002.

Time: March 1—Full Board 8:30 a.m.–10:15 a.m.; Assessment Development Committee 10:15 a.m.–12:15 p.m.; Committee on Standards, Design and Methodology, 10:15 a.m.–12:15 p.m.; Reporting and Dissemination Committee, 10:15 a.m.–12:15 p.m.; Full Board—Closed Meeting, 12:30 p.m.–1:45 p.m.; Open Meeting 1:45 p.m.–4:30p.m.; March 2—Nominations Committee—8 a.m.–8:45 a.m.; Full Board, 9:00 a.m.–12 p.m.

Location: The Ritz Carlton New Orleans, 921 Canal Street, New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite

825, Washington, DC 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2002) (Public Law 103-382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On March 1, 2002 the full Board will convene in open session from 8:30 a.m.–10:15 a.m. The Board will approve the agenda after which Secretary Rod Paige will administer the oath of office to a new Board member and address the Board. Welcome remarks and comments will then be made by Cecil Picard, the Louisiana Superintendent of Education, followed by an update on the NAEP Program by Deputy Commissioner of the National Center for Education Statistics, Gary Phillips. From 10:15 a.m. to 12:15 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in closed session on March 1, 2002 from 12:30 p.m.–1:45 p.m. to receive results of the NAEP 2001 U.S. History Assessment. This meeting must be closed because the Secretary of Education has not officially released results from the NAEP U.S. History Assessment to the public and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552(b)(c) of Title 5 U.S.C.

The full Board will reconvene in open session on March 1, from 1:45 p.m. to 4:30 p.m. to discuss implications of the No Child Left Behind Act of 2002 for NAEP; to hear a final report and take action on recommendations of the Ad Hoc Committee on Confirming Test Results; and to hear a final report and take action on the NAEP Reading Framework. The Board will also receive

a briefing on the 2005 NAEP Economics Framework project, upon which the March 1, 2002 session of the Board meeting will adjourn.

On March 2, 2002, the Nominations Committee will meet from 8 a.m. to 8:45 a.m. The full Board will meet in open session from 9 a.m. to 12 a.m. The Board will receive and view reading results of the Program for International Student Assessment (PISA). The Board will then hear and take action on Committee reports from 9:30 a.m. to 12 p.m., whereupon the meeting will adjourn.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552(b)(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC from 8:30 a.m. to 5 p.m. Eastern Standard Time

Dated: January 23, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02-1985 Filed 1-25-02; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. This notice announces the sixth meeting of FEMAC, an advisory committee authorized under Executive Order 13123—"Greening the Government through Efficient Energy Management."

DATES: Tuesday, February 12, 2002; 9 a.m. to 4:30 p.m.; Wednesday, February 13, 2002; 8:30 a.m. to 12 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Rick Klimkos, Acting Designated Federal

Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586-8287.

SUPPLEMENTARY INFORMATION:

Purpose of meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussions on the following topics:

Tuesday, February 12, 2002 and
Wednesday, February 13, 2002

- FEMAC participation in Energy 2002
- FEMAC Strategic Plan Working Group report
- FEMP FY 2003 budget
- Pending legislation affecting energy management in Federal facilities
- Update on FEMP program activities
- Other energy management issues and topics of interest to committee members
- Public comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Rick Klimkos at (202) 586-8287 or Rick.Klimkos@ee.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E-190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 23, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02-2050 Filed 1-25-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-453-001]

Conectiv Bethlehem, Inc.; Notice of Filing

January 22, 2002.

Take notice that on January 16, 2002, Conectiv Bethlehem, Inc. (CBI) withdraws the Tolling Agreement which it tendered for filing on November 30, 2002 as a service agreement under its market-based tariff which was also filed in this docket on that date.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 28, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1994 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-3017-000 and ER01-3017-001]

Coral Canada US Inc.; Notice of Issuance of Order

January 22, 2002.

Coral Canada US Inc. (Coral Canada) submitted for filing a rate schedule

under which Coral Canada proposed to sell electric capacity and energy at negotiated rates to any purchaser that is not a franchised public utility affiliate. Coral Canada also requested waiver of various Commission regulations. In particular, Coral Canada requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Coral Canada.

On January 15, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Coral Canada should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Coral Canada is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Coral Canada, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Coral Canada's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1992 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER02-388-000]

HC Power Marketing LLC; Notice of Issuance of Order

January 22, 2002.

HC Power Marketing LLC (HC Power Marketing) submitted for filing a proposed tariff that provides for sales of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity. HC Power Marketing also requested waiver of various Commission regulations. In particular, HC Power Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by HC Power Marketing.

On January 17, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by HC Power Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, HC Power Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of HC Power Marketing, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of HC Power Marketing's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 19, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may

also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 02-1993 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EG02-41-000, et al.]

FPL Energy Marcus Hook, L.P., et al.; Electric Rate and Corporate Regulation Filings

January 22, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. FPL Energy Marcus Hook, L.P.

[Docket No. EG02-41-000]

Take notice that on January 17, 2002, FPL Energy Marcus Hook, L.P., with its principal office at 700 Universe Boulevard, Juno Beach, FL 33408, filed with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its application for determination of exempt wholesale generator status.

Comment Date: February 7, 2002.**2. Southern Company Services, Inc.**

[Docket No. ER01-602-013]

Take notice that on January 16, 2002, Southern Company Services, Inc. (SCS) as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company, tendered an additional sheet to Southern Operating Companies First Revised Rate Schedule FERC No. 78 as a supplement to a filing made on November 16, 2001 in order to make such rate schedule Order No. 614 compliant.

Comment Date: February 6, 2002.**3. American Transmission Systems, Incorporated**

[Docket No. ER02-132-001]

Take notice that on January 17, 2002, in compliance with the Commission's December 18, 2001 Order in this docket

(American Transmission Systems, Incorporated, 97 FERC ¶61,273 (2001)), American Transmission Systems, Inc. (ATSI) tendered for filing a revised Generator Interconnection and Operating Agreement between ATSI and Fremont Energy Center, L.L.C. (Fremont). The Agreement has been redesignated First Revised Service Agreement No. 312 under the ATSI Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 1.

Copies of this filing have been served on the Ohio and Pennsylvania utility commissions and Fremont.

Comment Date: February 7, 2002.**4. New York Independent System Operator, Inc.**

[Docket No. ER02-194-001]

Take notice that on January 16, 2002, the New York Independent System Operator, Inc. (NYISO) submitted to the Federal Energy Regulatory Commission (Commission) a compliance filing in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that are included on the Commission's service list in this proceeding and to the electric utility regulatory agencies in New York and Pennsylvania.

Comment Date: February 6, 2002.**5. Mirant Delta, LLC, Mirant Potrero, LLC**

[Docket No. ER02-198-002]

Take notice that on January 17, 2002 Mirant Delta, LLC and Mirant Potrero, LLC (collectively, Mirant) submitted to the Federal Energy Regulatory Commission (Commission) an amended filing in compliance with Commission's directive.

Comment Date: February 7, 2002.**6. Progress Energy Inc. on Behalf of Florida Power Corporation**

[Docket No. ER02-610-001]

Take notice that on January 16, 2002, Florida Power Corporation (FPC) amended the filing originally made in this docket.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.**7. American Transmission Company LLC**

[Docket No. ER02-624-000]

Take notice that on January 16, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Letter of Clarification related to its December 28, 2001 filing of OATT revisions to accommodate retail access in Michigan,

for which ATCLLC requested an effective date of January 1, 2002.

Comment Date: February 6, 2002.

8. Delmarva Power & Light Company

[Docket No. ER02-634-002]

Take notice that on January 17, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised cover sheet and a revised page 1 to the execution date of an executed Interconnection Agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC).

Delmarva respectfully requests that the Interconnection Agreement with the revised cover sheet and revised page 1 become effective on December 31, 2001, the date on which Delmarva originally requested the Interconnection Agreement become effective. Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: February 7, 2002.

9. Illinois Power Company

[Docket No. ER02-775-000]

Take notice that on January 16, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Third Revised Network Integration Transmission Service Agreement entered into by Illinois Power and Dynegy Power Marketing, Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2002, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: February 6, 2002.

10. Entergy Services, Inc.

[Docket No. ER02-776-000]

Take notice that on January 16, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and AIG Energy Trading, Inc.

Comment Date: February 6, 2002.

11. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER02-777-000]

Take notice that on January 16, 2002, Progress Energy Service Company (Progress Energy), on behalf of Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Florida Power & Light Company (FP&L). Service to FP&L will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

Progress Energy is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: February 6, 2002.

12. Tampa Electric Company

[Docket No. ER02-778-000]

Take notice that on January 16, 2002, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on January 8, 2002, and gives notice of its cancellation as of February 1, 2002.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment Date: February 6, 2002.

13. Virginia Electric and Power Company

[Docket No. ER02-779-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Dominion Retail, Inc., designated as Service Agreement No. 349, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Dominion Retail, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

14. Virginia Electric and Power Company

[Docket No. ER02-780-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Pepco Energy Services, Inc., designated as Service Agreement No. 350, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Pepco Energy Services, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

15. Virginia Electric and Power Company

[Docket No. ER02-781-000]

Take notice that on January 16, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Dominion Energy Direct Sales, Inc., designated as Service Agreement No. 351, in accordance with Part III of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2002, as requested by the Customer.

Copies of the filing were served upon Dominion Energy Direct Sales, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 6, 2002.

16. PacifiCorp

[Docket No. ER02-787-000]

Take notice that on January 16, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of Rate Schedule FERC No. 243 for the Storage Agreement entered on September 5, 1985 between Snohomish Public Utility Department and PacifiCorp.

Copies of this filing were served on the Washington Utilities and

Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: February 6, 2002.

17. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER02-790-000]

Take notice that on January 17, 2002, Progress Energy Service Company, on behalf of Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Tampa Electric Company (Tampa). Service to Tampa will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

CP&L is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: February 7, 2002.

18. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02-791-000]

Take notice that on January 17, 2002, Wolverine Power Supply Cooperative, Inc., submitted for filing four revised Amended and Consolidated Wholesale Power Contracts (Contract) between Wolverine Power Supply Cooperative, Inc. (Wolverine) and: Cherryland Electric Cooperative (Cherryland), HomeWorks Tri-County Electric Cooperative (HomeWorks), Great Lakes Energy Cooperative (Great Lakes), and Presque Isle Electric and Gas Co-op, Inc. (Presque Isle), respectively.

Wolverine requests an effective date of March 15, 2002, or 60 days after this filing, for these Contracts.

Wolverine states that a copy of this filing has been served upon its member cooperatives: Cherryland Electric Cooperative, Great Lakes Energy, Presque Isle Electric & Gas Cooperative, HomeWorks Tri-County Electric Cooperative, Wolverine Power Marketing Cooperative, and the Michigan Public Service Commission.

Comment Date: February 7, 2002.

19. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02-792-000]

Take notice that on January 18, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the

Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into The Detroit Edison Company.

Ameren Energy seeks Commission acceptance of these service agreements effective December 20, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: February 8, 2002.

20. Lyon Rural Electric Cooperative

[Docket No. ER02-793-000]

Take notice that on January 17, 2002, Lyon Rural Electric Cooperative (Lyon) submitted for filing under section 205 of the Federal Power Act a change in rate regarding its Rate Schedule FERC No. 1, the Agreement for Purchase Of Power and Maintenance of System Between Lyon Rural Electric Cooperative and Town of Larchwood, Iowa. The rate change, designated First Revised Rate Schedule FERC No. 1, provides for a change in the components of the existing rate such that the resulting overall rate is increased approximately \$10,000.00 per year over the existing rate. The proposed rate sheets replace existing Rate Schedule FERC No. 1 and all supplements thereto.

Lyon asks the rate change to become effective March 1, 2002.

A copy of Lyon's filing is available during normal business hours at their corporate offices in Rock Rapids, Iowa.

Comment Date: February 7, 2002.

21. Xcel Energy Services Inc.

[Docket No. ER02-794-000]

Take notice that on January 18, 2002, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement between Southwestern and Public Service Company of New Mexico. XES requests that this agreement become effective on January 1, 2002.

Comment Date: February 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1991 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-1263-002, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 18, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Portland General Electric Company

[Docket Nos. ER99-1263-002 ER98-1643-005]

Take notice that on January 15, 2002, Portland General Electric Company (PGE) filed a notice of status change with the Federal Energy Regulatory Commission (Commission) in connection with the pending acquisition of PGE by a newly formed holding company currently identified as Northwest Natural Holding Company.

Copies of the filing were served upon all parties on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Comment Date: February 5, 2002.

2. PSI Energy, Inc.

[Docket No. ER02-591-001]

Take notice that on January 15, 2002, PSI Energy, Inc. (PSI) submitted for filing the Transmission and Local Facilities Agreement between PSI,

Indiana Municipal Power Agency and Wabash Valley Power Association, Inc.

Comment Date: February 5, 2002.

3. American Transmission Company LLC

[Docket No. ER02-772-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Mirant Portage County, LLC.

ATCLLC requests an effective date of January 11, 2002.

Comment Date: February 5, 2002.

4. American Transmission Company LLC

[Docket No. ER02-773-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing an executed Generation-Transmission Interconnection Agreement between ATCLLC and Manitowoc Public Utilities.

ATCLLC requests an effective date of June 25, 2001.

Comment Date: February 5, 2002.

5. American Transmission Company, L.L.C.

[Docket No. ER02-774-000]

Take notice that on January 15, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Mirant Neenah, LLC.

ATCLLC requests an effective date of January 14, 2002.

Comment Date: February 5, 2002.

6. Florida Power & Light Company

[Docket No. ER02-782-000]

Take notice that on January 16, 2002, Florida Power & Light Company (FPL) filed, pursuant to Section 205 of the Federal Power Act, an executed Interconnection & Operation Agreement between FPL and CPV Gulfcoast, Ltd.

Comment Date: February 6, 2002.

7. EPCOR Merchant and Capital (US) Inc.

[Docket No. ER02-783-000]

Take notice that on January 15, 2002, EPCOR Merchant and Capital (US) Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 5, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02-784-000]

Take notice that on January 15, 2002, Virginia Electric and Power Company, tendered for filing under the provisions of 205 of the Federal Power Act (FPA) a Wholesale Cost-Based Rate Tariff (Tariff) providing for sales of capacity, energy and resale of transmission rights, together with a pro-forma service agreement under that Tariff. Dominion Virginia Power asks that the proposed Tariff be made effective January 16, 2002, the day after it is filed.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: February 5, 2002.

9. Wisconsin Electric Power Company

[Docket No. ER02-785-000]

Take notice that on January 15, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing the 2001 inputs to the formula rates in Exhibit No. 4 of two Generation-Transmission Must Run Agreements with American Transmission Company, LLC (ATLLLC). The inputs are reflected in an updated Exhibit No. 4.4 for Wisconsin Electric's Oak Creek Power Plant and the Presque Isle Power Plant and Upper Peninsula of Michigan Hydroelectric Plants. By the terms of the Must Run Agreements, the inputs to the formula rate took effect on January 1, 2002.

Wisconsin Electric requests that the updates to Exhibit Nos. 4.4 of the Must Run Agreements be made effective on January 1, 2002.

Comment Date: February 5, 2002.

10. AmerGen Energy Company, LLC

[Docket No. ER02-786-000]

Take notice that on January 15, 2002, AmerGen Energy Company, LLC, tendered for filing a service agreement under its market-based rate wholesale power sales tariff under which it will make sales of energy and capacity to Exelon Generation Company, LLC.

Comment Date: February 5, 2002.

11. Desert Power, L.P.

[Docket No. ER02-789-000]

Take notice that on January 14, 2002, Desert Power, L.P. and Enron Power Marketing tender for filing a Service Agreement.

Comment Date: February 4, 2002.

12. Hot Spring Power Company, LLC

[Docket No. EG02-68-000]

Take notice that on January 15, 2002, Hot Spring Power Company, LLC

(Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own and operate a 800MW generating facility near the city of Malvern, in Hot Spring County, Arkansas, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a total nominal output of 800 MW.

Comment Date: February 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02-1954 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 11541-001]

Atlanta Power Company—Idaho; Notice of Availability of Final Environmental Assessment

January 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Atlanta Power Station Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The operating project is located on the Middle Fork Boise River near the town of Atlanta (75 miles from the nearest populated area), in Elmore County, Idaho. Water to operate the run-of-river project is diverted at Kirby dam which is owned and operated by the U.S. Forest Service (FS). The project occupies about 3.3 acres of land within the Boise National Forest, administered by the FS.

On August 3, 2000, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed by the FS, the United States Department of the Interior (Fish and Wildlife Service), Idaho Department of Fish and Game, and Idaho Rivers United and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Rm. 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection and may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02-1995 Filed 1-25-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Sunshine Act Meeting Notice**

January 23, 2002.

The following notice of meeting is published pursuant to section 3(A) of the government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 30, 2002, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda
*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 208-0400, for a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

783rd—Meeting January 30, 2002 Regular Meeting 10:00 A.M.**Administrative Agenda**

A-1.

DOCKET# AD02-1, 000, Agency Administrative Matters

A-2.

DOCKET# AD02-7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E-1.

DOCKET# AD02-6, 000, Infrastructure Discussion in the Northeast

E-2.

DOCKET# AD01-3, 000, California Infrastructure Update

E-3.

DOCKET# EX02-8, 000, Market Power

E-4.

DOCKET# EX02-10, 000, Report on the Economic Impacts on Western Utilities and Ratepayers of Price Caps on Spot Market Sales

E-5.

DOCKET# ER02-485, 000, Midwest Independent Transmission System Operator, Inc.

E-6.

OMITTED

E-7.

DOCKET# ER02-479, 000, Pacific Gas and Electric Company

OTHER#S ER02-250, 000, California Independent System Operator Corporation

ER02-527, 000, California Independent System Operator Corporation

E-8.

DOCKET# ER01-3142, 000, Midwest Independent Transmission System Operator, Inc.

OTHER#S ER01-3142, 001, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 002, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 003, Midwest Independent Transmission System Operator, Inc.

ER01-3142, 004, Midwest Independent Transmission System Operator, Inc.

E-9.

DOCKET# ER02-239, 000, Duke Energy South Bay LLC

OTHER#S ER02-239, 001, Duke Energy South Bay LLC

ER02-239, 002, Duke Energy South Bay LLC

E-10.

DOCKET# ER02-540, 000, Michigan Electric Transmission Company

E-11.

DOCKET# ER01-1107, 000, American Transmission Company LLC

E-12.

OMITTED

E-13.

DOCKET# ER01-2758, 000, Sierra Pacific Power Company and Nevada Power Company

OTHER#S ER01-2754, 000, Nevada Power Company

ER01-2754, 001, Nevada Power Company

ER01-2755, 000, Nevada Power Company

ER01-2758, 001, Sierra Pacific Power Company and Nevada Power Company

ER01-2759, 000, Sierra Pacific Power Company and Nevada Power Company

ER01-2759, 001, Sierra Pacific Power Company and Nevada Power Company

E-14.

OMITTED

E-15.

DOCKET# RT01-98, 002, PJM Interconnection, L.L.C. and Allegheny Power

E-16.

OMITTED

E-17.

DOCKET# EC02-28, 000, International Transmission Company

E-18.

DOCKET# EC02-5, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

OTHER#S ER02-211, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

EL02-53, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

E-19.

OMITTED

E-20.

OMITTED

E-21.

DOCKET# ER01-3034, 002, Duke Energy Oakland, LLC

- E-22.
DOCKET# ER01-3009, 001, New York Independent System Operator, Inc.
OTHER#S EL00-90, 001, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.
ER01-3009, 002, New York Independent System Operator, Inc.
ER01-3153, 001, New York Independent System Operator, Inc.
ER01-3153, 002, New York Independent System Operator, Inc.
EL00-90, 002, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.
- E-23.
DOCKET# ER01-3003, 001, Mid-Continent Area Power Pool
- E-24.
DOCKET# ER01-3047, 001, California Independent System Operator Corporation
- E-25.
DOCKET# EL01-94, 001, Rumford Power Associates, LP v. Central Maine Power Company
- E-26.
DOCKET# OA97-24, 006, Central Power and Light Company
OTHER#S ER97-881, 003, West Texas Utilities Company
ER98-4609, 003, Southwestern Electric Power Company
ER98-4611, 004, Public Service Company of Oklahoma
- E-27.
DOCKET# ER01-2126, 004, Michigan Electric Transmission Company
OTHER#S ER01-2375, 003, Michigan Electric Transmission Company
ER01-3075, 002, Michigan Electric Transmission Company
- E-28.
DOCKET# EL00-73, 003, Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company
- E-29.
OMITTED
- E-30.
DOCKET# EL00-62, 040, ISO New England Inc.
- E-31.
DOCKET# EC01-151, 001, Otter Tail Power Company
- E-32.
DOCKET# EC01-49, 002, PG&E National Energy Group, LLC and PG&E National Energy Group, Inc., on behalf of Themselves and Their Public Utility Subsidiaries
OTHER#S EC01-41, 002, PG&E National Energy Group, Inc., PG&E Enterprises, and PG&E Shareholdings, Inc., on behalf of Themselves and Their Public Utility Subsidiaries
- E-33.
DOCKET# ER01-2536, 002, New York Independent System Operator, Inc.
- E-34.
OMITTED
- E-35.
DOCKET# EL00-95, 054, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
- E-36.
DOCKET# ER01-702, 001, American Transmission Company LLC
OTHER#S OA01-7, 000, Edison Sault Electric Company
OA01-8, 000, Wisconsin Electric Power Company
- E-37.
DOCKET# EL01-121, 000, Wheelabrator Lassen Inc.
OTHER#S QF81-21, 004, Wheelabrator Lassen Inc.
- E-38.
DOCKET# EL01-65, 000, Californians for Renewable Energy, Inc. v. British Columbia Hydro and Power Authority, Powerex Corporation, Southern Energy Marketing Company (Mirant) and Bonneville Power Administration
- E-39.
DOCKET# EL02-42, 000, Dynegy Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Mirant California, LLC and Williams Energy Marketing & Trading Company v. California Independent System Operator Corporation
- E-40.
OMITTED
- E-41.
DOCKET# EL00-95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
OTHER#S EL00-98, 042, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation
- E-42.
DOCKET# ER02-199, 000, Mississippi Power Company
OTHER#S EL02-50, 000, Southern Company Services, Inc.
ER02-218, 000, Southern Company Services, Inc.
ER02-219, 000, Southern Company Services, Inc.
ER02-220, 000, Southern Company Services, Inc.
ER02-221, 000, Southern Company Services, Inc.
ER02-222, 000, Southern Company Services, Inc.
ER02-223, 000, Southern Company Services, Inc.
ER02-224, 000, Southern Company Services, Inc.
ER02-225, 000, Southern Company Services, Inc.
ER02-226, 000, Southern Company Services, Inc.
ER02-227, 000, Georgia Power Company
ER02-228, 000, Georgia Power Company
ER02-229, 000, Alabama Power Company
ER02-230, 000, Alabama Power Company
ER02-498, 000, Gulf Power Company
- E-43.
DOCKET# ER02-484, 000, Midwest Independent Transmission System Operator, Inc.
- E-44.
DOCKET# ER01-2644, 000, Colton Power, L.P.
- OTHER#S ER01-2644, 001, Colton Power, L.P.
ER01-2644, 002, Colton Power, L.P.
ER01-2644, 003, Colton Power, L.P.
- E-45.
DOCKET# ER02-489, 000, Midwest Independent Transmission System Operator, Inc.
- E-46.
DOCKET# ER01-2685, 001, PacifiCorp Power Marketing, Inc.
- E-47.
DOCKET# EL01-105, 000, The New Power Company v. PJM Interconnection L.L.C. (Closed Meeting Item)
- E-48.
OMITTED
- E-49.
DOCKET# ER02-562, 000, Michigan Electric Transmission Company
- Miscellaneous Agenda**
- M-1.
RESERVED
- Markets, Tariffs and Rates—Gas**
- G-1.
DOCKET# RP02-136, 000, Colorado Interstate Gas Company
- G-2.
DOCKET# RP02-137, 000, Kern River Gas Transmission Company
- G-3.
DOCKET# RP02-129, 000, Southern LNG Inc.
- G-4.
DOCKET# RP02-132, 000, Viking Gas Transmission Company
- G-5.
DOCKET# IS02-92, 000, Chevron Pipe Line Company
- G-6.
DOCKET# IS02-109, 000, Platte Pipe Line Company
- G-7.
DOCKET# RP01-190, 000, Kern River Gas Transmission Company
- G-8.
DOCKET# RP00-334, 000, K N Wattenberg Transmission Limited Liability Company
OTHER#S RP00-334, 001, K N Wattenberg Transmission Limited Liability Company
RP00-630, 000, K N Wattenberg Transmission Limited Liability Company
- G-9.
DOCKET# RP00-339, 000, Arkansas Western Pipeline, L.L.C.
- G-10.
DOCKET# RP02-125, 000, Gulf South Pipeline Company, LP
- G-11.
OMITTED
- G-12.
DOCKET# RP01-259, 000, ANR Pipeline Company
OTHER#S RP01-259, 001, ANR Pipeline Company
- G-13.
DOCKET# PR00-17, 000, Transok, LLC
OTHER#S PR00-17, 001, Transok, LLC
- G-14.
DOCKET# PR01-6, 000, Enogex, Inc.
OTHER#S PR01-6, 001, Enogex, Inc.
- G-15.
DOCKET# PR01-11, 000, PanEnergy Louisiana Intrastate, LLC

- OTHER#S RP01-11, 001, PanEnergy Louisiana Intrastate, LLC
- G-16. DOCKET# RP01-246, 003, Natural Gas Pipeline Company of America
- G-17. DOCKET# RP01-76, 002, Northern Natural Gas Company
OTHER#S RP00-404, 001, Northern Natural Gas Company
RP01-76, 003, Northern Natural Gas Company
RP01-76, 004, Northern Natural Gas Company
RP01-382, 008, Northern Natural Gas Company
RP01-396, 002, Northern Natural Gas Company
- G-18. DOCKET# RP00-152, 001, Northern Natural Gas Company
- G-19. DOCKET# RP01-503, 001, Natural Gas Pipeline Company of America
- G-20. DOCKET# RP00-325, 006, Colorado Interstate Gas Company
OTHER#S RP01-38, 003, Colorado Interstate Gas Company
- G-21. DOCKET# RP00-399, 006, National Fuel Gas Supply Corporation
OTHER#S RP00-399, 007, National Fuel Gas Supply Corporation
RP01-2, 002, National Fuel Gas Supply Corporation
- G-22. DOCKET# RP01-622, 001, Mississippi River Transmission Corporation
OTHER#S RP01-623, 001, Mississippi River Transmission Corporation
RP01-623, 002, Mississippi River Transmission Corporation
- G-23. DOCKET# RP00-407, 001, High Island Offshore System, L.L.C.
OTHER#S RP00-407, 002, High Island Offshore System, L.L.C.
RP00-619, 002, High Island Offshore System, L.L.C.
RP00-619, 003, High Island Offshore System, L.L.C.
- G-24. DOCKET# RP01-624, 001, Gulf South Pipeline Company, LP
- G-25. DOCKET# RP02-39, 001, Columbia Gulf Transmission Company
OTHER#S RP02-39, 002, Columbia Gulf Transmission Company
- G-26. OMITTED
- G-27. DOCKET# RP02-99, 000, Shell Offshore Inc. (Closed Meeting Item)
- G-28. DOCKET# RP00-469, 001, East Tennessee Natural Gas Company
OTHER#S RP00-469, 000, East Tennessee Natural Gas Company
RP00-22, 000, East Tennessee Natural Gas Company
RP00-22, 002, East Tennessee Natural Gas Company
- G-29. DOCKET# RP00-394, 000, KO Transmission Company
- G-30. DOCKET# IS00-436, 000, Colonial Pipeline Company
- G-31. DOCKET# RP01-17, 000, Raptor Natural Pipeline LLC
- G-32. DOCKET# RM01-9, 000, Reporting of Natural Gas Sales to the California Market
- G-33. DOCKET# RP02-144, 000, Superior Natural Gas Corporation and Walter Oil & Gas Corporation v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company and Williams Gulf Coast Gathering Company, L.L.C. (Closed Meeting Item)
- G-34. The Possible Initiation of Investigation (Closed Meeting Item)
- Energy Projects—Hydro**
- H-1. DOCKET# AD02-5, 000, Hydro Licensing Status Workshop
- H-2. DOCKET# P-11944, 001, Symbiotics, LLC
- H-3. DOCKET# P-5, 067, PPL Montana, LLC and Confederated Salish and Kootenai Tribes of the Flathead Nation
- H-4. DOCKET# P-1962, 038, Pacific Gas & Electric Company
OTHER#S P-1962, 040, Pacific Gas & Electric Company
- H-5. DOCKET# P-11925, 001, Symbiotics, LLC
OTHER#S P-12064, 001, Ochoco Irrigation District
- H-6. DOCKET# UL97-11, 002, PacifiCorp
- H-7. DOCKET# P-11959, 001, Symbiotics, LLC
- H-8. OMITTED
- H-9. DOCKET# P-2145, 040, Public Utility District No. 1 of Chelan County, Washington
- H-10. DOCKET# P-2413, 046, Georgia Power Company
- H-11. OMITTED
- H-12. DOCKET# DI98-2, 002, Alaska Power & Telephone Company
- H-13. DOCKET# P-2436, 154, Consumers Energy Company
OTHER#S P-2447, 144, Consumers Energy Company
P-2448, 148, Consumers Energy Company
P-2449, 127, Consumers Energy Company
P-2450, 124, Consumers Energy Company
P-2451, 129, Consumers Energy Company
P-2452, 134, Consumers Energy Company
P-2453, 154, Consumers Energy Company
P-2468, 130, Consumers Energy Company
P-2580, 172, Consumers Energy Company
P-2599, 141, Consumers Energy Company
- Energy Projects—Certificates**
- C-1. DOCKET# AD02-9, 000, Pipeline Expansion During 2001
- C-2. DOCKET# CP01-417, 000, Transcontinental Gas Pipe Line Corporation
- C-3. DOCKET# CP93-253, 004, El Paso Natural Gas Company
- C-4. DOCKET# CP01-45, 001, Colorado Interstate Gas Company
OTHER#S CP01-45, 000, Colorado Interstate Gas Company
- C-5. DOCKET# CP01-79, 001, ANR Pipeline Company
- C-6. DOCKET# CP01-389, 002, Transcontinental Gas Pipe Line Corporation
OTHER#S CP01-389, 001, Transcontinental Gas Pipe Line Corporation
- C-7. DOCKET# CP00-412, 001, Cross Bay Pipeline Company, L.L.C. and Transcontinental Gas Pipe Line Corporation
OTHER#S CP00-413, 001, Cross Bay Pipeline Company, L.L.C.
CP00-414, 001, Cross Bay Pipeline Company, L.L.C.
- C-8. DOCKET# CP01-153, 000, Tuscarora Gas Transmission Company
OTHER#S CP01-153, 001, Tuscarora Gas Transmission Company
- C-9. DOCKET# CP01-46, 000, National Fuel Gas Supply Corporation (Closed Meeting Item)
- Linwood A. Watson, Jr.,**
Acting Secretary.
[FR Doc. 02-2065 Filed 1-23-02; 4:24 pm]
BILLING CODE 6717-01-P
-
- DEPARTMENT OF ENERGY**
- Federal Energy Regulatory Commission; Notice of Meeting; Sunshine Act**
- January 23, 2002.
- The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:
- AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.
- DATE AND TIME:** January 30, 2002, (Two Hours Following Regular Commission Meeting).
- PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.
- STATUS:** Closed.
- MATTERS TO BE CONSIDERED:**
G-27 Docket No. RP02-99-000, Shell Offshore Inc. v. Transcontinental Gas Pipeline Corporation, Williams Gas

Processing—Gulf Coast Company, L.P. and Williams Field Services Company.

G-33 Docket No. RP02-144-000, Superior Natural Gas Corporation and Walter Oil & Gas Corporation v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company and Williams Gulf Coast Gathering Company, L.L.C.

E-47 Docket No. EL01-105-000, New Power Company v. PJM Interconnection, LLC.

C-9 Docket No. CP01-46-000, National Fuel Gas Supply Corporation.

G-34 The possible initiation of investigation.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 208-0400.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02-2066 Filed 1-23-02; 4:24 pm]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-4]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92-463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet three times annually. This is an open meeting. The theme will be "In-Use Testing" and will include presentations from EPA and other outside organizations. The preliminary agenda for this meeting will be available on the Subcommittee's website in early February. Draft minutes from the previous meetings are available on the Subcommittee's website now at: www.epa.gov/oar/caaac/mobile_sources-caaac.html.

DATES: Wednesday, February 13 from 9:00 am. to 3:30 pm. Registration begins at 8:30 am.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: For technical information: Ms. Cheryl L. Hogan, Alternate Designated Federal Officer, Certification and Compliance Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/

214-4402, FAX: 734/214-4053, e-mail: hogan.cheryl@epa.gov.

For logistical and administrative information: Ms. Mary F. Green, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734/214-4411, Fax: 734/214-4053, e-mail: green.mary@epa.gov.

Background on the work of the Subcommittee is available at: <http://transaq.ce.gatech.edu/epatac>.

For more current information: www.epa.gov/oar/caaac/mobile_sources-caaac.html.

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Hogan at the address above by January 31, 2002. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: January 22, 2002.

Donald E. Zinger,

Assistant Director, Office of Transportation and Air Quality.

[FR Doc. 02-2011 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-5]

Draft Particulate Matter Risk Analysis Methodology Document Available for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On January 23, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft document, Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas (hereafter, draft PM Risk Analysis Methodology). This document outlines the analyses and methods proposed for the quantitative risk assessment for fine particles that will be conducted as part of the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM) that is being conducted under sections 108 and 109 of the Clean Air Act (CAA).

DATES: Comments on the Draft PM Risk Analysis Methodology document should be submitted on or before February 27, 2002.

ADDRESSES: Comments on the draft PM Risk Analysis Methodology document should be submitted (in duplicate if possible) to Mr. Harvey Richmond, Office of Air Quality Planning and Standards (C539-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; for comments sent via any overnight delivery service: U.S. EPA, Attn: Mail Code C539-01, 4930 Old Page Road, Research Triangle Park, NC 27709; e-mail: richmond.harvey@epa.gov; telephone: (919) 541-5271; fax: (919) 541-0237.

Availability of Related Information:

Single copies of the draft PM Risk Analysis Methodology document may be obtained without charge by contacting Harvey Richmond at the address or telephone number listed above. Please include name, address, telephone number, e-mail if available, and delivery preference (mail or e-mail delivery).

Electronic Availability:

The draft PM Risk Analysis Methodology document can also be obtained online at the Agency's OAQPS Technology Transfer Network (TTN) under the technical area of Office of Air and Radiation Policy and Guidance (OAR P&G), and under the heading of "Staff Papers" at the following internet web site: <http://www.epa.gov/ttn/oarpg/t1sp.html>. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Richmond at (919) 541-5271.

SUPPLEMENTARY INFORMATION: The EPA is currently reviewing the NAAQS for PM. Sections 108 and 109 of the CAA require that EPA carry out a periodic review and revision, where appropriate, of the scientific criteria and the NAAQS for "criteria" air pollutants such as PM. Details of EPA's plans for review of the NAAQS for PM were announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997). The second external review draft of the Air Quality Criteria for Particulate Matter and the preliminary draft Staff Paper were made available for public review and comment (66 FR 18929, April 12, 2001 and 66 FR 32621, June 15, 2001, respectively).

The draft PM Risk Analysis Methodology document describes EPA's plans and approach for conducting PM health risk analyses for fine particles that will be summarized and discussed

in the next draft of the Staff Paper. The risk analysis will be performed to assist in the preparation of the OAQPS Staff Paper, which is to evaluate the policy implications of the key scientific and technical information contained in the Air Quality Criteria document and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to "bridge the gap" between the scientific review contained in the Air Quality Criteria document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

The draft PM Risk Analysis Methodology will be reviewed at an upcoming public teleconference of the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. A future **Federal Register** notice will inform the public of the date and details of that meeting. Following the CASAC meeting, EPA will revise the draft Risk Analysis Methodology taking into account public and CASAC comments, and proceed with the risk analyses.

Dated: January 22, 2002.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02-2013 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Liberty Industrial Finishing Site, Brentwood, Suffolk County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with Liberty Industrial Finishing Corporation, for recovery of past response costs concerning the Liberty Industrial Finishing Site ("Site") located at 550 Suffolk Avenue, Brentwood, Suffolk

County, New York. The settlement requires the settling party to pay \$370,000 in reimbursement of EPA's past costs at the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for its payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007-1866.

DATES: Comments must be submitted on or before February 27, 2002.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007-1866. Comments should reference the Liberty Industrial Finishing Site located in Brentwood, Suffolk County, New York, Index No. CERCLA-02-2002-2005. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT:

Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3168.

Dated: December 18, 2001.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02-2009 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7133-3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment—Asbestos Dump Superfund Site.

SUMMARY: The United States Environmental Protection Agency

("EPA") is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response and Liability Act of 1980, as amended ("CERCLA"). Notification is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the liability of the owners of the White Bridge Road property within the Asbestos Dump Superfund Site ("White Bridge Road Site") for certain response costs incurred by EPA at the White Bridge Road Site in Long Hill Township, Morris County, New Jersey.

DATES: Comments must be provided on or before February 27, 2002.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007, and should refer to: In the Matter of the Asbestos Dump Superfund Site: Administrative Settlement, U.S.E.P.A. Index No. 02-2001-2017.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007; Attention: Virginia A. Curry, Esq. (212) 637-3134 or curry.virginia@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 122(h) of CERCLA, notification is hereby given of a proposed administrative settlement with Joyce and David Major, the owners of a property within the Asbestos Dump Site. David Major arranged for the disposal of asbestos waste on his property. This settlement, in which the Majors will pay EPA \$5000 toward its unreimbursed costs at the Site, is based on the Majors' demonstrated limited ability to pay the full amount of the unreimbursed costs. Section 122(h) authorizes EPA to compromise claims with the approval of the Attorney General and the Attorney General has approved the settlement.

Dated: January 11, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02-2012 Filed 1-25-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 12:33 p.m. on Wednesday, January 23, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 23, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02-2084 Filed 1-24-02; 11:22 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3170-EM]

New York; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA-3170-EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those

areas determined to have been adversely affected by the catastrophe declared an emergency disaster by the President in his declaration of December 31, 2001:

The counties of Cattaraugus, Chautauqua, Wyoming, and Genesee for emergency protective measures under the Public Assistance program for a period of 120 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-1978 Filed 1-25-02; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to section 10(a) of the Federal Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of this public meeting is to convene the Commission to discuss possible Federal policy regarding complementary and alternative medicine (CAM). The main focus of the meeting is the discussion of key issues before the Commission and the development of the Recommendations, Action Items, and the Draft Final Report of the White House Commission on Complementary and Alternative Medicine Policy. Major issue areas to be considered by the Commission prior to completion of its Final Report include the following: Coordination of CAM Research; Access to and Delivery of CAM Practices and Products; Coverage and Reimbursement for CAM Practices and Products; Training and Education of Health Care Practitioners in CAM; Development and Dissemination of CAM Information for Health Care Providers and the Public; CAM in Wellness, Health Promotion, and Disease Prevention; Coordinating and Centralizing Private Sector and Federal Sector CAM Efforts; and the Definition of CAM and the Commission's Guiding

Principles. Comments received at the meeting may be used by the Commission to prepare the Final Report of the President as required by the Executive Order.

Opportunities for oral statements by the public will be provided on February 22, from 3 p.m.—4 p.m. (Time approximate).

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: February 21–22, 2002.

Time: February 21 8 a.m.—6 p.m., February 22 8 a.m.—5 p.m.

Place: Double Tree Hotel Rockville, Plaza I and II Conference Rooms, 1750 Rockville Pike, Rockville, MD 20852, Telephone: 301-468-1100.

Contact Persons: Michele M. Chang, CMT, MPH, Executive Secretary, or Stephen C. Groth, Pharm.D., Executive Director, 6707 Democracy Boulevard, Room 880, MSC-5467, Bethesda, MD 20892-5467, Phone: (301) 435-7592, Fax: (301) 480-1691, E-mail: WHCCAMP@mail.nih.gov.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

SUPPLEMENTARY INFORMATION: The White House Commission on Complementary and Alternative Medicine Policy was established on March 7, 2000 by Presidential Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to present oral comments may register by faxing a request to register at 301-480-1691 or by accessing the web site of the Commission at <http://whccamp.hhs.gov> no later than February 12, 2002.

Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Commission members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be

limited by the number of registrants. Priority may be given to participants who have not yet addressed the Commission at previous meetings. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or issue to be addressed:

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed above no later than February 12, 2002.

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2028 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-16-02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Outcome Evaluation of CDC's Youth Media Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), CDC, working in collaboration with the Health Resources and Services Administration (HRSA), the National Center for Child Health and Human Development (NICHD), and the Substance Abuse and Mental Health Services Administration (SAMHSA), is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime. The Campaign will be based on

principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

For the Campaign to be successful, a thorough understanding of tweens (youth ages 9-13), the health behaviors promoted, and the barriers and motivations for adopting and sustaining them is essential. Additionally, a thorough understanding of those who can influence the health behaviors of tweens is important. This understanding will facilitate the development of messages, strategies, and tactics that resonate with tweens, parents and other influencers.

Research for the national and minority audience components of the Youth Media Campaign will identify the target audience(s) using standard market research techniques and will address geographic and demographic diversity to the extent necessary to assure appropriate audience representation.

The intent of this audience research is to solicit input and feedback from audiences on a national level and from audiences within targeted populations. Information gathered from both audiences will be used to modify/refine and/or revise Campaign messages and strategies and evaluate Campaign effectiveness. The annual burden for this data collection is 3,584 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hours)
Screening	73,885	1	1/60
Child Youth Media Survey	5,939	1	10/60
Parent Youth Media Survey	6,293	1	13/60

Dated: January 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02-1959 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-15-02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the

Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Pilot Study of the U.S. Action Plan for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and

Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild polio virus will be in biomedical laboratories. Prevention of inadvertent transmission of polio viruses from the laboratory to the community is crucial.

The first step toward prevention is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild polio virus infectious and potentially infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed

of polio eradication progress and notified, when necessary, to implement bio-safety requirements appropriate for the risk of working with such materials.

An estimated 15,000 biomedical laboratories, in six categories of institutions: Academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the final survey. We propose conducting pilot studies in 525 biomedical laboratories representing the above six categories. Specific survey strategies for each category will be refined through these pilot surveys. Three types of biomedical laboratories within each institutional category will be targeted by the pilot

survey: Those most likely to possess wild polio virus materials; those least likely to possess wild polio virus materials; and those that may possess wild polio virus materials.

The survey instruments will ask laboratories to indicate whether or not they possess wild polio virus infectious and/or potentially infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO web page, and institutions will be encouraged to submit completed survey forms electronically. The total burden for this data collection is 350 hours.

Respondents	Number of respondents	Responses/respondent	Average burden/response (in hours)
Labs most likely to possess	175	1	30/60
Labs least likely to possess	175	1	30/60
Labs that may possess	175	1	60/60

Dated: January 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02-1960 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02027]

Cooperative Agreement for the American Academy of Pediatrics; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program with the American Academy of Pediatrics (AAP). This program addresses the "Healthy People 2010" focus areas of Maternal, Infant and Child Health and Disability and Secondary Conditions.

The purpose of the program is to enhance public health practices related to birth defects and developmental disabilities by (1) promoting the professional development of pediatricians; (2) providing expert guidance on special topics on pediatric research and services; and (3) disseminating to practicing pediatricians information on birth

defects, developmental disabilities, and health promotion for children with disabilities.

Research involving human participants will not be supported under this cooperative agreement.

B. Eligible Applicants

Assistance will be provided only to the American Academy of Pediatrics (AAP). No other applications are solicited.

The AAP is regarded as the most influential and prestigious professional association for pediatricians in the United States, and is the only national professional association for general pediatricians in the United States. The recommendations produced by the AAP are considered among the most reliable and up-to-date information available to the pediatric community. Because of their strong reputation and large pediatric provider audience, the AAP can rapidly and efficiently disseminate information about birth defects and developmental disabilities issues to pediatricians across the country. The AAP's unparalleled ability to convey information to a large number of American pediatricians would make them an extremely useful asset in enhancing communications among practicing pediatricians. Because of their relationships with pediatricians and the mission of the organization, the AAP is a unique position to carry-out the work being proposed and is the only national organization that has the capacity and established provider network to conduct this project.

The AAP has a long-standing position as a trusted leader in the birth defects, developmental disabilities, and childhood disabilities fields.

AAP has a chapter in each state and territory that facilitates grass-roots interventions. In addition to its preeminence as a national organization of pediatricians, AAP is represented in all U.S. regions. This regional presence makes AAP the natural leader when local action is needed.

Note: Title 2 of the United States Code, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately \$200,000 is available in FY 2002 to fund this award. It is expected that the award will begin on or about June 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Sheryl

Heard, Grants Management Specialist, Acquisition and Assistance Branch B., Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02027, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2723, E-mail: slh3@cdc.gov.

For program technical assistance, contact: Jack Stubbs, National Center on Birth Defects and Developmental Disabilities, 4770 Buford Highway, Mail Stop F-15, Atlanta, Georgia 30341, Telephone number: 770-488-7096, E-mail: jbs2@cdc.gov.

Dated: January 22, 2002.

Robert L. Williams,

Chief, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02-1975 Filed 1-25-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N-0590]

Agency Information Collection Activities; Proposed Collection; Comment Request; Salmonella Discovery System Pilot Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's burden estimates to construct and utilize a database from which FDA and pharmaceutical companies can share information based on their proprietary toxicology study data to predict the mutagenic response, mutagenic potency, and mechanism of mutagenesis of test chemicals in *Salmonella typhimurium*.

DATES: Submit written or electronic comments on the collection of information by March 29, 2002.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of

information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Karen Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA's Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Informatics and Computational Safety Analysis Staff intends to conduct a *Salmonella* Discovery System Pilot Study (the pilot study). The primary goal of the pilot study is to construct and execute a mutually beneficial process by which FDA and pharmaceutical companies can share information based on their proprietary toxicology study data and thereby expand their own knowledge databases. This process will be designed and

conducted using procedures that do not compromise the identity and chemical structures of the individual collaborator's proprietary chemicals.

The three major objectives of the pilot study are to:

- Build a joint and comprehensive FDA/pharmaceutical industry database for compounds tested in the *Salmonella t.* reverse mutagenicity assay;
- Use these data to construct a new enhanced *Salmonella t.* mutagenicity assay database module for the *Mu1tiCASE* quantitative structure activity relationship software program; and
- Employ the recently developed *Mu1tiCASE* expert system (*MCASE-ES*) to predict the mutagenic response, mutagenic potency, and mechanism of mutagenesis of test chemicals in *Salmonella t.*

The pilot study will be a joint venture designed to maximize the benefits and minimize the risks to all collaborators. FDA intends to send letters to companies that have purchased either *MultiCASE* or *CASETOXII* software programs to invite them to become a collaborator in the project.

FDA intends to request that each collaborator submit the following data electronically: (1) Test compound chemical structures; and (2) assay data, identifying the type of *Salmonella* mutagenicity assay used in the studies, the source and concentration of any exogenous activation system used, and the average number of revertants/plate for the negative control, positive control, and each of the test compound treatment groups. Although there is no minimum requirement for the number of test compounds to be submitted to FDA, the agency would expect to receive at least 200 compounds from each collaborator. Each company will be able to identify its own compounds in the resulting discovery system, and the more data submitted, the greater the coverage will be for each company's molecular universe.

FDA intends to act as the broker for the pilot study and will be responsible for the confidentiality and integrity of each collaborator's proprietary data. The number of compounds in the database module will depend upon the number of collaborators and the size of the data sets they contribute to the pilot study. After the enhanced *Salmonella* discovery system has been constructed and tested, FDA intends to custom prepare individual discovery systems for each collaborator.

The anticipated benefits to collaborators include:

- Receipt of a new expanded

- Salmonella in silico* discovery tool at no cost;
- Access to proprietary molecular fragment data derived from *Salmonella t.* mutagenicity studies from FDA and other collaborator archives;
 - Comprehensive lists of molecular structural alerts correlated with mutagenicity in *Salmonella t.*, including previously uncharacterized alerts derived from heretofore inaccessible

undeveloped lead pharmaceutical test data; and

- A *Salmonella* discovery system that should provide high coverage and high predictive performance for organic chemicals in each company's combinatorial and lead chemical data sets.

The *Salmonella* discovery system provided by FDA will be compatible with each company's current *MCASE* software program and will supplement

current *Salmonella* modules purchased from MultiCASE, Inc.

Participation in this pilot study will be voluntary. FDA estimates that approximately 12 companies will participate and that it will take each company approximately 8 hours to compile the information from electronic archives and submit the requested data and information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12	1	12	8	96

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1989 Filed 1–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0589]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for development of residue detection methodology for human or animal drugs prescribed for extralabel use in animals when the agency has determined there is reasonable probability this use may present a risk to public health due to residues exceeding a safe level.

DATES: Submit written or electronic comments on the collection of information by March 29, 2002.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26; Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below. With respect

to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control No. 0910–0325)—Extension

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Public Law 103–396) amended the Federal Food, Drug, and Cosmetic Act to permit licensed veterinarians to prescribe extralabel use in animals of approved human and animal drugs. Regulations implementing provisions of AMDUCA are codified under part 530 (21 CFR part 530). A new provision under these regulations in § 530.22(b) permits FDA to establish a safe level for extralabel use in animals of an approved human or animal drug when the agency determines there is reasonable probability that this use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding a safe level is considered an unsafe use of a drug. In conjunction with the establishment of a safe level, the new provision permits FDA to

request development of an acceptable residue detection method for an analysis of residues above any safe level established under part 530. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and perhaps

a third party (e.g., a State agency or a professional association), may negotiate a cooperative arrangement to develop the methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug. The

respondents may be sponsors of new animal drugs, State or Federal government, or individuals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22 (b)	2	1	2	4,160	8,320

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The Center for Veterinary Medicine (CVM) has not found circumstances to require the establishment of a safe level and subsequent development of an analytical methodology. However, CVM believes there will be instances when an analytical methodology will be required. Thus, we are estimating the reporting burden on one methodology being required annually.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-2051 Filed 1-25-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7056 ext. 285; fax: 301/402-0220; e-mail: shinnm@od.nih.gov. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Novel Vectors for Identifying Transgenic and Gene Targeting Animals

Dr. Dan Buchholz et al. (NICHD)

DHHS Reference No. E-319-01/0—
Research tool

Advances in vertebrate genetics have led to the development of gene knockout animals that allow for the study of gene function and transgenic analysis. This has also encouraged the development of gene-based therapies through introduction of exogenous genes to enhance and/or replace dysfunctional or missing genes. Yet, although the advances have been many, the analysis remains complicated with tedious screening of animals containing the desired genotype.

The NIH announces a double-promoter plasmid that carries a transgene under the control of any preferred promoter and the Green Fluorescent Protein (GFP) under the control of the eye-specific crystalline-promoter for transgenesis. This construct creates a green fluorescence in the eyes of the transgenic animals thus allowing for easy identification. Companies that work in the transgenic or gene targeting areas would find this plasmid useful in quickly and efficiently identifying desired transgenic animals with biological functionality of their gene of interest.

Combined Inhibition of Phosphodiesterase-4 (PDE-4) and Phosphodiesterase-3 (PDE-3) as a Therapy for Th1 Mediated Autoimmune Diseases

Dr. Bibiana Bielekova et al. (NINDS)

DHHS Reference Nos. E-077-00/0 filed 22 Dec 2000 and E-077-00/1 filed 21 Dec 2001

Hyperactive Th1-mediated immune responses are thought to be involved in

the pathogenesis of many autoimmune diseases, including rheumatoid arthritis, diabetes, inflammatory bowel disease, vitiligo, and multiple sclerosis among others. Immune cells are known to produce primarily two classes of phosphodiesterases (PDE), the PDE4 and the PDE3 classes. Inhibitors of these PDEs have been shown to down-regulate the expression or production of Th1 cytokines and have either no effect or augment the production of Th2 cytokines, therefore making them good candidates for the treatment of Th1-mediated autoimmune diseases.

The NIH announces a new technology wherein PDE-4 and PDE-3 inhibitors are used in combination and a synergistic enhancement of therapeutic activity is achieved. This results in a more potent immunomodulatory effect on the immune cells and could lead to the administration of lower dose rate of the inhibitors. This new form of treatment will alleviate side effects through the use of a lower dose rate for each and will make for a more effective therapy.

Dated: January 17, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02-2029 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with

35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HGC-1, A Gene Encoding a Member of the Olfactomedin-Related Protein Family

Griffin P. Rodgers, Wen-Li Liu, Jiachang Zhang (NIDDK)

DHHS Reference No. E-166-01/0 filed 07 Dec 2001

Licensing Contact: Kai Chen; 301/496-7736 ext. 247; e-mail: chenk@od.nih.gov

The current technology embodies a newly identified gene, Human Granulocyte Colony-Stimulating Factor-Stimulated-Clone-1 (hGC-1), that has been cloned and characterized, and its protein sequence has been deduced. The gene is expressed in the bone marrow, prostate, small intestine, colon, and stomach, and has been mapped to chromosome 13 in a region that contains a tumor suppressor gene cluster. The gene is found to be selectively present in normal human myeloid lineage cells and is believed to play a role in allowing lymphocytes to differentiate properly. It is believed that the gene may be used as a selective marker for human prostate cancer, multiple myeloma, B-cell chronic lymphocytic leukemia and other types of cancer and can be used diagnostically as well as in therapeutic screening activities.

Mitochondrial Topoisomerase I

Yves Pommier and Hong-Liang Zhang (NCI)

DHHS Reference No. E-099-01/0 filed 16 Feb 2001

Licensing Contact: Matthew Kiser; 301/496-7056 ext. 224; e-mail: kiserm@od.nih.gov

The subject technology is an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence encoding mitochondrial topoisomerase I (top1mt), a variant

top1mt, or a fragment of either of the foregoing, an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence that is complementary to a nucleotide sequence encoding top1mt, a variant top1mt, or a fragment of either of the foregoing, a vector comprising such an isolated or purified nucleic acid molecule, a cell comprising such a vector, an isolated or purified polypeptide molecule consisting essentially of an amino acid sequence encoding top1mt or a variant top1mt, a conjugate comprising such an isolated or purified polypeptide molecule and a cell-surface targeting moiety, a hybridoma cell line that produces a monoclonal antibody that is specific for an aforementioned isolated or purified polypeptide molecule, the monoclonal antibody produced by the hybridoma cell line, a polyclonal antiserum raised against an aforementioned isolated or purified polypeptide molecule, a method of altering the level of top1mt in a cell, and a method of identifying an inhibitor or an activator of top 1 mt.

Dated: January 17, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02-2030 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and

personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 5, 2002.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report of the Director on updates and an overview of new FIC programs and initiatives. In addition, a discussion of CDC plans, present and future, for international programs and global health concerns.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Closed: 1:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301-496-2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: www.nih.gov/fic/about/advisory.html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2025 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: February 19, 2002.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda—Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-19G, Bethesda, MD 20892-6200, (301) 594-2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2022 Filed 1-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Centers of Excellence in Complex Biomedical Systems Research.

Date: March 19-20, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13H, Bethesda, MD 20892, 301-594-3998, moenl@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2023 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

Date: March 13, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13, Bethesda, MD 20892, (301) 594-3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2024 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: March 20-22, 2002.

Time: 7:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chase Park Plaza, 212-232 N. Kingshighway Blvd., St. Louis, MO 63108.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13, Bethesda, MD 20892, 301-594-2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2026 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Medical Rehabilitation Research Subcommittee.

Date: March 5, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301-435-6908.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-2027 Filed 1-25-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4736-N-01]

Announcement of OMB Approval Number for the Admission to, and Occupancy of Public Housing: Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting Lists, Exemption of Police Officers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the requirements for admission and tenant selection policies, verification, notification, preference, waiting lists, and exemption of police officers for occupancy in public housing developments.

FOR FURTHER INFORMATION CONTACT:

Patricia Arnaudo, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0614, extension 4250. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the admission and occupancy of public housing, tenant selection, verification, notification, preference, waiting lists, and exemption of police officers. The OMB approval number for this information collection is 2577-0220, which expires November 30, 2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: January 18, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02-1937 Filed 1-25-02; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Sultan & Kahn Amendment # 1) for Incidental Take of the Bone Cave Harvestman

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Sultan & Kahn Partnership, Ltd., (Applicant) has requested an amendment to an incidental take permit issued March 9, 2001 by the U.S. Fish and Wildlife Service (Service), pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit amendment number TE-035525-1. The requested amendment would authorize the incidental take of the endangered Bone Cave harvestman (*Texella reyesi*) which would occur as a result of the construction of three commercial developments on Lots 2, 3, and 5. This construction is in addition to the originally permitted and authorized construction on Lots 1 and 4 at R.R. 620 and Great Oaks Drive, Round Rock, Williamson County, Texas.

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4201, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 am to 4:30 pm) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE-035525-1 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Bone Cave harvestman. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the

purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Sultan & Kahn Partnership, Ltd., plans to construct three commercial establishments on portions of Lots 2, 3, and 5 in addition to current (originally permitted) construction on Lots 1 and 4 at R.R. 620 and Great Oaks Drive, Round Rock, Williamson County, Texas. This action will indirectly impact the habitat of the Bone Cave harvestman. The development will eliminate approximately 3.53 acres of habitat which supports the Beck Bat Cave ecosystem resulting in degradation of habitat and take of the Bone Cave harvestmen. The applicant proposes to compensate for this incidental take of Bone Cave harvestmen by providing mitigation funding sufficient to purchase, preserve, and maintain one cave (at least 70 acres in size) containing habitat for the Bone Cave harvestman; implementing a fire ant control program in the vicinity of Beck Bat Cave; Planting a 30 foot native vegetation buffer; and restricting the use of the lots to those that do not have the potential to pollute the underlying karst features.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 02-1974 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the

SUPPLEMENTARY INFORMATION.

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5:30 p.m., Thursday, February 28, 2002,

and 8:30 a.m. to 1:00 p.m. Friday, March 1, 2002.

ADDRESSES: The ANS Task Force meeting will be held at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703-358-2308 or by Fax at: (703) 358-2210.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting on Thursday and Friday include: participation in a plenary session entitled "Building consensus for regional policy for aquatic nuisance species prevention and control" at the 11th International Conference on Aquatic Invasive Species; a discussion on the reauthorization of Nonindigenous Aquatic Nuisance Prevention and Control Act-National Invasive Species Act; the development of a strategic plan for the ANS Task Force; an update of activities from the Task Force's regional panels; a report on research priorities from Ballast Water and Shipping Committee; status and updates from several other Task Force committees including the Green Crab Control Committee, the Caulerpa Prevention Committee, the Mitten Crab Control Committee, Risk Assessment and Management Committee, and the Communications, Education and Outreach Committee; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: January 18, 2002.

William B. Knapp,

Co-chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 02-2035 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-310-1310-02-PB-24 1A]

OMB Approval Number 1004-0184; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 3501 *et seq.*). On July 31, 2001, the BLM published a notice in the **Federal Register** (66 FR 39527) requesting comments on the collection. The comment period ended October 1, 2001. No comments were received. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-0184), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630) 1849 C St., N.W., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;
3. Ways to enhance the quality, utility, and clarity of the information collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Onshore Oil and Gas Leasing and Operations, 43 CFR Part 3100.

OMB Approval Number: 1004-09184.

Abstract: Federal and Indian (except Osage) oil and gas lessees and operators or operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored. Respondents are oil

and gas companies, lessees, operators, operating rights owners, and individuals.

Form Number: None.

Frequency: On occasion; nonrecurring.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: For ease of reference, this table summarizes the burden items in this information collection request:

Information collection	Requirement	Total respondents	Reporting hours per respondent	Total burden hours
3121.12	Competitive leasing nomination	1,400	.25	350
3124.32	Lease consolidation	10	2	20
3125.11	Lease exchange	25	.25	6.25
3103.10(aa); 3153.37	LACT meter proving report	200	¹ 10	33.33
3103.10(bb); 3154.33	Gas charts; meter proving reports	1,000	.25	250
3103.10(dd)	Meter proving or calibration	5,000	15	416.67
3103	Oral notification	6,000	15	500
3103.10(i)	• Construction start-up.			
3103.10(j)	• Spud notice.			
3103.10(m)	• Running surface casing; BOP test.			
3103.10(o)	• Reserve pit closure.			
3103.10(x)	• Theft; production mishandling.			
3103.10(z)	• LACT meter proving.			
3103.10(ee)	• Leak detection system.			
3103.10(ff)	• Produced water pit completion.			
3103.10(gg)	• Spill; accident.			
3103.10(ii)	• Well abandonment.			
3103.10(ll)	• Concentrations of H ₂ S.			
3145.43.				
3136.10	Drainage agreement	5	10	50
3137.13	Unit Agreement	60	40	2,400
3137.64	Participating Area	45	12	540
3145.18	Notice of Staking	1,500	.25	375
3145.51(a)(3)	Remediation	100	5	500
3151.10(c)	Off-lease measurement	300	1	300
3151.10(d)	Commingling	500	.5	250
3164.15	Civil penalties	100	.5	50
3107.53	Bond decrease	100	1	100
3107.56 and 3145.23	Bond increase	6,600	.5	3,300
Total		22,945		9,441.25

¹ In minutes.

Annual Responses: 22,945.

Annual Burden Hours: 9,441.

Bureau Clearance Officer: Michael H. Schwartz (202) 452-5033.

Dated: December 21, 2001.

Michael H. Schwartz,

*Information Collection Clearance Officer,
Bureau of Land Management.*

[FR Doc. 02-2021 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-1320-EL, WYW154900]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as

amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Jacobs Ranch Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

- T. 42 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 7-10, 15, 16, N½ of Lot 17,
N½ of Lot 18;
Sec. 2: Lots 5-16;
- T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 23: Lots 1-16;
Sec. 25: Lots 3-6;
Sec. 26: Lots 1, 2, 7-10, 15, 16;
Sec. 35: Lots 1-16.

Containing 2533.98 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the

exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW154900): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of December 10, 2001, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Jacobs Ranch Coal Company no later than

thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Jacobs Ranch Coal Company, Attn: Darryl Maunder, Caller Box 3013, Gillette, WY 82717-3013, and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: November 21, 2001.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02-1943 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-912-02-1120-PG-24-1A]

Call for Nominations on Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Call for Nominations on Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to solicit public nominations for two (2) vacancies which have occurred on the Utah Resource Advisory Council (RAC). Nominations are being accepted for positions which fill Category 1 (Holders of Federal grazing permits, representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation); and, Category 2 (Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups).

Utah residents are being sought to fill these vacancies on the 15-person Council which have occurred due to the resignations of two of its members. The individuals selected will serve out the remaining balances of the 3-year terms that will continue through September 2002 (Category 1) and September 2003 (Category 2), respectively. These candidates would also be eligible for reappointment of additional 3-year terms on the Council.

Nominees will be evaluated based on their experience or knowledge of the geographic area; education, training and experience; and, their experience in working with disparate groups to achieve collaborative solutions. All nominations must be accompanied by

letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The Bureau of Land Management will forward the nominations to the Secretary of the Interior, who will make the appointments to the Council.

Resource Advisory Councils were established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on management of public lands.

FOR FURTHER INFORMATION CONTACT: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, Special Programs Coordinator, 324 South State Street, Salt Lake City, 84111; phone (801) 539-4195. All nominations must be received no later than close of business February 28, 2002.

Dated: January 8, 2002.

Sally Wisely,

State Director.

[FR Doc. 02-1940 Filed 1-25-02; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-030-1020-00]

Notice of Intent To Amend Plan

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent to prepare a plan amendment for the Grand Staircase-Escalante National Monument (GSENM) Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan with an associated Environmental Assessment (EA).

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR 1600) this notice advises the public that the BLM, GSENM is considering amending the GSENM Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan to reallocate forage on the Last Chance grazing allotment and amending the GSENM Management Plan and Escalante Management Framework Plan to reallocate forage on the Big Bowns Bench grazing allotment. The planning area is located in southern Utah; portions of the area are jointly

administered by GSENM and Glen Canyon National Recreation Area.

This amendment will be addressed through an EA. This notice initiates a 30-day comment period on the planning criteria and draft plan amendment/EA. If you have information, data, or concerns related to the potential impacts of reallocating forage on the Big Bowns Bench grazing allotment and the Last Chance grazing allotment, have comments on the planning criteria, or suggestions for alternatives, please submit them to the address below.

ADDRESSES: Written comments should be sent to: Monument Manager, Grand Staircase-Escalante National Monument, 190 East Main, Kanab, Utah 84741, (435-644-4300). Planning documents and letters received, including names and street addresses of respondents, will be available for public review at the GSENM Office in Kanab, Utah during regular business hours (8 a.m. to 5 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. If you are not currently on our mailing list and wish to receive a copy of future planning documents, please send your name and address to the address listed above.

SUPPLEMENTARY INFORMATION: The permittee has voluntarily relinquished all of the existing grazing privileges on the Big Bowns Bench grazing allotment and some of the existing grazing privileges on the Last Chance allotment. The amendment to the GSENM Management Plan, Escalante Management Framework Plan and Paria Management Framework Plan will consider a proposal to re-allocate all or part of the forage on the Big Bowns Bench allotment and the Last Chance allotment for wildlife, watershed conservation, and riparian values. The EA will be prepared by an interdisciplinary team to analyze the impacts of these proposals and alternatives.

The BLM has identified the following planning criteria, which will guide development of the amendments:

1. The plan amendment/EA is initiated in response to the voluntary

relinquishment of the sole grazing preference/permit for the Big Bowns Bench allotment and the Last Chance grazing allotment. Analysis and decisions in the plan amendment/EA apply only to those allotments.

2. The plan amendment/EA will be completed in compliance with the Federal Land Policy and Management Act, the National Environmental Policy Act, and all other applicable laws.

3. The plan amendment/EA will be developed using an interdisciplinary approach (e.g., a team approach using a variety of skills and perspectives such as rangeland management specialists, riparian specialists, etc.), with input from interested public, the State of Utah, local governments, and other Federal agencies and entities.

4. Decisions in the plan amendment/EA will provide for the balance of long-term sustainability with short-term uses.

5. This plan amendment/EA will incorporate and comply with the Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

Elena Daly,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 02-2131 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-01-134-1610-241A]

Colorado Canyons National Conservation Area Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The initial meeting of the Colorado Canyons National Conservation Area (CCNCA) Advisory Council will begin at 3 p.m. on Thursday, February 14, 2002, at White Hall, 300 North 6th Street, Grand Junction, Colorado. The CCNCA was established on October 24, 2000 when the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (the Act) was signed by the President. The Act required that the CCNCA Advisory Council be established to provide advice in the preparation and implementation of the CCNCA management plan, which must be completed by October, 2003.

DATES: The meeting will be held on February 14, 2002.

ADDRESSES: For further information or to provide written comments, please

contact Greg Gnesios, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244-3049; e-mail Gregory_Gnesios@co.blm.gov.

SUPPLEMENTARY INFORMATION: The CCNCA Advisory Council will meet on Thursday, February 14, 2002, at White Hall, 300 N. 6th Street, Grand Junction, Colorado beginning at 3 p.m. The agenda topics for this meeting are:

- (1) The election of council officials
- (2) Discussion of rules of engagement
- (3) Definition of roles and responsibilities
- (4) Discussion of planning issues related to the preparation of the CCNCA management plan
- (5) Discussion on previous planning efforts in the CCNCA area

(6) Plan for Advisory Council tour of the CCNCA and future council meetings

(7) Public comment period

(8) Agenda for next meeting

CCNCA Advisory Council meetings will be held monthly on the second Thursday of each month at the same time and location. The dates for these meetings are March 14, 2002; April 11, 2002; May 9, 2002; June 13, 2002; July 11, 2002; August 8, 2002; September 12, 2002; October 10, 2002; November 14, 2002 and December 12, 2002.

Topics of discussion for future meetings will include travel management, recreation, land health assessments, fire management, mining claims, use authorizations, rights-of-way, grazing, natural resource management, wilderness stewardship, the Black Ridge communication site, education, cultural resources, wildlife, partnerships, interpretation, adaptive management, socioeconomic, and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the CCNCA Advisory Council, can be obtained from the CCNCA web site at: <http://www.co.blm.gov/gjra/ccnca/ccncahome.htm>, which will be updated following each Advisory Council meeting.

Dated: December 20, 2001.

Greg Gnesios,

Colorado Canyons National Conservation Area Manager.

[FR Doc. 02-1942 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO-934-5700]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC54775

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas leases, COC54775, for lands in Moffat county, Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and Bureau of Land Management is proposing to reinstate leases COC59690 & COC 59692 effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Supervisory, Land Law Examiner, Oil and Gas Lease Management.

[FR Doc. 02-1941 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1310-01; WYW150376]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW150376 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW150376 effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 02-1938 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1310-01; WYW 129462]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW129462 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW129462 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 02-1939 Filed 1-25-02; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1-89]

Intertek Testing Services, NA, Inc.; Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Intertek Testing Services, NA, Inc. (ITSNA), for expansion of its recognition to use an additional site.

EFFECTIVE DATE: This recognition becomes effective on January 28, 2002 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ITSNA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Intertek Testing Services, NA, Inc. (ITSNA), as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion covers the use of an additional site. The NRTL's scope of recognition may be found in the following informational Web page: <http://www.osha-slc.gov/dts/otpca/nrtl/its.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two

notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** (see 66 FR 55208, November 1, 2001). The notice requested submission of any public comments by November 16, 2001. OSHA received no comments concerning the application. ITSNA had submitted its application for recognition of the Stockholm site in February 1997 (see Exhibit 35), and in the November 1 preliminary notice we explain the delay in processing the application. The NRTL Program staff performed the on-site review (assessment) of the facility on September 24-25, 1998, and provided a positive recommendation on the expansion in their report (see Exhibit 36).

The most recent notice published by OSHA for ITSNA's recognition, prior to the November 1 preliminary notice, covered its renewal of recognition, which OSHA granted on May 29, 2001 (66 FR 29178).

OSHA is recognizing the additional ITSNA site listed below. This site may use the supplemental programs included under ITSNA's scope of recognition. However, recognition of this site is limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites.

Under its current operations as an NRTL, ITSNA authorizes the use of the "ETL" certification mark or certifications only from its Cortland location. In addition, only the Vancouver, Antioch, and Madison sites identified below authorize the use of the "WHI" (Warnock Hersey) certification mark or certifications. Therefore, OSHA currently does not recognize any other ITSNA site, including the Stockholm site, for certifying products under ITSNA's NRTL operations.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to docket No. NRTL 1-

89, the permanent record of public information on the ITSNA recognition.

The current address of the additional ITSNA testing site recognized through this expansion of recognition is:

Intertek Testing Services NA Sweden
AB, Box 1103, S-164 #22, Kista,
Stockholm, Sweden

The current address of the ITSNA testing facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way,
Antioch, California 94509

ITSNA Atlanta, 1950 Evergreen Blvd.,
Suite 100, Duluth, Georgia 30096

ITSNA Boxborough, 70 Codman Hill
Road, Boxborough, Massachusetts
01719

ITSNA Cortland, 3933 U.S. Route 11,
Cortland, New York 13045

ITSNA Los Angeles, 27611 LaPaz Road,
Suite C, Laguna Niguel, California
92677

ITSNA Madison, 8431 Murphy Drive,
Middleton, Wisconsin 53562

ITSNA Minneapolis, 7250 Hudson
Blvd., Suite 100, Oakdale, Minnesota
55128

ITSNA San Francisco, 1365 Adams
Court, Menlo Park, CA 94025

ITSNA Totowa, 40 Commerce Way, Unit
B, Totowa, New Jersey 07512

ITSNA Vancouver, 211 Schoolhouse
Street, Coquitlam, British Columbia,
V3K 4X9 Canada

ITSNA Hong Kong, 2/F., Garment
Centre, 576 Castle Peak Road,
Kowloon, Hong Kong

ITSNA Taiwan, 14/F., Huei Fung
Building, 27, Chung Shan North Road,
Sec. 3, Taipei 10451, Taiwan

Existing Conditions

Currently, OSHA imposes certain conditions on its recognition of ITSNA. These conditions will apply also to the recognition of the Stockholm site. As mentioned in previous notices, these conditions apply solely to ITSNA's operations as an NRTL, and are in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL. These conditions are listed first under the "Conditions" section below.

In the preliminary notice, condition 2 below contained the ending phrase "including Compliance Design." However, after publication of that notice, ITSNA informed OSHA that it has ceased operation of this unit, which it had owned. As a result, the condition below has been revised for this final notice to eliminate the reference to Compliance Design.

(1) ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has

recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

(2) ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Intertek Testing Services NA, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the above additional site subject to the limitations and conditions set forth in this notice. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to these limitations and conditions.

Limitations

Recognition of Facilities

OSHA hereby expands the recognition of ITSNA to include the testing site in Stockholm, Sweden. Similar to other NRTLs that operate multiple sites, the Agency's recognition of any ITSNA testing site is limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs.

Conditions

ITSNA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports;

ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either

owned in excess of 2% by ITSLtd, or affiliated organizationally with ITSNA;

OSHA must be allowed access to ITSNA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITSNA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,
Assistant Secretary.

[FR Doc. 02-1935 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL3-92]

TUV Rheinland of North America, Inc.; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's

preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than February 15, 2002.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL3-92, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693-1648. Submit request for extension of the comment period for this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc. (TUV), has applied for renewal of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV requests renewal for its existing scope of recognition. OSHA's current scope of recognition for TUV may be found in the following informational Web page: <http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix

requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

The most recent notice published by OSHA for TUV's recognition covered a modification to its scope of recognition, which became effective on September 12, 2001 (66 FR 47505). The following Federal Register notices related to TUV's recognition have also been published by OSHA to address an expansion of their recognition for additional standards or programs: a request announced on March 2, 2000 (65 FR 11197) and granted on June 8, 2000 (65 FR 39946); requests announced on December 12, 1997 (62 FR 65446) and January 8, 1998 (63 FR 1127) and granted on April 2, 1998 (63 FR 16280).

The current address of the testing facility (site) that OSHA recognizes for TUV is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Applicant and the Application

TUV Rheinland of North America, Inc., is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. TUV is wholly owned by TUV Rheinland e. V. of Cologne, Germany. TUV is a U.S. corporation incorporated in the state of Delaware in 1983.

TUV received its recognition as an NRTL on August 16, 1995 (60 FR 42594), for a period of five years ending August 16, 2000. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. TUV submitted a request to renew its recognition on November 16, 1999 (see Exhibit 23), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

TUV's request covers only renewal of its existing scope of recognition, which includes the facility listed above, and 126 test standards and 5 supplemental programs.

Test standards

TUV seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the

following 126 test standards, all of which OSHA has determined are appropriate, within the meaning of 29 CFR 1910.7(c).

- UL 22 Amusement and Gaming Machines
- UL 48 Electric Signs
- UL 67 Panelboards
- UL 73 Motor-Operated Appliances
- UL 82 Electric Gardening Appliances
- UL 122 Photographic Equipment
- UL 130 Electric Heating Pads
- UL 136 Pressure Cookers
- UL 141 Garment Finishing Appliances
- UL 153 Portable Electric Lamps
- UL 174 Household Electric Storage Tank Water Heaters
- UL 197 Commercial Electric Cooking Appliances
- UL 250 Household Refrigerators and Freezers
- UL 298 Portable Electric Hand Lamps
- UL 430 Waste Disposers
- UL 469 Musical Instruments and Accessories
- UL 471 Commercial Refrigerators and Freezers
- UL 474 Dehumidifiers
- UL 482 Portable Sun/Heat Lamps
- UL 499 Electric Heating Appliances
- UL 506 Specialty Transformers
- UL 507 Electric Fans
- UL 508 Industrial Control Equipment
- UL 508C Power Conversion Equipment
- UL 541 Refrigerated Vending Machines
- UL 544 Electric Medical and Dental Equipment
- UL 561 Floor Finishing Machines
- UL 583 Electric-Battery-Powered Industrial Trucks
- UL 621 Ice Cream Makers
- UL 696 Electric Toys
- UL 697 Toy Transformers
- UL 745-1 Portable Electric Tools
- UL 745-2-1 Particular Requirements of Drills
- UL 745-2-2 Particular Requirements for Screwdrivers and Impact Wrenches
- UL 745-2-3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
- UL 745-2-4 Particular Requirements for Sanders
- UL 745-2-5 Particular Requirements for Circular Saws and Circular Knives
- UL 745-2-6 Particular Requirements for Hammers
- UL 745-2-8 Particular Requirements for Shears and Nibblers
- UL 745-2-9 Particular Requirements for Tappers
- UL 745-2-11 Particular Requirements for Reciprocating Saws
- UL 745-2-12 Particular Requirements for Concrete Vibrators

- UL 745-2-14 Particular Requirements for Planers
- UL 745-2-17 Particular Requirements for Routers and Trimmers
- UL 745-2-30 Particular Requirements for Staplers
- UL 745-2-31 Particular Requirements for Diamond Core Drills
- UL 745-2-32 Particular Requirements for Magnetic Drill Presses
- UL 745-2-33 Particular Requirements for Portable Bandsaws
- UL 745-2-34 Particular Requirements for Strapping Tools
- UL 745-2-35 Particular Requirements for Drain Cleaners
- UL 745-2-36 Particular Requirements for Hand Motor Tools
- UL 745-2-37 Particular Requirements for Plate Jointers
- UL 749 Household Dishwashers
- UL 751 Vending Machines
- UL 763 Motor-Operated Commercial Food Preparing Machines
- UL 775 Graphic Arts Equipment
- UL 778 Motor Operated Water Pumps
- UL 826 Household Electric Clocks
- UL 858 Household Electric Ranges
- UL 859 Household Electric Personal Grooming Appliance
- UL 867 Electrostatic Air Cleaners
- UL 875 Electric Dry Bath Heaters
- UL 921 Commercial Electric Dishwashers
- UL 923 Microwave Cooking Appliances
- UL 935 Fluorescent-Lamp Ballasts
- UL 961 Electric Hobby and Sports Equipment
- UL 982 Motor-Operated Household Food Preparing Machines
- UL 984 Hermetic Refrigerant Motor-Compressors
- UL 987 Stationary and Fixed Electric Tools
- UL 1004 Electric Motors
- UL 1005 Electric Flatirons
- UL 1012 Power Units Other than Class Two
- UL 1017 Vacuum Cleaning Machines and Blower Cleaners
- UL 1018 Electric Aquarium Equipment
- UL 1026 Electric Household Cooking and Food-Serving Appliances
- UL 1028 Hair Clipping and Shaving Appliances
- UL 1042 Electric Baseboard Heating Equipment
- UL 1081 Swimming Pool Pumps, Filters and Chlorinators
- UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
- UL 1083 Household Electric Skillets and Frying-Type Appliances
- UL 1230 Amateur Movie Lights
- UL 1236 Battery Chargers for Charging Engine-Starter Batteries
- UL 1240 Electric Commercial Clothes-Drying Equipment
- UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
- UL 1310 Class 2 Power Units
- UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
- UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
- UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
- UL 1419 Professional Video and Audio Equipment
- UL 1431 Personal Hygiene and Health Care Appliances
- UL 1445 Electric Water Bed Heaters
- UL 1459 Telephone Equipment
- UL 1559 Insect-Control Equipment, Electrocuting Type
- UL 1561 Dry Type General Purpose and Power Transformers
- UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
- UL 1564 Industrial Battery Chargers
- UL 1570 Fluorescent Lighting Fixtures
- UL 1571 Incandescent Lighting Fixtures
- UL 1572 High Intensity Discharge Lighting Fixtures
- UL 1573 Stage and Studio Lighting Units
- UL 1574 Track Lighting Systems
- UL 1585 Class 2 and Class 3 Transformers
- UL 1594 Sewing and Cutting Machines
- UL 1598 Luminaries
- UL 1647 Motor-Operated Massage and Exercise Machines
- UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
- UL 1727 Commercial Electric Personal Grooming Appliances
- UL 1776 High-Pressure Cleaning Machines
- UL 1786 Nightlights
- UL 1795 Hydromassage Bathtubs
- UL 1838 Low Voltage Landscape Lighting Systems
- ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
- UL 1995 Heating and Cooling Equipment
- UL 2021 Fixed and Location-Dedicated Electric Room Heaters
- UL 2157 Electric Clothes Washing Machines and Extractors
- UL 2158 Electric Clothes Dryers
- UL 2601-1 Medical Electrical Equipment; Part 1: General Requirements for Safety
- UL 3101-1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
- UL 3111-1 Electrical Measuring and Test Equipment; Part 1: General Requirements
- UL 3121-1 Process Control Equipment
- UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
- UL 8730-1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
- UL 8730-2-3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
- UL 8730-2-4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
- UL 8730-2-8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
- UL 60335-1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements

Note—Testing and certification of gas operated equipment is limited to equipment for use with “liquefied petroleum gas” (“LPG” or “LP-Gas”).

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA’s recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL’s scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1028) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1028). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in the list of test standards found in OSHA’s informational web page for the NRTL. Contact ANSI or the ANSI web site (www.ansi.org) and click “NSSLN” to find out whether or not a standard is currently ANSI-approved.

Programs and Procedures

TUV's renewal also would cover use of the supplemental programs listed below. OSHA has described these "supplemental" programs in a March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. An NRTL's initial recognition will always include the first or basic program, which requires that all of these activities be performed in-house by the NRTL that will certify the product. OSHA previously granted TUV recognition to use these programs, which currently are listed on OSHA's informational Web page for TUV's recognition (see: <http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html>)

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs are one of the three elements that define the scope of that recognition.

Existing Condition

Currently, OSHA imposes the following condition on its recognition of TUV as an NRTL. This condition would apply to the renewal of recognition.

TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and

must use these procedures in testing and certifying those products.

Preliminary Finding on the Application

TUV has submitted an acceptable request for renewal of its recognition as an NRTL. While processing this request, OSHA performed an on-site review of TUV's NRTL testing facilities. TUV has addressed any discrepancies noted by the assessor following the on-site evaluation, and the assessor has recommended renewal of TUV's recognition (see Exhibit 24).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to TUV the renewal of its recognition as an NRTL to use the facilities, test standards, and programs listed above, subject to the condition noted. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Agency has made a preliminary finding that TUV Rheinland of North America, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of its recognition, subject to the condition noted. This preliminary finding, however, does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUV has met the requirements of 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above see **ADDRESSES**) no later than the last date for comments see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of TUV's request, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL3-92, the

permanent record of public information on TUV's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUV's application for renewal of recognition. The Agency will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02-1934 Filed 1-25-02; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting Notice

TYPE: Quarterly Meeting Location Change.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedules and proposed agenda of the upcoming quarterly meeting of the National Council on Disability (NCD). Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94-409). On December 6, 2001, NCD published a Sunshine Act Meeting notice in the **Federal Register**, indicating that the meeting would take place in Los Angeles, California, at Los Angeles Marriott Hotel Downtown. The meeting will not be held at that location. It will now be held at the National Council on Disability office in Washington, DC. The dates and times are the same.

QUARTERLY MEETING DATES: February 4-5, 2002, 8:30 a.m. to 5 p.m.

LOCATION: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC; 202-272-2004.

CONTACT INFORMATION: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse

backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to these meetings.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

OPEN MEETING: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings unless requested to do so by an NCD member and recognized by the NCD chairperson.

QUARTERLY MEETING AGENDA: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session (closed), Unfinished Business, New Business, Announcements, Adjournment.

Records will be kept of all National Council on Disability proceedings and will be available after the quarterly meeting for public inspection at the National Council on Disability.

Signed in Washington, DC on January 23, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02-2064 Filed 1-23-02; 4:23 pm]

BILLING CODE 6820-MA-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Graduate Teaching Fellows in K-12 Education (GK-12) Program
OMB Control No.: 3145-NEW.

Expiration Date of Approval: Not applicable.

1. *Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Graduate Teaching Fellows in K-12 Education (GK-12). GK-12 is a fellowship that offers graduate students and advanced undergraduates the opportunity to serve as resources for K-12 teachers of science and mathematics. The study design focuses on GK-12 projects funded during the period 1999-2002 and involves two types of studies. One consists of case studies of three cohorts of GK-12 projects. The second is a survey of all GK-12 projects funded in this time period. This OMB submission seeks clearance for data collection instruments for both studies.

2. *Expected Respondents:* The expected respondents are GK-12 Fellows, Cooperating Teachers in the school districts where the Fellows are placed, Principal Investigators, and other educators associated directly with the GK-12 Program.

3. *Burden on the Public:* The total estimate for this collection is 1,823 burden hours for a maximum of 3,645 participants assuming an 80-100% response rate. The average annual reporting burden is 2 hours per respondent. The burden on the public is negligible; the study is limited to project participants that have received funding from the NSF GK-12 program.

Dated: January 22, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02-1968 Filed 1-25-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-02384, License No. SMB-00602 EA-99-290]

In the Matter of Earthline Technologies (Previously RMI Environmental Services), Ashtabula, OH; Order Imposing Civil Monetary Penalty

I

Earthline Technologies (previously RMI Environmental Services) was the holder of Materials License No. SMB-00602, issued by the Nuclear Regulatory Commission (NRC or Commission) on June 8, 1962. The license authorized the Licensee, in part, to conduct

decontamination and decommissioning activities in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on September 29, 1999. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 24, 2001. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated October 17, 2001. In its response, the Licensee denied the violation and protested the civil penalty. The Licensee claimed the employment action was taken for legitimate business reasons, the manager was unaware that the complainant had contacted the NRC, and the complainant did not have a material loss of benefits because he was placed on paid medical leave.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$17,600 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in

writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 15th day of January 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 02-2020 Filed 1-25-02; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Order No. 1320; Docket No. C2001-3]

First-Class Mail Service Standards

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning complaint.

SUMMARY: The Commission has initiated a case to consider a complaint concerning the consistency of certain recent changes in First-Class Mail service standards with controlling statutory provisions. This will allow pertinent allegations to be reviewed. Rates are not affected. Notice of this

action has also been mailed to persons on the Commission's mailing list and has been posted on the Commission's Web site.

DATES: See Supplementary Information section.

ADDRESSES: Send correspondence regarding this document to the attention of Steven W. Williams, secretary, 1333 H Street NW., suite 300, Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202-789-6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

This order addresses Douglas F. Carlson's formal request for institution of a service complaint proceeding, under 39 U.S.C. 3662, to address certain recent changes in First-Class Mail service standards.¹ The referenced changes, implemented in 2000 and 2001, affect two- and three-day service standards for delivery of First-Class Mail.

Scope and Extent of Changes

Carlson asserts that these changes entail a net decrease in the volume of First-Class Mail subject to a two-day service standard, and a net increase in the volume of First-Class Mail subject to a three-day standard. Carlson Complaint at 11. Carlson also says the changes affect over 76,440 origin-destination three-digit ZIP Code pairs in all postal areas, and all states except Alaska and Hawaii. *Id.* at 2-3, 11. He asserts:

The changes in First-Class Mail standards result in a net increase of approximately 22,250 origin-destination three-digit ZIP Code pairs for which the service standards is two days. However, the net *volume* of First-Class Mail subject to a two-day delivery standard instead of a three-day delivery standard has decreased by approximately 1.5 billion pieces per year. Moreover, the changes in First-Class Mail service standards have shifted over 3.4 billion pieces of mail per year from a two-day delivery standard to a three-day delivery standard.

Id. at 11, paragraph 53 (emphasis in original).

Rationale for seeking to explore recent changes in a service complaint.

In brief, Mr. Carlson's theory is that the Service should have requested an advisory opinion from the Commission,

¹ Douglas F. Carlson Complaint on First-Class Mail service standards, June 15, 2001 (Carlson complaint). The complaint includes an appendix, and was accompanied by two library references. DFC-LR-1 consists of correspondence with the Postal Service under the Freedom of Information Act (FOIA). DFC-LR-2 consists of service commitment diskettes and a service standards CD-ROM. Douglas F. Carlson notice of filing of library references, June 15, 2001. This order does not address FOIA issues.

pursuant to 39 U.S.C. 3661(b), within a reasonable time prior to making the 2000–2001 changes, as these materially changed, departed from or abandoned the standards proposed by the Service in docket no. N89–1, and did so on a nationwide basis within the meaning of the Postal Reorganization Act. Although the Service did not request such an opinion, Carlson contends that the Commission nevertheless has jurisdiction to address the changes in the alternative setting of a service complaint proceeding—and should do so—as 39 U.S.C. 3662 provides:

“Interested parties * * * who believe they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission * * *.”

Policies in Issue

The policies allegedly implicated by the Service’s actions, and cited in Mr. Carlson’s original complaint, include 39 U.S.C. 3361(a), which requires the Service to provide “adequate postal services” and 39 U.S.C. 403(c), which proscribes undue and unreasonable discrimination among users of the mail. A proposed amendment to the complaint also alleges that the service standard changes violate 39 U.S.C. 101(e) and (f).² Douglas F. Carlson motion for leave to amend complaint, August 14, 2001 (Carlson motion to amend complaint).

Structure of the complaint and initial Commission action. Upon filing, Mr. Carlson’s complaint was designated as docket no. C2001–3 for administrative purposes, pending a decision on whether to proceed on the merits. Pursuant to Commission rules, the secretary of the Commission transmitted the complaint the Postal Service.

In conformance with Commission rules, Carlson’s complaint provides formal identification of the complainant and his mailing address (in paragraph 1); addresses Commission jurisdiction (paragraphs 2–8); and summarizes the complaint (paragraphs 9–21). It also describes why First-Class Mail service is inadequate under the recent changes (paragraphs 22–32); reviews criteria for two-day service standards (paragraphs 22–40); addresses undue and unreasonable discrimination (paragraphs 41–43); and notes the

² Section 101(e) provides that the Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. Section 101(f) provides that in selecting modes of transportation, the Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services.

purported lack of public input (paragraphs 33–48). The complaint discusses the scope of changes in service standards (paragraphs 49–61, noting appendix 1’s printouts of maps from the service commitment program and service standards program.) It also describes the class of persons affected (paragraphs 62–64) and identifies the relief that is sought (paragraph 65). Paragraph 66 (to be filed) supplements the postal policies identified in the original complaint by adding 39 U.S.C. 101(e) and (f).

Requested Relief

The relief Carlson seeks (in paragraph 65) includes a specific request that the Commission issue a public report documenting the following four matters: the inadequate First-Class Mail service that many customers are now receiving; the undue and unreasonable discrimination some mailers located in California and other western states are suffering; the change in, departure from, or abandonment of criteria the Service announced in docket no. N89–1 and the 2001 ZIP Code directory for two-day service standards for First-Class Mail; and the Service’s failure to seek an advisory opinion before the effective date of those changes.

Other Pleadings

The Service has filed a paragraph-by-paragraph answer to the complaint (along with a general denial), a motion to dismiss, and a declaration prepared by Postal Service employee Charles Gannon.³ See order no. 1318, issued July 13, 2001. Mr. Carlson and the Commission’s office of the consumer advocate (OCA) have each filed answers opposing the Service’s motion to dismiss.⁴ In addition, the Service has filed a reply to both of these answers, and Mr. Carlson has filed a response to this reply.⁵

³ Answer of the United States Postal Service [to Carlson’s docket no. C2001–3 complaint on First-Class Mail service standards], July 13, 2001 (Postal Service answer); Motion of the United States Postal Service to dismiss complaint, July 30, 2001 (motion to dismiss) and declaration of Charles M. Gannon, July 30, 2001 (Gannon declaration).

⁴ Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, August 11, 2001 (Carlson answer to motion to dismiss); answer of the office of the consumer advocate to United States Postal Service motion to dismiss complaint, August 14, 2001 (OCA answer to motion to dismiss).

⁵ Motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss (August 21, 2001) and reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the motion to dismiss (August 21, 2001). Douglas F. Carlson response to reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the

The instant complaint and related filings draw extensively on docket no. N89–1, change in service 1989, First-Class delivery standards realignment. In that docket, the Service proposed a phased realignment of First-Class Mail delivery, or service standards. The Gannon declaration provides a useful review of key aspects of that proposal, and of developments since issuance of the Commission’s advisory opinion.⁶

II. Status of Key Allegations

A review of the pleadings at this stage of the case indicates that several allegations related to the timing, scope, and effect of the underlying changes are undisputed. Specifically, the complainant and the Postal Service appear to be in agreement that the complained-of changes were implemented by the Postal Service in 2000 and 2001; affect more than 76,440 three-digit ZIP Code origin-destination pairs; and have the volume impact cited by the complainant. Postal Service answer at 2–3, and 11–15.

However, the pleadings have not resolved other important allegations and legal questions. For example, as framed by the Postal Service, a threshold question is the context in which the changes occurred. Carlson’s view is that the 2000–2001 changes were necessarily so different and so attenuated in time from the docket no. N89–1 delivery realignment plan that they required a new advisory opinion prior to implementation. In contrast, the Service contends that the changes were simply the long-delayed, but nevertheless related, implementation of “phase II” of the earlier proposal, and cites the Gannon declaration for support. Postal Service motion to dismiss at 4–5. In effect, the Service argues that the changes are part of a continuum that required no new advisory opinion.

Other legal questions center on whether the impact is nationwide within the meaning of the Postal Reorganization Act; whether the criteria and/or resulting service are unduly discriminatory and inadequate or implicate other statutory policies; whether the Commission should

motion to dismiss (August 29, 2001); see also Douglas F. Carlson response to reply of the United States Postal Service to the answers of the consumer office of the advocate and the complainant in opposition to the motion to dismiss—erratum (August 25, 2001). The erratum notes two errors, neither of which affect the substance of the reply. A previous Commission order (no. 1318, issued July 13, 2001) granted the Postal Service’s unopposed motion for an extension of time (from July 19, 2001) to file this motion and the referenced declaration.

⁶ The Commission’s docket no. N89–1 opinion advised against implementation of the service standard changes proposed at that time. PRC Op. N89–1 at 2.

exercise its jurisdiction to hear a complaint that entails alleged failure to comply with 39 U.S.C. 3661; and whether the Commission has the authority to grant relief on all of the requested terms.

III. Positions on the Service's Motion To Dismiss

Carlson's Answer

Mr. Carlson's answer to the Service's motion to dismiss cites four grounds justifying exercise of the Commission's jurisdiction. These include reiteration of the argument that the Service should have sought an advisory opinion prior to implementing the changes, given the nationwide scope of the 2000–2001 changes and the assertion that new standards depart from the original criteria. They also include claims that resulting First-Class Mail service is not adequate within the meaning of 39 U.S.C. 3661(a) for some customers, and that the standards unduly and unreasonably discriminate among users of the mail, contrary to 39 U.S.C. 403(c). Carlson answer at 2–3.

The OCA's answer. The OCA contends that the pleadings raise sufficient issues of law and fact to warrant the Commission's denial of the motion to dismiss. It proposes that the Commission establish "further procedures to allow participants to undertake a more detailed inquiry into the facts alleged in order to create a full record for the Commission to reach a reasoned decision as to the appropriate disposition of the complaint." OCA Answer at 2. In particular, the OCA suggests that the Commission should order the Postal Service to provide the results of "relevant and appropriate investigations of the cost consequences of changes in delivery standards" undertaken by the Postal Service in relation to the service standard changes in issue. It notes that the Commission previously recommended that the Service undertake such studies before implementing nationwide service standards. *Id.* at 2–3.

IV. Action on Proposed Amendment to Compliant

Carlson proposes an amendment to his complaint, based on his review of the Gannon declaration. He alleges that this "reveals that the Postal Service has changed the definition of two-day First-Class mail to exclude the use of air transportation for most or all mail for which a two-day delivery standard applies." Carlson motion to amend compliant at 1, citing paragraph 18 of the Gannon declaration. Carlson says he thus has formed a reasonable belief that

the new definition of the two-day First-Class Mail delivery area is consistent with 39 U.S.C. 101(e) and (f). *Id.* at 1–2.

The Commission finds that the proposed amendment of the complaint is consistent with the general framework of the original compliant; reflects information that is apparently newly-available to Mr. Carlson; and may foster efficiency in the review and administration of the complainant's concerns. Accordingly, the motion to amend is granted. The Commission directs Mr. Carlson to file a revised page 16 showing an additional paragraph (No. 66) containing this allegation, pursuant to the complainant's offer. The remaining discussion assumes this amendment.

V. Discussion

Further action on the instant complaint requires several preliminary decisions. One is a determination of whether Mr. Carlson has made a prima facie showing that his complaint has statutory merit. In terms of what has emerged as the threshold question—the context of the charges—the Commission must conclude that the decade-plus "gap" in implementation of the recent standards raises the possibility that the changes in issue may have legally fallen within the scope of 39 U.S.C. 3661(b). The Gannon declaration stands as an informative and impressive narration of decisions and events that have transpired since docket no. N89–1, but is not persuasive on the main point the Service presses here, which is that the changes can reasonably be considered, for purposes of the statute, as a continuum of the original plan. Instead, despite characterization of changes as "phase II," the Gannon declaration chronicles near-abandonment of the realignment at various times over the ensuing years. Thus, while front-line postal managers may have made a good-faith attempt to stay focused on the original plan, it is reasonable that Carlson (and others) may regard the "gap" as a break.

There is, as the Service notes, no explicit time limit in the statute for completion of changes subject to 39 U.S.C. 3661; however, reading out a "rule of reasonableness" effectively would nullify the provision, as one broad service change request could then arguably be deemed to operate essentially in perpetuity. It is unlikely the authors of this provision would have intended this result. A common-sense interpretation requires acknowledgement that passage of time, in some instances, may require the Service to request a new advisory

opinion. Where, as here, time has not simply passed, but has passed with several changes of postmasters general, several changes in Governors, several reorganizations, and numerous changes in operations, technology—and possibly public need—the case is even stronger. Accordingly, the Commission finds that Mr. Carlson has made a prima facie showing on this threshold question.

On certain other critical policy issues, such as whether the resulting postal service is adequate, whether there is undue or unreasonable discrimination, and whether the highest consideration has been given to certain considerations pertaining to delivery of First-Class Mail, no final answer can be discerned at this time. Indeed, these are points on which Mr. Carlson may need to provide more specific evidence, such as mail users' need for certain service standards. However, it again appears that the complainant has made a prima facie showing that the alleged policy violations have occurred as a result of the recent changes.

Related Jurisdictional Issues

The provisions in question here—39 U.S.C. 361 and 3662—are not mutually exclusive, so there is no automatic bar to Mr. Carlson's interest in pursuing certain service concerns under the service complaint proceedings. At the same time, the latter are not automatically available to remedy any perceived failure to seek an advisory opinion. Instead, exercise of complaint jurisdiction is discretionary, and the Commission must consider whether it is appropriate to proceed.

In addition to the conclusion above regarding the prima facie showing Mr. Carlson has made, the Commission has considered that public input is a hallmark of 39 U.S.C. 3661. Although the Gannon declaration indicates postal administrators apparently have been well-intentioned in implementing the changes, there is little, if any, indication of whether there was any direct public input. Instead, these changes, as Mr. Gannon notes, entailed many internal logistical decisions, including adoption of a maximum 12-hour drive time range to determine 2-day service destinations in place of the previous standard of a 600-mile radius. Gannon declaration at 9–10. As Mr. Gannon notes, the process of determining the changes to make in the "phase 2 finalization" also differed from that contemplated in docket no. N89–1: the organization management structure had changed significantly; a service standard mapping program had been developed (thereby allowing more centralization in deciding what changes to consider in implementing the new

“drive time” standard); and a preference for surface transportation had emerged in the face of less dependable air transportation for 2-day mail. *Id.* at 10–13.

Mr. Gannon acknowledges that as a result, “more western and Pacific area origin-destination First Class Mail shifted from 2-day to 3-day service, than occurred throughout the remainder of the country” and that within certain states (California, Nevada, Texas, Wyoming and Alaska) there are home state pairs that have a 3-day standard. *Id.* at 13. Moreover, in response to Mr. Carlson’s comments about a certain non-reciprocal origin-destination pair, Mr. Gannon suggests: “If we had included overnight standards as part of our recent adjustments, the originating service standards would, very likely, have ended up as being 3-days in both directions between Ashland, Oregon and Yreka, California, based on our processing network design.” *Id.* at 15. Overall, the net effect of the Service’s actions involve 48 states; affect service standards for more than 76,440 origin-destination three-digit ZIP Code pairs in all postal areas; and shift more than 3.4 billion pieces of mail annually to a three-day service standard from a two-day standard. Postal Service answer at 15–16.

Relief

The statute provides for a public hearing and if the complaint is found justified, for the Commission to issue a recommended decision or public report, as appropriate. Carlson seeks these remedies, as well as a change in service standards. In addition, the OCA suggests that cost data and information should be provided. It is reasonable to assume that if warranted, at least some of the relief Mr. Carlson has requested can be provided. This clearly constitutes a major, national service change. The issue of whether First-Class service continues to meet the policies established in the Act is important, and the Commission will hold hearings on this complaint.

Further Action

Information procedures do not appear likely to resolve these issues. The Commission hereby denies the Postal Service motion to dismiss and institutes a formal docket. The Commission therefore directs Mr. Carlson to provide, no later than September 24, 2001, an estimate of the amount of time he anticipates needing for discovery, the earliest date by which he could present evidence, and identification of any other procedural requests. Responses to Mr. Carlson’s filing will be due on October

1, 2001. Ted P. Gerarden, the director of the Commission’s office of the consumer advocate, is directed to represent the interests of the public in any further proceedings in this case. Others who believe they may be affected by this proceeding are invited to intervene. Notices of intervention shall be filed with the Commission no later than October 1, 2001. It is ordered:

1. The Douglas F. Carlson motion for leave to amend complaint, August 11, 2001, is granted.

2. The motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss, August 21, 2001, is granted.

3. The motion of the United States Postal Service to dismiss complaint, July 30, 2001, is denied.

4. The Commission institutes a formal service complaint proceeding to address the allegations raised in the captioned proceeding.

5. Complainant is directed to inform the Commission, no later than September 24, 2001, of the amount of time he believes is necessary to prepare his case.

6. Responses to Mr. Carlson’s filing are due October 1, 2001.

7. Ted P. Gerarden, director of the Commission’s office of the consumer advocate, is appointed to represent the interests of the general public.

8. Interested persons shall intervene no later than October 1, 2001.

9. The Secretary is directed to arrange for publication of this order in the **Federal Register**.

By the Commission.

Dated: September 12, 2001.

Steven W. Williams.

Acting Secretary.

[FR Doc. 02–1413 Filed 1–25–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45320: File No. SR–AMEX–2001 79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Technical Corrections to American Stock Exchange LLC Rules

January 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

notice is hereby given that on December 14, 2001, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change was filed by the Exchange as a “non-controversial” rule change under Rule 19b–4(f)(6)³ under the Act, which renders the proposal effective upon receipt of the filing by the Commission.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to correct Amex Rules 3(c) (Commentary .04), 7 (Commentary .01), 21(b), 22 (Commentary .03), 25(a), 60(h), 103(b), 111 (Commentary .12), 114 (Commentary .14), 154 (Commentary .15), 177(c), 235, 323, 950(f), 958(g) (Commentary .10), and 1202(d). The Exchange also proposes to correct Sections 101 (Commentary .01), 901(d), and 1203(a) of the Amex Listing Guidelines, and to relocate the section of the Exchange’s rule titled “Admission of Members and Member Organizations; Regular and Options Principal Memberships” to Section 4 of the Exchange’s “Office Rules.” The text of the proposed rule change is available from the Amex and from the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ 17 CFR 240.19b–4(f)(6).

⁴ The proposed rule change was originally filed on September 28, 2001 pursuant to Section 19(b)(2) of the Act. *See* 15 U.S.C. 78s(b)(2). The Amex filed an amendment on December 14, 2001, requesting that the proposed rule change be considered as filed pursuant to Section 19(b)(3)(A) of the Act. *See* 15 U.S.C. 78s(b)(3)(A). The Amex requested that the Commission waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

From time to time, the Exchange reviews its rules to ensure their accuracy. As the result of one of these reviews, the Amex is proposing a number of revisions to its rules. All of the proposed rule changes are technical rather than substantive in nature. The proposed amendments would (1) Clarify the Exchange's rules by making conforming changes to rules that were previously amended (with SEC approval) elsewhere in the Amex Constitution and Rules; and (2) revise language that might tend to mislead or confuse. The changes are described below:

- (1) The proposed amendment to Amex Rule 3(c) reflects organizational restructuring;
- (2) The proposed amendment to Amex Rule 7, Commentary .01 reflects revisions to SEC Rule 10a-1;
- (3) The proposed amendment to Amex Rule 22, Commentary .03 reflects organizational restructuring;
- (4) The proposed amendment to Amex Rule 25(a) reflects organizational restructuring;
- (5) The proposed amendment to Amex Rule 60(h) reflects organizational restructuring;
- (6) The proposed amendment to Amex Rule 103(b) reflects clarifying language;
- (7) The proposed amendment to Amex Rule 111, Commentary .12 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;
- (8) The proposed amendment to Amex Rule 114, Commentary .14 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;
- (9) With respect to the proposed revisions to Amex Rule 154: (a) the amendment to Commentary .01 reflects appropriate cross references to Amex Rules 153, 180 and 181; (b) the amendment to Commentary .06 reflects the use of the Electronic Display Book for all good-'til-canceled orders which eliminated the need for paper receipts; and (c) the amendment to Commentary .15 corrects a typographical error that was corrected in a similar New York Stock Exchange ("NYSE") rule change (NYSE Rule 123A.30) in 1999;
- (10) The proposed amendment to Amex Rule 177(c) reflects a prior revision to Amex Rule 103(a);

(11) The proposed amendment to Amex Rule 235(e) reflects organizational restructuring;

(12) The proposed amendment to Amex Rule 323 permits electronic access to the Amex Constitution and Amex Rules at member firm offices;

(13) The proposed amendment to Amex Rule 950(f) reflects a prior revision to the Commentary to Amex Rule 154 and corrects a cross reference;

(14) The proposed amendment to Amex Rule 958, Commentary .10 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;

(15) The proposed amendment to Amex Rule 1202(d) contains language from (rather than a cite to) rescinded Amex Listing Guidelines Section 811;

(16) The proposed amendment to Amex Listing Guidelines Section 101 reflects organizational restructuring;

(17) With respect to the proposed revision to Amex Listing Guidelines Section 910: (a) the proposed amendment to (d)(i) reflects a revision to Amex Rule 174; (b) the proposed amendment to (d)(iii) reflects language conforming to that of Amex Rule 175; and (c) the proposed amendment to the second (d)(iii) reflects a prior revision to Amex Rule 103(a);

(18) The proposed amendment to Amex Listing Guidelines Section 1203 reflects organizational restructuring;

(19) The proposed renumbering of paragraphs 9174 through 9181 of the Amex Rules to become Amex Rules 350 through 358 reflects clarifying references; and

(20) The proposed renaming of Amex Office Rules, Section 4 reflects the addition of Amex Rules 350 through 358 to that Section of the Amex Rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and the provisions of Section 6(b)(5) of the Act,⁶ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) was discussed by the Commission and the Exchange at least five days before filing of the same, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

The Amex has asked the Commission to designate that the proposed rule change become operative immediately. Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In this regard, the Amex believes that it would be consistent with the protection of investors and the public interest to institute immediately the technical changes that are contemplated in the proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately so that Amex can

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

implement the technical changes that are contemplated in the proposed rule change.¹² The Commission finds that permitting the proposal to become effective immediately is consistent with the protection of investors and the public interest because it will make Amex's rules more comprehensible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX-2001-79 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1956 Filed 1-25-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45319; File No. SR-NASD-2001-69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rule 4720 Relating to the Inclusion of UTP Exchanges in the Nasdaq National Market Execution System

January 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on October 5, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. On December 19, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.³ On January 16, 2002, the NASD submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4720 to delineate the use of SelectNet by UTP Exchanges. Proposed new language is in italics; proposed deletions are in brackets.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated December 18, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD removed from the proposed rule change language related to NASDAQ National Market Execution System ("NNMS") trading through the quotes of UTP exchanges that do not participate in the NNMS.

⁴ See letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated January 16, 2002 ("Amendment No. 2"). In Amendment No. 2, the NASD amended language that: (1) Incorrectly described SelectNet as being included within the rubric of the NNMS; (2) defined the term "Non-Participating UTP Exchange;" and (3) ambiguously referenced the "Nasdaq system."

⁵ The NASD requested that the Commission alter the originally proposed rule language of Rule 4720(c)(i) to reflect the current name of the Nasdaq OTC/UTP Plan. Telephone message left by

4720. *SelectNet Service*

(a)-(b) No Change.

(c) Prohibition Regarding the Entry of Certain Preferred Orders to Nasdaq National Market Execution System Market [Makers] *Participants*

(i) For purposes of this rule the term "Participating UTP Exchange" shall mean any registered national securities exchange that elects to participate in the Nasdaq National Market Execution System ("NNMS") and that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation And Dissemination Of Quotation And Transaction Information For Nasdaq-Listed Securities Traded On Exchanges On An Unlisted Trading Privileges Basis; and

(ii) Non-Participating UTP Exchanges are prohibited from sending SelectNet preferred orders. No member or Participating UTP Exchange shall direct a SelectNet preferred order to a Non-Participating UTP Exchange.

(iii) Participating UTP Exchanges must participate in SelectNet and the NNMS under the same conditions that apply to Nasdaq market makers, as set forth herein.

(iv) No member or Participating UTP Exchange shall direct a SelectNet preferred order to an NNMS [Nasdaq National Market Execution System ("NNMS")] market maker (as defined in NASD Rule 4701) [(including that market maker's Agency Quote (as defined in NASD Rule 4613)], to an ECN that provides automatic execution against its quote through the NNMS, or to a Participating UTP Exchange, unless that order is designated as:

(A) A non-liability order that is entered as an "All-or-None" order ("AON") and is at least one normal unit of trading (i.e. 100 shares) in excess of the displayed quote to which the preferred order is directed; or

(B) A non-liability order that is entered as a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferred order is directed; or

(C) A non-liability order that is entered at a price that is inferior to the displayed quote to which the preferred order is directed.

Katherine England, Assistant Director, Division of Market Regulation, Commission (January 18, 2002) for Jeffrey S. Davis, Assistant General Counsel, Office of General Counsel, Nasdaq (January 18, 2002), and response telephone message left by Jeffrey S. Davis for Katherine England (January 22, 2002).

¹² For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

(v) The prohibition of this paragraph shall not apply to:] *SelectNet preferred orders sent by a member, or a Participating UTP Exchange to an ECN that does not provide automatic execution against its quote through NNMS.*

[(A) Preferred orders sent by a UTP Exchange that does not elect to participate in the automatic execution functionality of the NNMS, to: (1) An NNMS market maker; (2) another UTP Exchange; (3) an ECN, regardless of whether the ECN provides an automatic execution against its quote through NNMS; or]

[(B) Preferred orders sent by an NNMS market maker to: (1) A UTP Exchange that does not participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS; or]

[(C) Preferred orders sent by an ECN that does not provide an automatic execution against its quote through NNMS, to: (1) A UTP Exchange that does not elect to participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS; or]

[(D) Preferred orders sent by a UTP Exchange that elects to participate in the automatic execution functionality of the NNMS, to: (1) Another UTP Exchange that does not participate in the automatic execution functionality of the NNMS; (2) an ECN that does not provide an automatic execution against its quote through NNMS.]

[(iv) For purposes of this rule the term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation And Dissemination Of Quotation And Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan"). In addition, participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the NNMS system, the provisions of this subparagraph shall apply to UTP Exchanges that choose to participate in the NNMS.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 4720 to specify that a UTP Exchange will be permitted access to SelectNet on a similar basis that it is offered to NASD members. As a result, SelectNet will be available only in connection with participation in the Nasdaq National Market Execution System ("NNMS") (hereinafter referred to as "SuperSOES"). The rule change would bring Nasdaq market makers into parity with UTP Exchanges, as well as reduce the risk of dual liability for both Nasdaq market makers and UTP Exchanges participating in SuperSOES. As set forth in more detail below, Nasdaq believes that the rule would also limit the possibility of backing away from quotes by UTP Exchanges, and would limit the instances of locked/crossed markets among market participants that participate in a Nasdaq execution system.

The proposal is consistent with Nasdaq's long-standing goal to improve the quality of its market. Establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in that respect. Nasdaq believes that implementation of SuperSOES has significantly improved the Nasdaq Stock Market. In particular, Nasdaq's initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, SuperSOES has not had a significant negative impact on spreads, depth or volatility. According to Nasdaq, the ease with which the market reopened on September 17 appears to be directly connected to the efficiency of SuperSOES. In addition, SuperSOES has been voluntarily adopted by the Chicago Stock Exchange, Inc. ("CHX") and the Boston Stock Exchange, Inc. ("BSE"), which currently

represent the vast majority of the trading volume in Nasdaq-listed stocks by UTP Exchanges. CHX has participated in SuperSOES since it was implemented in July 2001.⁶ As SuperSOES becomes a more familiar feature in the Nasdaq market place, Nasdaq believes it will benefit Nasdaq market participants and public investors by making the operation of Nasdaq more efficient.

Nasdaq states that SuperSOES is improving the operation of the Nasdaq Stock Market, however, Nasdaq has identified two areas of concern that it believes must be addressed immediately to ensure the smooth functioning of Nasdaq's systems. Specifically, permitting UTP Exchanges to participate in Nasdaq without automatic execution functionality perpetuates the potential for "dual liability" that Nasdaq designed SuperSOES to eliminate. The potential for dual liability exists when market participants, such as UTP Exchanges, send SelectNet liability messages to Nasdaq market makers that simultaneously receive executions through SuperSOES. Additionally, permitting UTP Exchanges to access Nasdaq via SelectNet could disrupt and slow the market. To improve the trading environment for all of Nasdaq's valued market participants, and to avoid potential significant market disruptions, Nasdaq is proposing to require UTP Exchanges that choose to participate in Nasdaq to accept automatic executions through SuperSOES.

Background. On January 14, 2000, the Commission approved a rule change to establish SuperSOES,⁷ which was implemented for all Nasdaq National Market securities on July 30, 2001. SuperSOES is an automated execution system that allows the entry of retail as well as principal orders for up to 999,999 shares.⁸ By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet for NASD members was limited to certain types of non-liability orders that require negotiation with the receiving market participant.⁹

⁶ In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. See Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

⁷ See Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

⁸ SOES was limited to small agency orders for customers.

⁹ As originally developed, SuperSOES allowed market participants to enter into SelectNet only those orders that (1) specify a minimum acceptable quantity for a size that is at least 100 shares greater

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, a subset of Nasdaq market participants, Electronic Communications Networks ("ECNs"), as well as UTP Exchanges, continue to have their quotes in Nasdaq accessed through SelectNet and, as such, are not required to accept automatic executions.¹⁰ Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange.¹¹

According to Nasdaq, SuperSOES increases the speed of executions and improves the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Nasdaq states that while SelectNet was adequate as the primary means of UTP Exchange access in the past, this is no longer true. Market participants demand and require the ability to access liquidity at the best prices instantaneously. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to preferred SelectNet liability orders, continuing SelectNet liability functionality for UTP Exchanges is not a viable option.

Moreover, under the rules that established the NNMS, SelectNet became primarily a non-liability system for SuperSOES market participants. Nasdaq made SelectNet a non-liability system for SuperSOES market

participants to, among other reasons, provide protection for Nasdaq market participants that are required to (*i.e.*, Nasdaq market makers), or chose to (*i.e.*, Full Participant ECNs and participating UTP Exchanges¹²), take automatic execution against their quotes through SuperSOES by limiting the potential for dual liability.¹³ The current rules, however, do not offer sufficient protection, because they continue to allow UTP Exchanges that do not participate in SuperSOES to send preferred SelectNet liability orders to SuperSOES market participants. As a result, dual liability could occur if a SuperSOES market participant receives an order from a UTP Exchange through SelectNet to which it owes an obligation to execute under the NASD's and SEC's firm quote rule, and immediately thereafter receives an execution through SuperSOES against the same quote.

Proposed Amendment. To address these problems, Nasdaq is proposing to amend NASD Rule 4720 to require that UTP Exchanges that voluntarily choose to trade Nasdaq securities through Nasdaq market systems send and accept automatic executions through SuperSOES. A UTP Exchange that does not wish to use a Nasdaq market system would be accessible by telephone—the method of access specified in the Nasdaq UTP Plan—or via a mutually agreed upon bilateral link created by the UTP Exchange.¹⁴

Specifically, Nasdaq proposes to allow UTP Exchanges to choose whether or not they want to access Nasdaq market systems for order processing and execution purposes. If a UTP Exchange elects to participate in SuperSOES, the UTP Exchange, like Nasdaq market makers, will be permitted access to SelectNet in accordance with the proposed changes to paragraph (c) of Rule 4720. Through SuperSOES, UTP Exchanges will make their quotes accessible to other market participants, and will access the quotes of market

markers, Full Participant ECNs, and other UTP Exchanges participating in SuperSOES.

Under this option, UTP Exchanges will use SelectNet on the same terms as Nasdaq market makers and ECNs. First, Participating UTP Exchanges may direct non-liability orders (as set forth in subparagraph (c) of Rule 4720) to SuperSOES market participants. Second, Participating UTP Exchanges (similar to Nasdaq market makers) will receive via SelectNet only non-liability orders, in order to limit their potential for dual liability, as noted above.¹⁵ This will limit any potential dual liability. Third, UTP Exchanges may access quotes of Order Entry ECNs with preferred SelectNet liability orders.

If a UTP Exchange elects not to participate in SuperSOES, the UTP Exchange's quote will not be accessed through SuperSOES or SelectNet. In this case, SuperSOES will not include that UTP Exchange's quotation for order processing and execution purposes. UTP Exchanges that choose this option would be accessible by telephone as contemplated in the Nasdaq UTP Plan,¹⁶ or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.¹⁷ Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq is proposing these amendments for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. According to Nasdaq, the volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Consequently, market

than the posted quote of the receiving market participant or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

¹⁰ ECNs may choose whether or not to take automatic executions through SuperSOES. ECNs that choose to take automatic execution against their quotes through SuperSOES are referred to as "Full Participant ECNs." Full Participant ECNs are not required to take liability orders through SelectNet (a "liability order" imposes an obligation on the market participant that receives the order to respond to the order in a manner consistent with the Firm Quote Rule (Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1) (*e.g.* by executing the order for that market participant's displayed size). ECNs that choose not to take automatic execution against their quotes through SuperSOES must continue to take delivery of liability orders against their quotes through SelectNet. These ECNs are referred to as "Order-Entry ECNs."

¹¹ The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, it relies on the language in the UTP Plan and provides only telephone access to its quotes.

¹² Specifically, CHX and BSE have chosen to participate in SuperSOES.

¹³ Dual liability may occur when a market participant has simultaneous, multiple obligations with respect to orders that it receives from more than one venue. For instance, if a market maker is preferred through SelectNet for its displayed size at the same time that it receives an automatic execution order through SuperSOES, that market maker is exposed to dual liability for those orders. Dual liability can result in a market participant risking more capital than it might otherwise desire.

¹⁴ The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants "shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations." See Section IX, Market Access, of the Nasdaq UTP Plan.

¹⁵ The rules clarify that if a UTP Exchange participates in SuperSOES, orders preferred to the UTP Exchange's quotes must meet the Oversized Order Requirement. This restriction is intended to limit the potential for dual liability for UTP Exchanges. In addition, Nasdaq is proposing non-substantive changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the Oversized Order Requirement in the rule, while orders sent to Full Participant ECNs are subject to this requirement.

¹⁶ We note this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

¹⁷ This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of the NNMS Plan.

participants demand and require the ability to access liquidity at the best prices instantaneously. Nasdaq states that SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of its marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

According to Nasdaq, while SelectNet—which requires an affirmative response in order to trade—was adequate as the primary means of UTP Exchange access in the past, this is no longer true. In 1997, when Nasdaq made SelectNet available to UTP Exchanges for liability order processing, Nasdaq (inclusive of the only active UTP Exchange at the time, CHX) processed an average of 417,224 quote updates and 467,914 transactions per day.¹⁸ Over the first seven months of 2001, Nasdaq processed an average of 5,822,474 quote updates and 2,757,556 transactions per day. The need for immediate response by all participants who choose to access the Nasdaq market is very clear. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to preferred SelectNet liability orders, it can no longer offer SelectNet liability functionality as an option to UTP Exchanges.

Moreover, Nasdaq believes that this proposal, requiring a UTP Exchange to participate in SuperSOES if the UTP Exchange wishes to access Nasdaq via Nasdaq's own systems, is consistent with prior SEC statements in the context of alternative trading systems ("ATSs"). In the release adopting Regulation ATS, the Commission stated its concern that an ATS should respond to orders entered by non-participants (e.g., broker-dealers that access the ATS through a linkage like SelectNet) no slower than it responds to orders entered by subscribers.¹⁹ The Commission addressed this concern by establishing a principle that underscores the importance of each market establishing the parameters and automation of its system, specifically the Commission stated "[a]ny SRO to which alternative trading systems may be linked, may determine that it is necessary for the fair and orderly operation of its market to require that

publicly displayed alternative trading system orders be subject to automatic execution."²⁰ Nasdaq believes that the Commission should apply this principle to Nasdaq's current proposal for UTP Exchange participation in SuperSOES.

Second, Nasdaq believes it is appropriate to minimize the potential for dual liability in the Nasdaq market by requiring UTP Exchanges to participate in SuperSOES. The possibility of dual liability arising from a UTP Exchange that accesses the Nasdaq market through SelectNet was not a major concern at the time the SuperSOES rules were adopted. At that time, only CHX traded Nasdaq securities, CHX's volume was minimal, and CHX, in fact, chose to accept automatic execution by participating in SuperSOES. Recently, however, there has been renewed interest by other regional stock exchanges in trading Nasdaq-listed securities on a UTP basis. In fact, a number of new participants joined the Nasdaq UTP Plan subsequent to Nasdaq proposing SuperSOES, and these exchanges have indicated an interest in trading Nasdaq-listed securities in the coming weeks and months. According to Nasdaq, although CHX elected to participate in SuperSOES—temporarily eliminating the potential for dual liability—the imminent entry of other UTP Exchanges trading Nasdaq securities reintroduces the potential of dual liability to all SuperSOES market participants.

Third, participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq states that it is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, Nasdaq believes it is entirely appropriate to limit UTP Exchange access to Nasdaq's most efficient system. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it is appropriate to alter the terms under which a UTP Exchange participates in the Nasdaq market to address all of the concerns described in this proposal. Nasdaq is committed to operating a fair, orderly, efficient marketplace for the benefit of all investors in Nasdaq-listed securities, and this proposal is essential to Nasdaq's ability to meet that commitment.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)²¹ of the Act, which requires, among other things, that the NASD's rules be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that requiring a UTP Exchange that chooses to participate in the Nasdaq market also to participate in SuperSOES is necessary for the fair and orderly operation of the Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible and is alone at the best bid or best offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of

¹⁸ These figures are based on the average daily quote updates and trades reported over the first seven months (January through July) of 1997.

¹⁹ *Regulation of Exchanges and Alternative Trading Systems*, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at Section IV.2.c.(iii)(A).

²⁰ *Id.*

²¹ 15 U.S.C. 78o-3(b)(6).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-69 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1957 Filed 1-25-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45322; File No. SR-Phlx-2001-115]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Volume Thresholds for the Options Specialist Shortfall Fee and Corresponding Shortfall Credit

January 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 15, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing

this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the requisite volume thresholds associated with the options specialist 10 percent deficit fee ("shortfall fee")⁴ and corresponding options specialist 10 percent shortfall credit ("shortfall credit").⁵ The Exchange also proposes to amend the definition of a Top 120 Option, clarify who is eligible to receive the shortfall credit and make other minor, technical amendments to its fee schedule. The Exchange intends to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002.⁶

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Summary of Equity Option Charges (P. 1/2)

SPECIALIST [10%] DEFICIT (*Shortfall*) FEE I

\$.35 per contract for specialists trading any Top 120 Option if [at least 10% of] *the following* total national monthly contract volume for such Top 120 Option is not effected on the PHLX: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

Summary of Equity Option Charges (P. 2/2)

[OPTIONS] SPECIALIST [10%] DEFICIT (Shortfall) FEE CREDIT

A credit of \$.35 per contract may be earned by options specialists for all contracts traded in excess of the [10%] *following* volume thresholds in eligible

the Act. Finally, the Exchange requested that the proposed fee be approved as of January 2, 2002 and that the proposed rule change be approved on an accelerated basis in order to permit the Exchange to invoice its January fees in a timely manner by the middle of February.

⁴ See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

⁵ See Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR-Phlx-2001-83).

⁶ See Amendment No. 1, *supra* note 3. The Exchange states that the shortfall fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

* * * * *

I denotes fee eligible for monthly credit of up to \$1,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

According to the Exchange, the purpose of the proposed rule change is to increase the volume thresholds related to the options specialist shortfall fee and corresponding shortfall credit in order to encourage specialists to compete for order flow in the national market. The options traded by the specialist unit, and the transactions related thereto, may be especially valuable to that specialist unit and the Exchange due to their potential profitability. Therefore, the Exchange believes that the specialist should compete for order flow in the national market, because that specialist unit is the key party responsible for marketing and receiving order flow in that particular option.

Currently, the Exchange imposes a fee of \$0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not effected on the Exchange in that

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the statutory basis of the proposed rule change to include Section 6(b)(4) of the Act. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(2) of

month.⁷ In addition, a corresponding shortfall credit of \$0.35 per contract may be earned toward previously imposed shortfall fees for each contract traded in excess of the 10 percent volume threshold during a subsequent monthly time period. Thus, the Exchange states that options specialists may apply this credit when trading in their issues falls below the 10 percent volume threshold in one month, and exceeds the threshold in a subsequent month. Such a credit may be applied against shortfall fees imposed within the preceding six months for the same option, provided that, in the month the deficit occurred, the option traded in excess of 10 million contracts nationwide that month.⁸

The proposed fee amendments would increase the requisite volume thresholds by 1 percent per quarter over each quarter of 2002. Thus, the minimum trading volume requirements for total volume in the Top 120 Options would be in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002. The related shortfall credit will also be amended to correspond with the volume thresholds described above. Therefore, in order to qualify for the shortfall credit, specialists/specialist units must have total volume in the Top 120 Options (that otherwise qualify based on the 10 million contract volume requirement) in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.

The Exchange also proposes to amend the definition of a Top 120 Option to include the top 120 most actively traded equity options in terms of the total numbers of contracts in that option that were traded nationally for a specified month based on volume reflected by OCC.⁹

⁷ The Exchange states that at present a Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC") and which was listed on the Exchange after January 1, 1997.

⁸ The Exchange states that nationwide trading figures are based on the national monthly contract volume reflected by the OCC.

⁹ The Exchange states that previously, options listed on the Phlx before January 1, 1997 were excluded from the calculation of the Top 120 Options. The Phlx intends to continue to divide by two the total volume reported by OCC, which reflects both sides of an executed transaction, thus

Currently, the rate of \$0.35 per contract is paid to the Exchange if the requisite volume for such Top 120 Option is not effected on the Phlx in that month and a shortfall credit of \$0.35 may be earned against previously imposed shortfall fees, as discussed above. These rates will remain unchanged.

In order to avoid one specialist unit trying to claim the credit for volume deficits created by another specialist unit, the Exchange also proposes to clarify that the shortfall credit is available only to the same specialist unit or one associated with or related to that specialist unit to capture, for example, affiliates, subsidiaries and corporate mergers.

The Exchange states that other procedures relating to the specialist shortfall fee and shortfall credit remain unchanged.¹⁰ Finally, the Exchange proposes to make other minor, technical amendments to the headings of the shortfall fee and credit to make them more consistent.

The Exchange believes that this proposal is necessary to continue to attract order flow to the Exchange in order to remain competitive. According to the Exchange, the proposed fee should encourage specialists to vigorously compete for order flow, which not only enhances the specialists' role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that specialists' efforts to maintain the requisite volume thresholds as outlined above should contribute to deeper, more liquid markets and tighter spreads. Thus, the Exchange believes that competition should be enhanced, and important auction market principles preserved.

In conclusion, the Exchange proposes to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002. To that end, the Exchange has requested

avoiding one trade being counted twice for purposes of determining overall volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

¹⁰ The Exchange states that, for example, the previously imposed transition period for newly listed options would remain in effect. Therefore, the requisite volume threshold of three percent for the first full calendar month and six percent for the second full calendar month of trading will remain unchanged. The Exchange fee schedule continues to apply to all equity options transactions not covered by this options specialist shortfall fee. Also, the three-month differentiation to determine whether an equity option is considered a Top 120 Option will remain in effect, i.e., September's Top 120 Options are based on June's volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71). Any excess volume (over the total volume target) may not be carried over to a future month.

accelerated approval so that the proposed rule change may become effective as of January 2, 2002. The Exchange stated that approval of the proposed rule change on an accelerated basis would ensure that all of the applicable fees for January 2002 are integrated into the Exchange's routine billing cycle thus avoiding potential member confusion.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4)¹² and 6(b)(5)¹³ of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and it is intended to promote just and equitable principles of trade and protect investors and the public interest by attracting more order flow to the Exchange, which should result in increased liquidity and tighter markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2001-115 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-1955 Filed 1-25-02; 8:45 am]

BILLING CODE 8010-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter Twenty Roster

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Invitation for Applications.

SUMMARY: Chapter Twenty of the North American Free Trade Agreement (NAFTA) establishes a mechanism for the settlement of disputes between the NAFTA Parties. A five-member panel conducts each dispute settlement proceeding. Article 2009 provides for the establishment of a roster of persons to serve on Chapter Twenty dispute settlement panels. USTR invites qualified persons to apply for consideration as a nominee to the roster of panelists.

DATES: Applications should be received no later than February 27, 2002.

ADDRESSES: USTR encourages applicants to submit their applications by email to naftapanel@ustr.gov or by fax to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, at (202) 395-3640. Alternatively, applicants may

submit their applications by first class mail to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. Submissions sent by hand delivery or messengers will not be accepted.

FOR FURTHER INFORMATION CONTACT: For information regarding the form of the application, contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, at (202) 395-3582. For other inquiries, contact Kent Shigetomi, Director for NAFTA, at (202) 395-3412 or David W. Oliver, Associate General Counsel, at (202) 395-3581.

SUPPLEMENTARY INFORMATION:

Dispute Settlement Under NAFTA Chapter Twenty

Chapter Twenty procedures apply to the avoidance or settlement of most types of disputes between the Parties arising under the NAFTA. If the NAFTA Parties cannot settle a dispute through consultations they may convene a dispute settlement panel to consider the matter.

Chapter Twenty Roster and Composition of Panels

Article 2009 of the NAFTA provides for a roster of up to 30 persons to serve on Chapter Twenty dispute settlement panels. A separate five-member panel is formed for each dispute. Panelists normally are selected from the roster (although non-roster panelists may be selected, for instance, when a dispute involves a matter for which a particular expertise not reflected on the roster would be helpful). For each case, roster members under consideration to serve as a panelist will be requested to complete a disclosure form, which is used to identify possible conflicts of interest or appearances of conflict. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of any clients the roster member may have and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter Twenty Roster

Article 2009 provides that roster members shall (a) have expertise or experience in law, international trade, other matters covered by the NAFTA or the resolution of disputes arising under trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment, (b) be independent of, and not be affiliated

with or take instructions from, any Party, and (c) comply with the code of conduct for Chapter Twenty panelists.

Procedures for Selection of Chapter Twenty Roster Members

Following the receipt of applications, USTR, in consultation with the Senate Committee on Finance and the House Committee on Ways and Means, selects persons that the United States will nominate for inclusion on the Chapter Twenty roster. Roster members are appointed by consensus of the three NAFTA Parties for terms of three years, and may be reappointed.

Remuneration and Expenses

Persons selected for service on a Chapter Twenty panel are remunerated at the rate of \$800 (Canadian) per day, plus expenses.

Applications

Qualified persons who wish to be included on the Chapter Twenty roster are invited to submit applications. Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter Twenty Roster." Applications should include the following information:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Spanish language fluency, written and spoken.
5. Current employment, including title, description of responsibilities, and name and address of employer.
6. Relevant education and professional training.
7. Post-education employment history, including the names and addresses of current and prior employers, positions held, dates of employment, and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, relevant to the subject matter of the NAFTA.
10. A list of international trade proceedings or domestic proceedings relating to international trade matters in which the applicant has provided advice to a party or otherwise participated.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States, Canada, or Mexico.
12. The names and nationalities of (a) all foreign principals for whom the applicant is currently or has previously

¹⁴ 17 CFR 200.30-3(a)(12).

been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods; and (b) all foreign entities for which the applicant (or the applicants' employer on behalf of the applicant) is currently or has previously been registered under the Lobbying Disclosure Act of 1995 (Pub.L. 104-65), and the dates of all registration periods.

13. A short statement of qualifications and availability for service on Chapter Twenty panels, including information relevant to the applicant's expertise or experience in law, international trade, other matters covered by the NAFTA, or the resolution of disputes arising under trade agreements, and willingness to make the necessary time commitments for service on panels.

14. On a separate page, the names, addresses, and telephone and fax numbers of three persons willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and expertise or experience in law, international trade, other matters covered by the NAFTA, or the resolution of disputes arising under trade agreements.

Current Roster Members and Prior Applicants

Current members of the Chapter Twenty roster who wish to remain on the roster are requested to submit updated applications. Persons who have previously applied but have not been selected may reapply.

Public Disclosure

Applications normally will be subject to public disclosure. An applicant who wishes to exempt information from public disclosure should follow the procedures set forth in 15 CFR 2003.6.

False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter Twenty roster or for appointment to Chapter Twenty panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that the Office of Management and Budget (OMB) has approved. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure

to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter Twenty roster. It is expected that the collection of information burden will be under two hours. This collection of information contains no annual reporting or record keeping burden. OMB approved this collection of information under OMB Control Number 0350-0010. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 106 of the NAFTA Implementation Act (19 U.S.C. 3316) and section 141 of the Trade Act of 1974, as amended (19 U.S.C. 2171). Provision of the information requested above is voluntary; however, failure to provide the information may preclude consideration as a candidate for the NAFTA Chapter Twenty roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." The information provided is needed, and will be used by USTR and other federal government trade policy officials concerned with NAFTA dispute settlement and by officials of the other NAFTA Parties, to select well-qualified persons for inclusion on the Chapter Twenty roster and for service on Chapter Twenty panels.

Peter B. Davidson,
General Counsel.

[FR Doc. 02-2032 Filed 1-25-02; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 11, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2002-11287.

Date Filed: January 8, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR-SASC 0084 dated 11 December 2001
Europe-South Asian Subcontinent Resolutions r1-r14
Minutes—PTC23 EUR-SASC 0085 dated 14 December 2001
Tables—PTC23 EUR-SASC FARES 0031 dated 14 December 2001
Intended effective date: 1 April 2002.

Docket Number: OST-2002-11290.

Date Filed: January 9, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PSC/Reso/112 dated 19 December 2001
Book of Finally Adopted Resolutions & RPs r1-40
Minutes—PSC/MINS/004 dated 19 December 2001
Intended effective date: 1 June 2002.

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 02-2041 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 11, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2002-11315.

Date Filed: January 11, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 2002.

Description

Joint Application of Aloha Airlines, Inc. and Hawaiian Airlines, Inc., pursuant to 49 U.S.C. 41105 and subpart B, requesting approval of the transfer of

their respective international certificate authority; and, pursuant to 49 U.S.C. 40109, requests transfer of their outstanding international exemption authority.

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 02-2042 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Burlington Northern and Santa Fe Railway Company

[Docket Number FRA-2001-10660]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain provisions of the *Railroad Operating Practices* regulations, 49 CFR part 218, regarding blue signal protection of workers. Specifically, to permit train and yard crew members, and utility employees to remove and replace batteries in two-way end-of-train telemetry devices (EOT), while the EOT is in place on the rear of the train the individual has been called to operate, without establishing any blue signal protection.

Section 218.5 defines worker as, any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning. Both §§ 218.25 and 218.27, requires blue signal protection when workers are on, under, or between rolling equipment on main track or

other than main track. Section 218.22(b) states in part: A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

BNSF contends that safety would be enhanced if the individual were allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual would be handling a battery pack that weighs less than 10 pounds, as opposed to lifting the EOT device that weighs 32-34 pounds. Also, it takes approximately five minutes to remove and then re-install the EOT device, as opposed to removing and replacing a battery pack that takes less than one minute. Coupling and uncoupling the air hose between the car and EOT also poses a risk of a striking injury from the air hose, if the air pressure has not been completely released. BNSF also believes that there is potential for reduction in train delays if this waiver is granted. In analyzing safety risks and benefits, BNSF believes that there are no adverse consequences or costs that will accrue from granting this petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2001-10660) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, DC on January 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02-2043 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 26, 2001 [66 FR 49253-49254].

DATES: Comments must be submitted on or before February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Louis Molino at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS-20), 202-366-1833, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirement.

OMB Number: 2127-0599.

Type of Request: Extension of a currently approved collection.

Abstract: 49 U.S.C. 30111, 30112, and 30117 authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data, which support their implementation. Using this authority, the agency issued a modification to FMVSS 208, Occupant Crash Protection, to require advanced air bags in accordance with the Transportation Equity Act of the 21st Century (TEA 21), which was enacted by the United States Congress in 1998.

A two-stage phase-in is included in FMVSS 208 to allow for the introduction of advanced air bags. Manufacturers must equip a certain percentage of their new vehicle fleets with advanced air bags and report their production to NHTSA. Each report will contain, in addition to the identity, addresses, etc., several numerical items of information. The information includes, but is not limited to, the following items.

Total number of vehicles manufactured for sale during the preceding production year; and total number of vehicles manufactured during the production year that are in compliance with the regulatory requirements.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 1,260

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 18, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02-2040 Filed 1-25-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34163]

Martin Marietta Materials, Inc.— Continuance in Control Exemption— Fredonia Valley Railroad, Inc.

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption to continue in control of Fredonia Valley Railroad, Inc. (FVRR) upon FVRR's becoming a rail carrier. MMM previously controlled Alamo Gulf Coast Railroad Company (AGCRC).¹ FVRR owns and operates approximately 9.65 miles of railroad line between milepost 87.60 near Fredonia and milepost 97.25 near Princeton in Caldwell County, KY; and AGCRC leases and operates a rail line from milepost 252 to milepost 257, near Beckmann Station, in Bexar County, TX.

FVRR became a carrier on or about December 17, 1998. Due to an apparent oversight, MMM did not file its verified notice of exemption with the Board until December 28, 2001. Thus, the effective date of the exemption is January 4, 2002 (7 days after the exemption was filed).²

MMM states that: (i) the railroads do not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the two railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and

¹ See *Fredonia Valley Railroad, Inc.—Acquisition and Operation Exemption—in Caldwell County, KY*, STB Finance Docket No. 33695 (STB served Jan. 6, 1999); and *Alamo Gulf Coast Railroad Company—Lease and Operation Exemption—Certain Lines of Southern Pacific Transportation Company*, Finance Docket No. 32855 (STB served Jan. 26, 1996).

² The class exemption invoked by MMM does not provide for retroactive effectiveness.

11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34163, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, N.W. 8th Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: January 22, 2002.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02-2036 Filed 1-25-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Written comments should be received on or before March 29, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Change in Accounting Method.

OMB Number: 1545-0152.

Form Number: 3115.

Abstract: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit organizations, and farms.

Estimated Number of Respondents: 6,400.

Estimated Time Per Respondent: 42 hrs., 31 min.

Estimated Total Annual Burden Hours: 272,046.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- the accuracy of the agency's estimate of the burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02-2048 Filed 1-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****FEDERAL RESERVE SYSTEM****Agency Information Collection****Activities: Discontinuance**

AGENCIES: Office of Thrift Supervision (OTS), Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Discontinuance of information collections.

SUMMARY: Notice is hereby given of the discontinuance by the Board and the OTS (collectively, the "agencies") of the following information collections, the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006), effective with the December 31, 2001 report. In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board and the OTS (collectively, the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

On October 12, 2001, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the **Federal Register** (66 FR 52186) requesting public comment on the discontinuance of the (FFIEC 001 and FFIEC 006) reports. The comment period for this notice expired on December 11, 2001. No comments were received. The agencies are now submitting requests to OMB for approval of the discontinuance of the (FFIEC 001 and FFIEC 006) reports.

DATES: Comments must be submitted on or before February 27, 2002.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the agencies. All comments should refer to the OMB control number(s) and will be shared between the agencies.

OTS: Submit any written comments concerning this notice to Information Collection Comments, Chief Counsel's

Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention: 1550-0026, FAX Number (202) 906-6518, or e-mail to infocollection.comments@ots.treas.gov. OTS will post any comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW, by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202-452-3819 or 202-452-3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP-500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 or by e-mail to ahunt@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Additional information or a copy of the collections may be requested from:

OTS: Sally W. Watts, OTS Clearance Officer, (202) 906-7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; e-mail address sally.watts@ots.treas.gov.

Board: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Users of Telecommunications Device for the Deaf (TDD) may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Discontinuation of the following reports:

Report Titles: Annual Report of Trust Assets and Annual Report of International Fiduciary Activities.

Form Numbers: FFIEC 001 and FFIEC 006.

Frequency of Response: Annual.

Affected Public: Business or other for profit.

For OTS:

OMB Number: 1550-0026.

Number of Respondents: 101 (FFIEC 001).

Estimated Average Time per Response: 4.08 burden hours (FFIEC 001).

Estimated Total Annual Burden: 412 burden hours.

For Board:

OMB Number: 7100-0031.

Number of Respondents: 22 (FFIEC 001), 0 (FFIEC 006).

Estimated Average Time per Response: 3.82 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Estimated Total Annual Burden: 84 burden hours.

General Description of Reports: This information collection (FFIEC 001 and FFIEC 006) is mandatory: 12 U.S.C. 1464 (for thrift institutions), and 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies). The data on the FFIEC 001 are publicly available with the exception of Schedule E—Fiduciary Income Statement. The FFIEC 006, collected by the Board, is given confidential treatment [5 U.S.C. 552(b)(8)]. Small businesses (i.e., small banks) are affected.

Abstract: These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes.

Current Actions: Financial institutions that exercise fiduciary powers and have fiduciary assets or accounts have reported information on their trust activities each December 31 in the Annual Report of Trust Assets (FFIEC 001). Institutions with trust operations in foreign offices also complete the Annual Report of International Fiduciary Activities (FFIEC 006). The agencies will discontinue the FFIEC 001 and the FFIEC 006 trust activities reports.

This discontinuance is prompted by the introduction of Schedule RC-T, "Fiduciary and Related Services," on the quarterly bank Consolidated Reports

of Condition and Income (Call Report) (FFIEC 031 and 041, OMB No. 7100-0036),¹ and Schedule T, "Fiduciary and Related Services" on the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002, OMB No. 7100-0032).² Schedules RC-T and T take effect as of December 31, 2001. The OTS is adding Schedule FS—Fiduciary and Related Services to the Thrift Financial Report (OMB No. 1550-0023) effective March 31, 2002.

The new trust schedule replaces the Annual Report of Trust Assets (FFIEC 001) in December 2001 for institutions that file Call Reports and the FFIEC 002 and in March 2002 for institutions that file Thrift Financial Reports. For national and state member banks, two items in the new schedule will replace the Annual Report of International Fiduciary Activities (FFIEC 006). However, federally supervised state-chartered nondeposit trust companies that are subsidiaries of holding companies do not file Call Reports or Thrift Financial Reports, but were previously required to complete the FFIEC 001. The agencies have determined that the information of supervisory interest on trust activities that these trust companies have reported on the FFIEC 001 can be monitored by other means.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared between the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

¹ *Federal Register*, March 5, 2001 (66 FR 13369).

² *Federal Register*, May 4, 2001 (66 FR 22556).

Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: January 18, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations & Legislation Division, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, January 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02-1988 Filed 1-25-02; 8:45 am]

BILLING CODE 6720-01-P and 6210-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0052]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from a claimant prior to undergoing a VA examination and to record the findings of the examining physician.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 29, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0052" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Medical Examination for Disability Evaluation, VA Form 21-2545.

OMB Control Number: 2900-0052.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21-2545 is used to gather information from a claimant prior to undergoing a VA examination and to record the findings of the examining physician.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden Per

Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 180,000.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1947 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0161]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to report medical expenses paid by claimants in connection with claims for pension and other income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 29, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0161" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Medical Expense Report, VA Form 21-8416.

OMB Control Number: 2900-0161.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's countable income for Improved Pension purposes can be reduced if the individual pays unreimbursed medical expenses. These expenses may be deducted from otherwise countable income in determining the rate of VA benefits payable. VA Form 21-8416 is used to report unreimbursed medical expenses paid by claimants.

Affected Public: Individuals or households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 96,400.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1948 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0179]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 27, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0179."

SUPPLEMENTARY INFORMATION:

Title: Application for Change of Permanent Plan (Medical) (Change to a

policy with a Lower Reserve Value), VA Form 29-1549.

OMB Control Number: 2900-0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at pages 54341-54342.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Send comments and recommendations concerning any

aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0179" in any correspondence.

Dated: January 15, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02-1949 Filed 1-25-02; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45276; File No. SR-NASD-2002-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

Correction

In notice document 02-1425 beginning on page 2936 in the issue of

Tuesday, January 22, 2002, make the following correction:

On page 2936, the heading is corrected to read as set forth above.

[FR Doc. C2-1425 Filed 1-25-02; 8:45 am]

BILLING CODE 1505-01-D

Corrections

Federal Register

Vol. 67, No. 18

Monday, January 28, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45276; File No. SR-NASD-2002-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

Correction

In notice document 02-1425 beginning on page 2936 in the issue of

Tuesday, January 22, 2002, make the following correction:

On page 2936, the heading is corrected to read as set forth above.

[FR Doc. C2-1425 Filed 1-25-02; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
January 28, 2002**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Revised Determinations of
Prudency and Proposed Designations of
Critical Habitat for Plant Species From
the Islands of Kauai and Niihau, Hawaii;
Proposed Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG71

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Kauai and Niihau, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), originally determined that designation of critical habitat was prudent, and proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. We incorporate those 76 prudency determinations here. In this proposal we have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palms, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau, and no change is made to that determination here. We also did not propose critical habitat for two species, *Melicope quadrangularis* and *Phyllostegia waimeae*, which had not been seen in the wild and for which no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis*.

In the November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of

critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). In this proposal we incorporate the prudency determinations for these nine species and propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, *Mariscus pennatiformis*. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands. We determined that critical habitat was not prudent for *Acaena exigua*, a species known only from Kauai and Maui, in the proposal published on December 18, 2000 (Maui and Kahoolawe). This species had not been seen recently in the wild and no viable genetic material was known to exist. No change is made here to the earlier prudency determination for this species.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyrifolium*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyrifolium*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

We are now proposing critical habitat for 83 of the 95 species from the islands of Kauai and Niihau. Critical habitat is not proposed for seven of the 95 species (*Achyranthes mutica*, *Hibiscus brackenridgei*, *Isodendron pyrifolium*, *Phlegmariurus mannii*, *Silene lanceolata*, *Solanum incompletum*, and *Vigna o-wahuensis*) which no longer occur on the islands of Kauai or Niihau, and for which we are unable to determine any habitat that is essential to their conservation on the islands of Kauai or Niihau. Critical habitat is not

proposed for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* for which we determined, on November 7, 2000, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau, and no change is made to that determination here. Critical habitat is not proposed for two species, *Melicope quadrangularis* and *Acaena exigua*, for which we determined, on November 7, 2000, and December 18, 2000, respectively, that critical habitat was not prudent because they had not been seen recently in the wild, and no viable genetic material of these species was known. No change is made to that determination here.

We propose critical habitat designations for 83 species within 15 critical habitat units totaling approximately 40,147 hectares (ha) (99,206 acres (ac)) on the island of Kauai, and within one critical habitat unit totaling approximately 282 ha (697 ac) on the island of Niihau.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until March 29, 2002. We will hold one public hearing on this proposed rule. The public hearing will be held from 6:00 p.m. to 8:00 p.m., Wednesday, February 13, 2002, on the island of Kauai, Hawaii. Prior to the public hearing, we will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m.

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

You may submit written comments and information to the Field Supervisor,

U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3-122, P.O. Box 50088, Honolulu, HI 96850-0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment,

during normal business hours at the above address. The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai. Additional information on this hearing can be found under "Public Hearing" found in the Background section of this rule.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section)

(telephone 808/541-3441; facsimile 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 95 plant species that, at the time of listing, were reported from the islands of Kauai and Niihau (Table 1).

TABLE 1.— SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
<i>Acaena exigua</i> (liliwai)	H				H		
<i>Achyranthes mutica</i> (No Common Name (NCN)).	H					C	
<i>Adenophorus periens</i> (pendent kiihi fern).	C	H	C	R	H	C	
<i>Alectryon macrococcus</i> (mahoe)	C	C	C		C		
<i>Alsinidendron lychnoides</i> (kuawawaenohu).	C						
<i>Alsinidendron viscosum</i> (NCN)	C						
<i>Bonamia menziesii</i> (NCN)	C	C	H	C	C	C	
<i>Brighamia insignis</i> (olulu)	C						Ni (C)
<i>Centaurium sebaeoides</i> (awiwi)	C	C	C	C	C		
<i>Chamaesyce halemanui</i> (NCN)	C						
<i>Ctenitis squamigera</i> (pauoa)	H	C	C	C	C	H	
<i>Cyanea asarifolia</i> (haha)	C						
<i>Cyanea recta</i> (haha)	C						
<i>Cyanea remyi</i> (haha)	C						
<i>Cyanea undulata</i> (NCN)	C						
<i>Cyperus trachysanthos</i> (puukaa)	C	C	H	H			Ni (C)
<i>Cyrtandra cyaneoides</i> (mapele)	C						
<i>Cyrtandra limahuliensis</i> (haiwale)	C						
<i>Delissea rhytidosperra</i> (NCN)	C						
<i>Delissea rivularis</i> (oha)	C						
<i>Delissea undulata</i> (NCN)	C				H	C	Ni (H)
<i>Diellia erecta</i> (asplenium-leaved diellia).	C	H	C	H	C	C	
<i>Diellia pallida</i> (NCN)	C						
<i>Diplazium molokaiense</i> (NCN)	H	H	H	H	C		
<i>Dubautia latifolia</i> (naenae)	C						
<i>Dubautia pauciflorula</i> (naenae)	C						
<i>Euphorbia haeleeeleana</i> (akoko)	C	C					
<i>Exocarpos luteolus</i> (heau)	C						
<i>Flueggea neowawraea</i> (mehamehame).	C	C	H		C	C	
<i>Gouania meyenii</i> (NCN)	C	C					
<i>Hedyotis cookiana</i> (awiwi)	C	H	H			H	
<i>Hedyotis st.-johnii</i> (Na Pali beach hedyotis).	C						
<i>Hesperomannia lydgatei</i> (NCN)	C						
<i>Hibiscadelphus woodii</i> (hau kuahiwi)	C						
<i>Hibiscus brackenridgeri</i> (mao hau hele)	H	C	H	C	C	C	Ka (R)
<i>Hibiscus clayi</i> (Clay's hibiscus)	C						
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i> (kokio keokeo).	C						
<i>Ischaemum byrone</i> (Hilo ischaemum)	C	H	C		C	C	
<i>Isodendron laurifolium</i> (aupaka)	C	C					
<i>Isodendron longifolium</i> (aupaka)	C	C					
<i>Isodendron pyrifolium</i> (wahine noho kula).		H	H	H	H	C	Ni (H)
<i>Kokia kauaiensis</i> (kokio)	C						
<i>Labordia lydgatei</i> (kamakahala)	C						
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> (kamakahala).	C						
<i>Lipochaeta fauriei</i> (nehe)	C						
<i>Lipochaeta micrantha</i> (nehe)	C						

TABLE 1.— SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
<i>Lipochaeta waimeaensis</i> (nehe)	C						
<i>Lobelia niihauensis</i> (NCN)	C	C					Ni (H)
<i>Lysimachia filifolia</i> (NCN)	C	C					
<i>Mariscus pennatiformis</i> (NCN)	H	H			C	H	NW (C)
<i>Melicope haupuensis</i> (alani)	C						
<i>Melicope knudsenii</i> (alani)	C				C		
<i>Melicope pallida</i> (alani)	C	C					
<i>Melicope quadrangularis</i> (alani)	H						
<i>Munroidendron racemosum</i> (NCN)	C						
<i>Myrsine linearifolia</i> (kolea)	C						
<i>Nothoestrum peltatum</i> (aiea)	C						
<i>Panicum niihauense</i> (lau ehū)	C						Ni (H)
<i>Peucedanum sandwicense</i> (makou) ...	C	C	C		C		
<i>Phlegmariurus mannii</i> (wawaeiole)	H				C	C	
<i>Phlegmariurus nutans</i> (wawaeiole)	H	C					
<i>Phyllostegia knudsenii</i> (NCN)	C						
<i>Phyllostegia waimeae</i> (NCN)	C						
<i>Phyllostegia wawrana</i> (NCN)	C						
<i>Plantago princeps</i> (laukahi kuahiwi) ...	C	C	C		C	H	
<i>Platanthera holochila</i> (NCN)	C	H	C		C		
<i>Poa mannii</i> (Mann's bluegrass)	C						
<i>Poa sandwicensis</i> (Hawaiian bluegrass).	C						
<i>Poa siphonoglossa</i> (NCN)	C						
<i>Pritchardia aylmer-robinsonii</i> (wahane)							Ni (C)
<i>Pritchardia napaliensis</i> (loulu)	C						
<i>Pritchardia viscosa</i> (loulu)	C						
<i>Pteralyxia kauaiensis</i> (kaulu)	C						
<i>Remya kauaiensis</i> (NCN)	C						
<i>Remya montgomeryi</i> (NCN)	C						
<i>Schiedea apokremnos</i> (maolioli)	C						
<i>Schiedea helleri</i> (NCN)	C						
<i>Schiedea kauaiensis</i> (NCN)	C						
<i>Schiedea membranacea</i> (NCN)	C						
<i>Schiedea nuttallii</i> (NCN)	C	C	C		R		
<i>Schiedea spergulina</i> var. <i>leiopoda</i> (NCN).	C						
<i>Schiedea spergulina</i> var. <i>spergulina</i> (NCN).	C						
<i>Schiedea stellarioides</i> (NCN)	C						
<i>Sesbania tomentosa</i> (ohai)	C	C	C	H	C	C	NW (C), Ka
<i>Silene lanceolata</i> (NCN)	H	C	C	H		C	
<i>Solanum incompletum</i> (popolo ku mai)	H		H	H	H	C	
<i>Solanum sandwicense</i> (aiakeakua, popolo).	C	H					
<i>Spermolepis hawaiiensis</i> (NCN)	C	C	C	C	C	C	
<i>Stenogyne campanulata</i> (NCN)	C						
<i>Vigna o-wahuensis</i> (NCN)		H	C	C	C	C	Ni (H), Ka
<i>Viola helenae</i> (NCN)	C						
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> (nani waialeale).	C						
<i>Wilkesia hobdyi</i> (dwarf iliau)	C						
<i>Xylosma crenatum</i> (NCN)	C						
<i>Zanthoxylum hawaiiense</i> (ae)	C		C	H	C	C	

KEY:

C (Current)—population last observed within the past 30 years.

H (Historical)—population not seen for more than 30 years.

R (Reported)—reported from undocumented observations.

Fifty-seven of these species are endemic to the islands of Kauai and/or Niihau, while 38 species are reported from one or more other islands, as well as Kauai and/or Niihau.

We originally determined that designation of critical habitat was

prudent, and proposed designation of critical habitat, for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*,

Bonamia menziesii, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea*

rivularis, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808). In this proposal we have revised the proposed designations for the 76 plants based on new information received during the comment periods. In addition, we incorporate new information, and/or address comments and new information received during the comment periods on the November 7, 2000, proposal.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these determinations here and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we also determined that critical habitat was not prudent for *Melicope quadrangularis* and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species because we believe that such designation would be beneficial to this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis* and it is hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatififormis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). No change is made to these prudency determinations for these nine species in this proposal and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatififormis* on the island of Kauai, based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

No change is made here to the prudency determination for *Acaena*

exigua, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000, and it is hereby incorporated by reference (65 FR 79192). In that proposal, we determined that critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material was known to exist.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. These four plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We determine that critical habitat is prudent for these four species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

Critical habitat for 83 of the 95 species from the islands of Kauai and Niihau is proposed at this time. Critical habitat is not proposed for seven of the 95 species (*Achyranthes mutica*, *Hibiscus brackenridgei*, *Isodendron pyriformis*, *Phlegmariurus mannii*, *Silene lanceolata*, *Solanum incompletum*, and *Vigna o-wahuensis*) which no longer occur on the islands of Kauai or Niihau, and for which we are unable to determine any habitat that is essential to their conservation on the islands of Kauai or Niihau. However, proposed critical habitat designations, or non-designations, for these species will be included in other future Hawaiian plants proposed critical habitat proposed rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS OR NON-DESIGNATIONS WILL BE MADE FOR SEVEN SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT ESSENTIAL FOR THEIR CONSERVATION ON THE ISLANDS OF KAUAI AND NIIHAU

Species	Proposed rules in which critical habitat designations will be made
<i>Achyranthes mutica</i>	Hawaii Island.
<i>Hibiscus brackenridgei</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.
<i>Isodendron pyriform</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.
<i>Phlegmariurus mannii</i>	Maui and Kahoolawe reproposal; Hawaii Island.
<i>Silene lanceolata</i>	Molokai reproposal; Lanai reproposal; Hawaii Island; Oahu.
<i>Solanum incompletum</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island.
<i>Vigna o-wahuensis</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.

Critical habitat is not proposed for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* for which we determined, on November 7, 2000, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these prudency determinations in this proposal and they are hereby incorporated by reference (65 FR 66808). Critical habitat is not proposed for two species, *Melicope quadrangularis* and *Acaena exigua*, for which we determined, on November 7, 2000, and December 18, 2000, respectively, that critical habitat was not prudent because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. No change is made to these prudency determinations here and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192).

The Islands of Kauai and Niihau

Because of its age and relative isolation, Kauai has levels of floristic diversity and endemism that are higher than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians, and more recently, converted to agricultural use or pasture (Gagne and Cuddihy 1999). Intentional or inadvertent introduction of non-native plant and animal species has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic (moist) and wet regions within Kauai's conservation district. The land that supports the habitat essential to the conservation of the 83 plant taxa is owned by various private parties, the State of Hawaii (including State parks,

forest reserves, natural area reserves, and a wilderness area), and the Federal Government. Most of the taxa included in this proposed rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development, or where inaccessibility has limited encroachment by non-native plant and animal species.

Niihau's relative isolation and severe environmental conditions have produced a few endemic species. Unfortunately, human disturbance, primarily ungulate ranching, has drastically changed the vegetation and hydrologic parameters of the island, leaving few of the native vegetation communities. Niihau has been privately owned since 1864 and access has been, and continues to be, restricted (Department of Geography 1998). Therefore, current information on plant locations and population status is extremely limited.

Discussion of Plant Taxa

Species Endemic to Kauai and Niihau

Alsinidendron lychnoides (kuawawaenohu)

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub, woody at the base, with a dense covering of fine glandular hairs throughout. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals (modified leaves), number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron viscosum*, which differs primarily in having narrower leaves, fewer capsule valves, and fewer flowers per cluster (Wagner *et al.* 1999).

This species was observed with fruits during February. No additional life

history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron lychnoides* was found on the east rim of Kalalau Valley near Keanapuka, the western and southeastern margins of the Alakai Swamp, and southwest of the Swamp near Kaholuamano on the island of Kauai. Currently, there are two populations with a total of 10 individual plants. This species is extant on State-owned land in the Alakai Swamp, the Mohihi Waialae Trail, Keanapuka and Pihea in the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (Hawaii Natural Heritage Program (HINHP) Database 2000; Geographic Decision Systems International (GDSI) 2000).

Alsinidendron lychnoides typically grows on steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* (ohia) and *Cheirodendron* spp. (olapa), or by *Metrosideros polymorpha* and *Dicranopteris linearis* (uluhe), and at elevations between 828 and 1,344 meters (m) (2,715 and 4,408 feet (ft)). Associated native plant species include *Asplenium* spp. (No Common Name (NCN)), *Astelia* spp. (painiu), *Broussaisia arguta* (kanawao), *Carex* spp. (NCN), *Cyrtandra* spp. (haiwale), *Diplazium sandwichianum* (hoio), *Elaphoglossum* spp. (ekaha), *Hedyotis terminalis* (manono), *Machaerina* spp. (uki), *Peperomia* spp. (ala ala wai nui), or *Vaccinium* spp. (ohelo) (61 FR 53070; Ken Wood, National Tropical Botanical Garden (NTBG), pers. comm., 2001).

The major threats to this species are competition from the aggressive non-native plant species *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs (*Sus scrofa*); trampling by humans; risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small

number of extant individuals (61 FR 53070).

Alsinidendron viscosum (NCN)

Alsinidendron viscosum, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub densely covered with fine glandular hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1999).

Alsinidendron viscosum was observed in flower during January, February, and April 1995. No additional life history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron viscosum* was found at Kahoulamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai. Currently, there are a total of five populations containing about 263 individuals on the island of Kauai. These populations are on State-owned land at the Halemanu Kokee Trail, Mohihi Waialae Trail, Kawaiiki Valley, Waialae Falls, and Nawaimaka Valley in the Alakai Wilderness Preserve, Kokee State Park, and the Na Pali-Kona Forest Reserve (61 FR 53070; HINHP Database 2000; GDSI 2000).

Alsinidendron viscosum is typically found at elevations between 754 and 1,224 m (2,474 and 4,016 ft), on steep slopes in *Acacia koa* (koa)—*Metrosideros polymorpha* lowland, montane mesic forest. Associated native plant species include *Alyxia oliviformis* (maile), *Asplenium polydon* (NCN), *Bidens cosmoides* (poola nui), *Bobea* spp. (ahakea), *Carex meyerii* (NCN), *Carex wahuensis* (NCN), *Coprosma* spp. (pilo), *Dryopteris unidentata* (NCN), *Dryopteris glabra* (hohiu), *Dodonaea viscosa* (aalii), *Dubautia laevigata* (naenae), *Dianella sandwicensis* (ukiuki), *Dryopteris wallichiana* (ionui), *Doodia kunthiana* (ohupukupulauii), *Gahnia* spp. (NCN), *Ilex anomala* (aiea), *Melicope* spp. (alani), *Panicum nephelophilum* (konakona), *Pteridium aquilinum* var. *decompositum* (bracken fern), *Pleomele* spp. (hala pepe), *Psychotria* spp. (kopiko), *Schiedea stellarioides* (lauhilihi), or *Vaccinium dentatum* (ohelo) (K. Wood, pers. comm., 2001).

The major threats to this species are destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the non-native plant species *Rubus argutus*, *Lantana camara* (lantana), and

Melinis minutiflora (molasses grass); and a risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small number of extant populations and individuals (61 FR 53070).

Brighamia insignis (olulu)

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This short-lived perennial species is a member of a unique endemic Hawaiian genus with only one other species, *B. rockii*, presently known only from Molokai, from which it differs by the color of its petals, its shorter calyx lobes, and its longer flower stalks (59 FR 9304; Lammers 1999).

Current reproduction is not thought to be sufficient to sustain populations, with poor seedling establishment due to competition with non-native grasses as the limiting factor. Pollination by native sphingid moths (Sphingidae family) is likely; however, pollination failure is common, due to either a lack of pollinators or a reduction in genetic variability. The flower structure appears to favor out crossing (pollination between different parent plants). Some vegetative cloning has been observed and flower and leaf size appear to be dependent on moisture availability. Seeds of this species are undoubtedly dispersed by gravity. Although they may be blown for short distances, they are not obviously adapted for wind dispersal, being ovoid to ellipsoid, smooth, and lacking any sort of wing or outgrowth (59 FR 9304; Service 1995).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau. Currently, there are a total of four populations containing a total of about 65 individuals on the islands of Kauai and Niihau. It is reported on State land (Hono O Na Pali Natural Area Reserve) and privately owned lands at Hoolulua and Waiahuakua Valleys, Haupu, and Keopaweo, and on the privately owned island of Niihau (Service 1995; GDSI 2000; HINHP Database 2000; Steve Perlman, NTBG, pers. comm., 2000).

Brighamia insignis is found at elevations between 0 and 748 m (0 and 2,453 ft) on rocky ledges with little soil or on steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 165 cm (65 in.). Associated native plant species

include *Artemisia australis*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus kokio* ssp. *saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta* (nehe), *Munroidendron racemosum*, or *Sida fallax* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this plant are browsing and habitat degradation by feral goats; human disturbance; fire; the introduced Carmine spider mite (*Tetranychus cinnabarinus*); a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of individuals; restricted distribution; reduced reproductive vigor; and competition from non-native plant species such as *Melinis minutiflora*, *Setaria gracilis*, *Sporobolus africanus* (smutgrass), *Lantana camara*, *Psidium cattleianum*, *Psidium guajava*, *Kalanchoe pinnata*, *Ageratum conyzoides* (maile hohono), or *Stachytarpheta dichotoma* (59 FR 9304).

Chamaesyce halemanui (NCN)

Chamaesyce halemanui, a short-lived perennial member of the spurge family (Euphorbiaceae), is a scandent (climbing) shrub. It is distinguished from closely related species by its decussate leaves (arranged in pairs at right angles to the next pair above or below), persistent stipules (bract- or leaf-like structures), more compact flower clusters, shorter stems on cyathia, and smaller capsules (57 FR 20580; Koutnik 1987; Koutnik and Huft 1999).

Little is known about the life history of *Chamaesyce halemanui*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Chamaesyce halemanui* was found in Kauhao and Makaha Valleys in the Na Pali-Kona Forest Reserve, Mahanaloa Valley in Kuia NAR, the Halemanu drainage in Kokee State Park, and Olokele Canyon on the island of Kauai. Currently, there are a total of six populations, containing about 143 individuals, in Kuia Valley, Poopooiki Valley, Kauhao Valley, Kaha Ridge, Awaawapuhi Valley, Waipio Falls, Halemanu, and Kaluahaulu in the Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve on State-owned land (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000; K. Wood, pers. comm., 2001).

Chamaesyce halemanui is typically found on the steep slopes of gulches in mesic *Acacia koa* forests at elevations

between 556 and 1,202 m (1,825 and 3,944 ft). Associated native plant species include *Asplenium* spp., *Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Bobea brevipes* (ahakea lau lii), *Carex meyenii*, *Carex wahuensis*, *Cheirodendron trigynum* (olapa), *Coprosma* spp., *Diospyros sandwicensis* (lama), *Dodonaea viscosa*, *Elaeocarpus bifidus* (kalia), *Hedyotis terminalis*, *Kokia kauaiensis* (kokio), *Metrosideros polymorpha*, *Melicope haupuensis* (alani), *Microlepia strigosa* (NCN), *Panicum nephelophilum*, *Pisonia* spp. (papala kepau), *Pittosporum* spp. (hoawa), *Pleomele aurea* (hala pepe), *Psychotria mariniana* (kopiko), *Psychotria greenwelliae* (kopiko), *Pouteria sandwicensis* (alaa), *Santalum freycinetianum* (iliahi), or *Styphelia tameiameia* (pukiawe) (57 FR 20580; K. Wood, pers. comm., 2001).

The major threats to this species are competition from non-native plants, such as *Lantana camara*, *Psidium cattleianum* (strawberry guava), and *Stenotaphrum secundatum* (St. Augustine grass); habitat degradation by feral pigs; restricted distribution; small population size; increased potential for extinction resulting from naturally occurring events, such as landslides or hurricanes; and depressed reproductive vigor (57 FR 20580).

Cyanea asarifolia (haha)

Cyanea asarifolia, a member of the bellflower family (Campanulaceae), is a sparingly branched shrub. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (59 FR 9304; Lammers 1999).

Little is known about the life history of *Cyanea asarifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyanea asarifolia* was known only from along the bank of Anahola Stream on Kauai. Currently, one population with approximately five individuals is reported from the headwaters of the Wailua River in central Kauai on State-owned land in the Lihue-Koloa Forest Reserve (HINHP Database 2000; GDSI 2000).

This species typically grows in pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests at elevations between 182 and 1,212 m (597 and 3,976 ft). Associated native plant species include ferns, *Bidens* spp. (kookoolau), *Dubautia plantaginea*

(naenae), *Hedyotis centranthoides* (NCN), *Hedyotis elatior* (awiiwi), *Lysimachia filifolia* (kolokolo kuahiwi), *Machaerina angustifolia* (uki), *Metrosideros polymorpha*, or *Panicum lineale* (NCN) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are a risk of extinction from naturally occurring events, such as hurricanes and rock slides, and/or reduced reproductive vigor due to the small number of existing individuals; predation by introduced slugs and rodents (rats (*Rattus rattus*) and mice (*Mus musculus*)); and habitat degradation by feral pigs (59 FR 9304).

Cyanea recta (haha)

Cyanea recta, a member of the bellflower family (Campanulaceae), is an unbranched shrub with densely hairy flowers. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by the following collective characteristics: horizontal or ascending inflorescence; narrowly elliptic leaves 12 to 28 centimeters (cm) (4.7 to 11 inches (in.)) long, flat leaf margins; and purple berries (Lammers 1990).

Little is known about the life history of *Cyanea recta*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyanea recta* was found in upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Power line Trail, and the Lehua Makano- Alakai area on the island of Kauai. Currently, there is a total of seven populations, with approximately 609 individuals, on State and private lands in the following areas: Waioli Valley, the left and right branches of Wainiha Valley, Makaleha Mountains, and Puu Eu, including areas in Halelea Forest Reserve, Kealia Forest Reserve, and the Lihue-Koloa Forest Reserve (GDSI 2000; HINHP Database 2000).

Cyanea recta grows in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, usually in gulches or on slopes, and typically at elevations between 234 and 1,406 m (768 and 4,613 ft). Associated native plant species include *Dicranopteris linearis*, *Psychotria* spp., *Antidesma* spp. (hame), *Cheirodendron platyphyllum* (lapalapa), *Cibotium* spp. (hapuu), or *Diplazium* spp. (NCN) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are bark removal and other damage by rats;

habitat degradation by feral pigs; browsing by goats; unidentified slugs that feed on the stems; and competition with the non-native plant species *Blechnum occidentale* (blechnum fern), *Lantana camara*, *Rubus rosifolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides* (NCN), *Deparia petersenii* (NCN), *Erechtites valerianifolia* (fireweed), *Melastoma candidum* (NCN), *Paspalum conjugatum* (Hilo grass), *Sacciolepis indica* (Glenwood grass), or *Youngia japonica* (Oriental hawkbeard) (61 FR 53070).

Cyanea remyi (haha)

Cyanea remyi, a member of the bellflower family (Campanulaceae), is a shrub with generally unbranched, unarmed (lacking prickles) stems which are hairy toward the base. This short-lived perennial species is distinguished from others in the genus that grow on Kauai by its shrubby habit, relatively slender, unarmed stems, smooth or minutely toothed leaves, densely hairy flowers, the shape of the calyx (outer whorl of flower consisting sepals) lobes, length of the calyx and corolla (part of flower consisting of separate or fused petals), and length of the corolla lobe relative to the floral tube (Lammers 1999).

Little is known about the life history of *Cyanea remyi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Currently, there are seven known populations with approximately 374 plants among them on the island of Kauai. *Cyanea remyi* is reported from Pali Eleele, Waioli Valley, Makaleha, Blue Hole, Kawaikini, and Kapalaoa on privately and State-owned lands, including the Halelea and Lihue-Koloa Forest Reserves (Lammers and Lorence 1993; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Cyanea remyi is usually found in tight drainages and wet stream banks in lowland wet forest or shrubland at elevations between 215 and 1,167 m (704 and 3,829 ft). Associated native plant species include various "finger" (ferns in the Grammitaceae family) and "filmy" (ferns in the Hymenophyllaceae family) fern species, *Adenophorus* spp. (pendant fern), *Antidesma* spp., *Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum*, *Eragrostis grandis* (kawelu), *Bidens* spp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea* (ieie), *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis* (olomea), *Pipturus* spp. (mamaki),

Psychotria hexandra (kopiko), *Syzygium sandwicensis* (ohia ha), *Thelypteris* spp. (palapalaia), *Touchardia* spp. (olona), or *Ureia glabra* (opuue) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the non-native plant species *Erechtites valerianifolia*, *Paspalum conjugatum*, *Psidium cattleianum*, *Rubus rosifolius*, or *Melastoma candidum*; habitat degradation by feral pigs; browsing by feral goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining populations (61 FR 53070).

Cyanea undulata (NCN)

Cyanea undulata is an unbranched (or the stem is occasionally forked) shrub or undershrub with fine rust-colored hairs covering the lower surface of the leaves (Lammers 1999).

Native members of the Campanulaceae (bellflower) family, including the genus *Cyanea*, are generally believed to have adapted to pollination by native nectar-eating passerine birds, such as the Hawaiian "honeycreepers." The long, tubular, slightly curved flowers of *C. undulata* fit this model, but field observations are lacking. The fleshy orange fruits of this species are adapted for bird dispersal like other species of *Cyanea*. Although recognized as a short-lived perennial species, specific details of the life history of this species, such as growth rates, age plants begin to flower, and longevity of plants, are unknown (Lorence and Flynn 1991; Service 1994).

Historically, *Cyanea undulata* was known only from the Wahiawa Bog area on Kauai. Currently, one population with a total of 28 plants is reported on privately owned land along the bank of a tributary of the Wahiawa Stream in the Wahiawa Drainage (HINHP Database 2000; GDSI 2000).

Cyanea undulata typically grows in tight drainages and wet stream banks in *Metrosideros polymorpha* dry to montane wet forest or shrubland at elevations between 145 and 1,066 m (476 and 3,497 ft). Associated native species include various grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Diplazium sandwichianum*, *Dryopteris glabra*, *Eragrostis grandis*, *Bidens* spp., *Freyinetia arborea*, *Machaerina angustifolia*, *Mariscus* spp. (NCN), *Melicope feddei* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria mariniana*, *Psychotria hexandra*,

Sadleria pallida (amau), *Sadleria squarrosa* (amau), *Smilax melastomifolia* (pioi), *Sphenomeris chinensis* (palaa), *Syzygium sandwicensis*, or *Thelypteris* spp. (Service 1994; K. Wood, pers. comm., 2001).

The primary threats to this species include competition with the non-native plant species *Psidium cattleianum*, *Melastoma candidum*, *Rhodomyrtus tomentosa* (rose myrtle), *Clidemia hirta*, *Melaleuca quinquenervia* (paperbark tree), *Stachytarpheta dichotoma* (owi), *Rubus rosifolius*, *Elephantopus mollis* (NCN), *Erechtites valerianifolia*, *Youngia japonica*, *Pluchea carolinensis* (sourbush), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum*, *Paspalum urvillei* (Vasey grass), *Sacciolepis indica*, *Setaria gracilis* (yellow foxtail), *Deparia petersenii*, or *Cyathea cooperi* (Australian tree fern); trampling by feral pigs; landslides; seed predation by rats; herbivory by introduced slugs; loss of pollinators; hurricanes; and decreased reproductive vigor, restricted distribution, and extinction due to unforseen circumstances because of small population size (56 FR 47695; Service 1994).

Cyrtandra cyaneoides (mapele)

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, usually unbranched shrub with opposite toothed leaves which have impressed veins on the lower surface that are sparsely covered with long hairs. This short-lived perennial species differs from others of the genus that grow on Kauai by being a succulent, erect or ascending shrub and having a bilaterally symmetrical calyx that is spindle-shaped in bud and falls off after flowering, leaves that are 41 to 56 cm (16 to 22 in.) long and 23 to 35 cm (9 to 14 in.) wide and have a wrinkled surface, and berries with shaggy hairs (Wagner *et al.* 1999).

Little is known about the life history of *Cyrtandra cyaneoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyrtandra cyaneoides* was known to occur only along the trail to Waiialea Valley on Kauai until recently discovered in other areas. It is currently known from five populations, containing about 404 individuals, on private and State lands (including Halelea Forest Reserve and Alakai Wilderness Preserve) at Pihea, Waioli Valley, Lumahai, the left branch of

Wainiha Valley, and Makaleha (61 FR 53070; GDSI 2000; HINHP Database 2000).

Cyrtandra cyaneoides typically grows on talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*, *Cheirodendron* spp., and *Dicranopteris linearis* at elevations between 157 and 1,406 m (514 and 4,614 ft). Associated native species include *Bidens* spp., *Boehmeria grandis* (akolea), *Cyanea* spp. (haha), *Cyrtandra longifolia* (haiwale), *Cyrtandra kauaiensis* (haiwale), *Cyrtandra limahuliensis* (haiwale), *Coprosma* spp., *Diplazium sandwichianum*, *Freyinetia arborea*, *Gunnera* spp. (ape ape), *Hedyotis terminalis*, *Hedyotis tryblium* (NCN), *Machaerina* spp., *Melicope clusiifolia* (kolokolo mokihana), *Melicope puberula* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria* spp., *Pritchardia* spp. (loulou), or *Stenogyne purpurea*. (NCN) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with non-native plant species such as *Paspalum conjugatum*, *Rubus rosifolius*, *Deparia petersenii*, and *Drymaria cordata* (pipili); predation of seeds by rats; reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides and hurricanes, due to the small number of populations; and habitat degradation by feral pigs (61 FR 53070).

Cyrtandra limahuliensis (haiwale)

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub with moderately or densely hairy leaves. The following combination of characteristics distinguishes this short-lived perennial species from others of the genus: the leaves are usually hairy (especially on lower surfaces), the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity, and the flowers are borne singly (Wagner *et al.* 1990).

Little is known about the life history of *Cyrtandra limahuliensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyrtandra limahuliensis* was known from three locations on Kauai: Wainiha Valley, Lumahai Valley, and near Kilauea River until recently discovered in additional areas. Currently, a total of 11 populations,

containing approximately 822 plants, are reported on private and State lands (including the Halelea Forest Reserve, Kealia Forest Reserve, and the Lihue-Koloa Forest Reserve) at Limahuli Falls, Lumahai Valley, Waipa Valley, Waioli Valley, Kekoiiki, Makaleha, the right fork of Wainiha Valley, Kualapa and Blue Hole, Kepalaoa, and Puu Kolo. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 2000; GDSI 2000).

This species typically grows along stream banks in lowland wet forests at elevations between 208 and 1,594 m (681 and 5,228 ft). Associated native plant species include *Antidesma* spp., *Boehmeria grandis*, *Bidens* spp., *Charpentiera* spp. (papala), *Cibotium glaucum* (hapuu), *Cyanea* spp., *Cyrtandra kealiae* (haiwale), *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp. (naeanae), *Eugenia* spp. (nioi), *Gunnera kauaiensis* (ape ape), *Hedyotis terminalis*, *Hibiscus waimeae* (kokio keokeo), *Metrosideros polymorpha*, *Perrottetia sandwicensis*, *Pisonia* spp., *Pipturus* spp., *Pritchardia* spp., *Psychotria* spp., *Touchardia latifolia* (olona), or *Urera glabra* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are competition from non-native plant species (*Psidium cattleianum*, *Paspalum conjugatum*, *Melastoma candidum*, *Psidium guajava* (common guava), *Hedychium flavescens* (yellow ginger), *Rubus rosifolius*, *Youngia japonica*, *Erechtites valerianifolia*, *Blechnum occidentale*, or *Clidemia hirta*); habitat degradation by feral pigs; natural landslides; and hurricanes (59 FR 9304).

Delissea rhytidosperma (NCN)

Delissea rhytidosperma, a member of the bellflower family (Campanulaceae), is a branched shrub with lance-shaped or elliptic toothed leaves. This short-lived perennial species differs from other species of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (part of stamen that produces pollen and usually is borne on a stalk) (Lammers 1999).

Little is known about the life history of *Delissea rhytidosperma*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Delissea rhytidosperma* was known from as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as Haupu Range, between the elevations of

122 and 915 m (400 and 3,000 ft) on the island of Kauai. Currently, three populations, on private and State lands (including Kuia Natural Area Reserve), with a total of 19 individuals, are reported from Kuia Valley, Puhakukane, and the Haupu range (HINHP Database 2000; GDSI 2000).

This species generally grows in well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha*-*Acacia koa* forests at elevations between 167 and 895 m (547 and 2,935 ft). Associated native plant species include grammitid ferns, *Adenophorus oligadenus* (pendant fern), *Cyanea* spp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Euphorbia haeleleana* (akoko), *Hedyotis* spp. (NCN), *Microlepia strigosa*, *Nestegis sandwicensis* (olopua), *Psychotria hobbyi* (kopiko), *Pisonia* spp., *Pteralyxia* spp. (kaulu), or *Styphelia tameiameia* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are predation and/or habitat degradation by mule or black-tailed deer (*Odocoileus hemionus columbianus*), feral pigs, and goats; herbivory by rats and introduced slugs; fire; and competition with the non-native plants *Lantana camara*, *Passiflora ligularis* (sweet granadilla), *Cordyline fruticosa* (ti), and *Passiflora mollissima* (banana poka); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Service 1995).

Delissea rivularis (oha)

Delissea rivularis, a member of the bellflower family (Campanulaceae), is a shrub, unbranched or branched near the base, with hairy stems and leaves arranged in a rosette at the tips of the stems. This short-lived perennial species is distinguished from others of the genus by the color, length, and curvature of the corolla, shape of the leaves, and presence of hairs on the stems, leaves, flower clusters, and corolla (Lammers 1999).

Little is known about the life history of *Delissea rivularis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Delissea rivularis* was found at Waiakealoha Waterfall, Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (61 FR 53070). Currently, this species is known from two populations with a

total of 40 individuals. The populations are reported from Moaalele and Hanakapiai on State land within the Hono o Na Pali Natural Area Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Delissea rivularis is found on steep slopes near streams in *Metrosideros polymorpha*-*Cheirodendron trigynum* montane wet or mesic forest at elevations between 722 and 1,306 m (2,370 and 4,286 ft). Associated native plant species include *Boehmeria grandis*, *Broussaisia arguta*, *Carex* spp., *Coprosma* spp., *Dubautia knudsenii* (naeanae), *Diplazium sandwichianum*, *Hedyotis foggiana* (NCN), *Ilex anomala*, *Machaerina angustifolia*, *Melicope clusiifolia*, *Melicope anisata* (mokihana), *Pipturus* spp., *Psychotria hexandra*, or *Sadleria* spp. (amau) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the encroaching non-native plant *Rubus argutus*; habitat destruction by feral pigs; predation by rats; and reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining individuals (61 FR 53070; Service 1998a).

Diellia pallida (NCN)

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a plant that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones, and reproduces by spores, the minute, reproductive dispersal unit of ferns and fern allies. This short-lived perennial species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (a group or cluster of spore cases) (Wagner 1952, 1987).

Little is known about the life history of *Diellia pallida*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Diellia pallida was known historically from Halemanu on the island of Kauai. More recently additional populations have been found and currently, there is a total of four populations with 20 to 25 individuals in Mahanaloa and Kuia Valleys, Makaha Valley, Waimea Canyon, and Koaie Canyon, all on State-owned land including Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (59 FR 9304; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species grows on bare granular soil with dry to mesophytic leaf litter with pH of 6.9 to 7.9. on steep, talus slopes in lowland mesic forests at elevations between 445 and 1,027 m (1,460 and 3,371 ft). Associated native plant species include *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Antidesma platyphyllum*, *Asplenium spp.*, *Carex meyenii*, *Diospyros hillebrandii* (lama), *Diospyros sandwicensis*, *Doodia kunthiana*, *Hedyotis knudsenii* (NCN), *Metrosideros polymorpha*, *Microlepia strigosa*, *Myrsine lanaiensis* (kolea), *Nestegis sandwicensis*, *Psychotria mariniana*, *Psydrax odoratum* (alahee), *Pteralyxia kauaiensis* (kauulu), *Rauvolfia sandwicensis* (hao), *Styphelia tameiameia*, *Tetraplasandra kauaiensis* (ohe ohe), *Wilkesia gymnoxiphium* (iliau), or *Zanthoxylum dipetalum* (ae) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species include competition with the non-native plants *Lantana camara*, *Melia azedarach* (Chinaberry), *Stenotaphrum secundatum*, *Oplismenus hirtellus*, *Aleurites moluccana* (kukui) or *Cordyline fruticosa*; predation and habitat degradation by feral goats, pigs, and deer; fire; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Dubautia latifolia (naenae)

Dubautia latifolia, a member of the aster family (Asteraceae), is a diffusely branched, woody perennial vine with leaves which are conspicuously net-veined, with the smaller veins outlining nearly square areas. A vining habit, distinct petioles (stalks), and broad leaves with conspicuous net veins outlining squarish areas separate this from closely related species (Carr 1982b, 1985, 1999a).

Individual plants of this species do not appear to be able to fertilize themselves. Since at least some individuals of *Dubautia latifolia* require cross-pollination, the wide spacing of individual plants (e.g., each 0.5 kilometer (km) (0.3 mile (mi)) apart) may pose a threat to the reproductive potential of the species. The very low seed set noted in plants in the wild indicates a reproductive problem, possibly asynchronous flowering or lack of pollinators. Seedling establishment and survival to juvenile stage is also rare. *Dubautia latifolia* experiences seasonal vegetative decline during the spring and summer, often losing most of

its leaves. New growth and flowering occur in the fall, with fruits developing in November. Pollinators and seed dispersal agents are unknown (Carr 1982b; Service 1995).

Historically, *Dubautia latifolia* was found in the Makaha, Awaawapuhi, Waialae, Kawaiula, and Kauhao Valleys of the Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia Natural Area Reserve; Halemanu in Kokee State Park; along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua Ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve; and at Kaholuamanu on the island of Kauai. Currently, there are a total of nine populations containing approximately 80 individuals on State-owned land in Kauhao Valley, Makaha Valley headwaters, Kuia Valley, Kawaiula Valley, Kumuwela Ridge, Awaawapuhi Valley, Waiakoali picnic area, Alakai picnic area, Honopu Trail, Nualolo Trail, Waieke Swamp, Noe Stream, Kumuwela Ridge, Mohihi Ditch, Mohihi Waialae Trail, and Kaluahaulu Ridge in the Alakai Wilderness Preserve, Kokee State Park, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and the Waimea Canyon State Park (Carr 1982b; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species typically grows on gentle to steep slopes in well drained soil and in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations between 544 and 1,277 m (1,786 and 4,189 ft). Commonly associated native plant species are *Alphitonia ponderosa*, *Antidesma spp.*, *Bobea spp.*, *Claoxylon sandwicense* (poola), *Coprosma waimeae* (olena), *Cyrtandra spp.*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *Nestegis sandwicensis*, *Pleomele spp.*, *Pouteria sandwicensis*, *Psychotria mariniana*, *Scaevola spp.* (naupaka), or *Xylosma spp.* (maua) (59 FR 9304; K. Wood, pers. comm., 2001).

The threats to this species include competition from the non-native plants *Passiflora mollissima*, *Rubus argutus*, *Lonicera japonica* (Japanese honeysuckle), *Acacia mearnsii* (black wattle), *Hedychium spp.* (ginger), *Erigeron karvinskianus* (daisy fleabane), or *Psidium cattleianum*; damage from trampling and grazing by feral pigs and deer; vehicle traffic and road maintenance; seasonal dieback; small number of extant individuals; and restricted distribution (59 FR 9304).

Dubautia pauciflora (naenae)

Dubautia pauciflora, a member of the aster family (Asteraceae), is a somewhat sprawling shrub or erect small tree with narrowly lance-shaped or elliptic leaves clustered toward the ends of the stems. The tiny, two- to four-flowered heads distinguish this short-lived perennial species from its relatives (Carr 1985, 1999a).

Few details are known about the life history of any *Dubautia* species under natural conditions. Certain species produce viable seed when self-pollinated (self-fertile), although others fail to do so (self-infertile). Low pollinator numbers resulting in reduced cross-pollination and consequently low numbers of viable seeds could explain the small population sizes. Because of their structure and small size, flowers of *D. pauciflora* are presumably pollinated by small generalist insects, although field observations are lacking. The bristle-like pappus (tuft of appendages that crowns the ovary or fruit) probably represents an adaptation for wind dispersal. Very little is known about the life cycle of this species, including growth rates, longevity of the plants, and number of years the plants remain reproductive (56 FR 47695; Carr 1985; Service 1994).

Historically and currently, this species is found only on State (including the Lihue-Koloa Forest Reserve) and privately owned lands in the Wahiawa Drainage on Kauai. There are two populations containing 42 individual plants (HINHP Database 2000; GDSI 2000).

These populations are found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest within stream drainages at elevations between 564 and 1,093 m (1,849 and 3,587 ft). Associated native plant species include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cheirodendron spp.*, *Dubautia laxa* (naenae pua melemele), *Embelia pacifica* (kilioe), *Hesperomannia lydgatei*, *Labordia waialealae* (kamakahala lau lii), *Melicope spp.*, *Nothoperanema rubiginosa* (NCN), *Pritchardia spp.*, *Psychotria spp.*, *Sadleria spp.*, *Scaevola mollis* (naupaka kuahiwi), *Syzygium sandwicensis*, or *Tetraplasandra spp.* (ohe ohe) (K. Wood, pers. comm., 2001).

The threats to this plant include direct competition with the non-native plant species such as *Psidium cattleianum* or *Melastoma candidum*, and potential threats from *Rhodomyrtus tomentosa*, *Clidemia hirta*, *Melaleuca quinquenervia*, *Stachytarpheta dichotoma*, *Rubus rosifolius*, *Elephantopus mollis*, *Erechtites*

valerianifolia, *Youngia japonica*, *Pluchea carolinensis*, *Oplismenus hirtellus*, *Paspalum conjugatum*, *Paspalum urvillei*, *Sacciolepis indica*, *Setaria gracilis*, *Deparia petersenii*, or *Cyathea cooperi*; trampling by feral pigs; landslides and erosion; restricted distribution; and hurricanes (56 FR 47695; Service 1994).

Exocarpos luteolus (heau)

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub with knobby branches and leaves which are either minute scales or typical leaves. This short-lived perennial species is distinguished from others of the genus by its generally larger fruit with four indentations and by the color of the receptacle and fruit (Wagner *et al.* 1999).

Little is known about the life history of *Exocarpos luteolus*. This species tends to grow at habitat edges where there is adequate light and is likely to be semi-parasitic. Flowering cycles, pollination vectors, seed dispersal agents, longevity, other specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Exocarpos luteolus* was known from three general locations on Kauai: Wahiawa Bog, Kaholuamanu, and Kumuwela Ridge. Currently, there is a total of eight populations containing approximately 75 individual plants. This species has a scattered distribution on State (Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands and is reported from Pohakua, the right fork of Kalalau Valley, the left fork of Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haelele Valley (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species is found at elevations between 361 and 1,465 m (1,183 and 4,808 ft) in wet places bordering swamps or open bogs; open, dry ridges in lowland or montane mesic *Acacia koa*-*Metrosideros polymorpha* dominated forest communities with *Dicranopteris linearis*. Associated native plant species include *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Boba brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata*, *Dianella sandwicensis*, *Poa sandwicensis* (Hawaiian bluegrass), *Schiedea stellarioides*, *Peperomia*

macraeana (ala ala wai nui), *Claoxylon sandwicense*, *Santalum freycinetianum*, or *Styphelia tameiameia* (59 FR 9304; Service 1995; K. Wood, pers. comm., 2001).

The major threats to this species are feral goats and pigs; competition with the non-native plants *Erigeron karvinskianus*, *Acacia mearnsii*, *Corynocarpus laevigata* (karakanut), *Myrica faya* (firetree), or *Rubus argutus*; seed predation by rats; fire; and erosion (59 FR 9304; Service 1995).

Hedyotis st.-johnii (Na Pali beach hedyotis)

Hedyotis st.-johnii, a member of the coffee family (Rubiaceae), is a succulent perennial herb with slightly woody, trailing, quadrangular stems and fleshy leaves clustered towards the base of the stem. This species is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis st.-johnii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Currently, there are a total of four populations, containing approximately 296 individuals, on State-owned land in Nualolo Valley, Nualolo Kai, Kaahole Valley, Keawanui, Kawaiula Valley, Milolii Spring, Makaha Point, Polihale Spring, Kalepa Valley, and Nakeikionaiwi Caves within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (HINHP Database 2000; GDSI 2000).

This plant grows in the crevices of north-facing, near-vertical coastal cliff faces in sparse dry coastal shrubland at elevations between 0 and 187 m (0 and 613 ft). Associated native plant species include *Artemisia australis* (ahinahina), *Bidens* spp., *Capparis sandwichiana* (maia pilo), *Chamaesyce celastroides* (akoko), *Eragrostis variabilis* (kawelu), *Heteropogon contortus* (pili grass), *Lipochaeta connata* (nehe), *Lycium sandwicense* (ohelo kai), *Myoporum sandwicense* (naio), *Nototrichium sandwicense* (kulu), or *Schiedea apokremnos* (maolioli) (56 FR 49639, K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral goats; competition from non-native plant species, especially *Pluchea carolinensis*; landslides; fire; trampling and grazing by cattle (*Bos taurus*); and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased

reproductive vigor because of the small population sizes and restricted distribution (56 FR 49639; Service 1995).

Hesperomannia lydgatei (NCN)

Hesperomannia lydgatei, a member of the aster family (Asteraceae) is a sparsely branched, small, long-lived perennial tree 2 to 4 m (6.5 to 13 ft) tall with alternately arranged, lance-shaped, or elliptic leaves that are 10 to 30 cm (4 to 12 in.) long and 3.5 to 9 cm (1.4 to 3.5 in.) wide, broader above the middle and paler beneath. The flower heads are in groups of four or five on slender stems and are clustered at the ends of branches and pendant when mature. The flower heads consist of four to eight circles of overlapping bracts, the outer are purplish or brownish and the inner are silver, that surround the slender, tubular yellow florets, which are 2.2 to 2.5 cm (0.9 to 1 in.) long (Wagner *et al.* 1999).

Almost no mature fruits develop, and it is possible that it is self-infertile and fails to set seed unless cross-pollinated with other individuals. The flower heads with long, tubular yellow florets suggest pollination by long-tongued insects such as moths or butterflies, although field observation is required to confirm this. Absence of the appropriate pollinator(s) could be responsible for the observed lack of viable seeds. The plume-like hairs crowning the fruit strongly suggests dispersal by wind, as in many members of the aster family. This species grows almost exclusively along streams, however, so dispersal by water currents is also likely. Specific details regarding growth rates, age trees begin flowering in the wild, length of time they remain reproductive, and longevity of the plants are unknown (Service 1994).

Historically, *Hesperomannia lydgatei* was found in the Wahiawa Mountains of Kauai. Currently, this species is known from State (Halelea Forest Reserve) and privately owned lands in the Pali Elele, Waiole Valley, Wahiawa and Kapalaoa areas. There are three populations containing a total of 295 individual plants (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Hesperomannia lydgatei is found at elevations between 405 and 1,570 m (1,329 and 5,151 ft) along stream banks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest. Associated native plant species include *Adenophorus periens*, *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii*, *Dubautia*

laxa, *Dubautia pauciflora*, *Dubautia raillardoides* (naenae), *Elaphoglossum* spp., *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra*, or *Syzygium sandwicensis* (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to the species include non-native plants, feral goats, rats, landslides, and erosion (Service 1994).

Hibiscadelphus woodii (hau kuahiwi)

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched, long-lived perennial tree with a rounded crown.

Hibiscadelphus woodii differs from the other Kauai species by differences in leaf surface and characteristics of the whirled leaves or bract and flower color (Lorence and Wagner 1995; Bates 1999).

Flowering material has been collected in March, April, and September, but no fruit set has been observed in spite of efforts to manually outcross and bag the flowers. A museum specimen of a liquid-preserved flower has been identified that contains three adult Nitidulidae (sap) beetles, probably an endemic species. The damage by these larvae may be responsible for the observed lack of fruit set in *Hibiscadelphus woodii* (Lorence and Wagner 1995; Service 1998a). No additional life history information for this species is currently known.

Hibiscadelphus woodii has been found only at the site of its original discovery on State-owned land in left branch of the Kalalau Valley, within the Na Pali Coast State Park on Kauai; only two trees of this species are currently known (GDSI 2000; HINHP Database 2000; K. Wood, in litt. 2001).

Hibiscadelphus woodii is found at elevations between 219 and 1,197 m (717 and 3,926 ft) on basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. These forests contain one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis* (kookoolau), *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis* (akoko), *Dubautia* spp., *Hedyotis* spp., *Lepidium serra* (anaunau), *Lipochaeta* spp. (nehe), *Lobelia niihauensis* (NCN), *Lysimachia glutinosa* (kolokolo kuahiwi), *Melicope pallida* (alani), *Myrsine* spp. (kolea), *Nototrichium* spp. (kului), *Panicum lineale*, *Poa mannii* (NCN), or *Stenogyne campanulata* (NCN) (Lorence and Wagner 1995; 61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Hibiscadelphus woodii* are habitat degradation by feral goats and pigs; competition from the non-native plant species *Erigeron karvinskianus*; nectar robbing by Japanese white-eye (*Zosterops japonicus*), an introduced bird; and a risk of extinction from naturally occurring events (e.g., rock slides), and reduced reproductive vigor due to the small number of existing individuals at the only known site (61 FR 53070; Lorence and Wagner 1995).

Hibiscus clayi (Clay's hibiscus)

Hibiscus clayi, a member of the mallow family (Malvaceae), is a long-lived perennial shrub or small tree. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule and by the margins of the leaves (Bates 1999).

Little is known about the life history of *Hibiscus clayi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hibiscus clayi* was known from scattered locations on Kauai: the Kokee region on the western side of the island, Moloaa Valley to the north, Nounou Mountain in Wailua to the east, and as far south as Haiku near Haliu Stream. At this time, only the population on State land in the Nounou Mountains, with a total of six trees, is known to be extant (HINHP Database 2000; GDSI 2000).

Hibiscus clayi generally grows on slopes at elevations between 9 and 380 m (29 and 1,245 ft) in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest with *Artemisia australis*, *Bidens* spp., *Cyanea hardyi* (haha), *Hedyotis acuminata* (au), *Gahnia* spp., *Munroidendron racemosum* (NCN), *Pandanus tectorius* (hala), *Panicum tenuifolium* (mountain pili), *Pleomele aurea*, *Pipturus* spp., *Psychotria* spp., or *Psydrax odoratum* (59 FR 9304; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral pigs; competition from non-native plant species, *Psidium cattleianum* and *Araucaria columnaris* (Norfolk Island pine); trampling by humans; and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population sizes and restricted distribution (59 FR 9304; HINHP Database 2000).

Hibiscus waimeae ssp. *hannerae* (kokio keokeo)

Hibiscus waimeae ssp. *hannerae*, a member of the mallow family (Malvaceae), is a gray-barked tree with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The long-lived perennial species is distinguished from others of the genus by the position of the anthers along the staminal column, length of the staminal column relative to the petals, color of the petals, and length of the calyx. Two subspecies, ssp. *hannerae* and ssp. *waimeae*, both endemic to Kauai, are recognized. Subspecies *hannerae* is distinguishable from ssp. *waimeae* by its larger leaves and smaller flowers (Bates 1999).

Little is known about the life history of *Hibiscus waimeae* ssp. *hannerae*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Hibiscus waimeae* ssp. *hannerae* was known from Kalihiwai and adjacent Valleys, Limahuli Valley, and Hanakapiai Valley. This subspecies is no longer extant at Kalihiwai. Currently, there are three populations containing 27 individuals on State (Na Pali Coast State Park) and privately owned lands in Hanakapiai Valley, Limahuli Valley, and Pohakuao (Bates 1999; HINHP Database 2000; GDSI 2000).

Hibiscus waimeae ssp. *hannerae* grows at elevations between 174 and 1,154 m (570 and 3,787 ft). It is found in *Metrosideros polymorpha*-*Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* (papala) lowland wet or mesic forest with *Antidesma* spp., *Psychotria* spp., *Pipturus* spp., *Bidens* spp., *Bobea* spp., *Sadleria* spp., *Cyrtandra* spp., *Cyanea* spp., *Cibotium* spp., *Perrottetia sandwicensis*, or *Syzygium sandwicensis* (Service 1998a; Bates 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs, competition with non-native plant species, and a risk of extinction from naturally occurring events (e.g., landscapes and hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (61 FR 53070; HINHP Database 2000).

Kokia kauaiensis (kokio)

Kokia kauaiensis, a member of the mallow family (Malvaceae), is a small tree. This long-lived perennial species is distinguished from others of this endemic Hawaiian genus by the length

of the bracts surrounding the flower head, number of lobes and the width of the leaves, the length of the petals, and the length of the hairs on the seeds (Bates 1999).

Little is known about the life history of *Kokia kauaiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Kokia kauaiensis* was found at seven scattered populations on northwestern Kauai. Currently, there are a total of five populations with 166 individuals, found in Pohakuao, the left branch of Kalalau Valley, Paaiki Valley, Kuia Valley, Koaie Canyon, Kipalau Valley, and Kawaiiki Valley, all on State-owned land within Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Kokia kauaiensis typically grows in diverse mesic forest at elevations between 215 and 1,037 m (707 and 3,402 ft). Associated native plant species include *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides*, *Claoxylon sandwicense*, *Dicranopteris linearis*, *Diellia pallida*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Flueggea neowawraea*, *Hibiscus* spp. (aloalo), *Hedyotis* spp., *Isodendron laurifolium* (aupaka), *Lipochaeta fauriei* (nehe), *Melicope* spp., *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Nototrichium* spp., *Pisonia* spp., *Pleomele aurea*, *Pouteria sandwicensis*, *Psychodora odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium* (iliahi), *Streblus pendulinus* (aiai), *Syzygium sandwicensis*, *Tetraplasandra* spp., or *Xylosma* spp. (Service 1998a; Bates 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with and habitat degradation by invasive non-native plant species, substrate loss from erosion, habitat degradation and browsing by feral goats and deer, and seed predation by rats are the major threats affecting the survival of *Kokia kauaiensis* (Wood and Perlman 1993; Service 1998a; HINHP Database 2000).

Labordia lydgatei (kamakahala)

Labordia lydgatei, a member of the logania family (Loganiaceae), is a much-branched perennial shrub or small tree with sparsely hairy, square stems. The small size of the flowers and capsules borne on sessile (attached to the base) inflorescences (a flower cluster)

distinguish it from other members of the genus growing in the same area (Wagner *et al.* 1999).

Immature fruits were seen on two plants during surveys in 1991 and 1992 by botanists from NTBG, and remnants of old fruiting bodies were seen on another, suggesting that the plants are able to self-fertilize. It is also suspected that the fruits of this species are adapted for bird dispersal. Due to a lack of bird or other native pollinators, pollination may be inhibited. Micro-habitat requirements for seed germination and growth may also be extremely specific. Virtually nothing is known about the life history or ecology of this species (Service 1994).

This species was originally known from the Wahiawa Drainage, Waioli Stream Valley, and Makaleha Mountains on Kauai. *Labordia lydgatei* is currently known from six populations, consisting of 37 individual plants, located on State (Lihue-Koloa Forest Reserve and Halelea Forest Reserve) and privately owned lands at Pali Elele, Waioli Valley, Lelewi, Lumahai Valley, and Kapalaoa (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Labordia lydgatei is found on streambanks in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest at elevations between 182 and 1,140 m (597 and 3,740 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii* (hame), *Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii*, *Hedyotis terminalis*, *Ilex anomala*, *Labordia hirtella* (NGN), *Psychotria* spp., or *Syzygium sandwicensis* (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition from non-native plants poses the greatest threat to the survival of *Labordia lydgatei* (56 FR 47695). Additional threats include habitat degradation from feral pigs; rats, a potential seed predator; landslides and erosion; and a lack of dispersal, germination or pollination agents (Service 1994).

Labordia tinifolia var. *wahiawaensis* (kamakahala)

Labordia tinifolia var. *wahiawaensis*, a member of the logania family (Loganiaceae), is a shrub or small tree with hairless, cylindrical young branches. This long-lived perennial species differs from others of the genus by having a long common flower cluster stalk, hairless young stems and leaf surfaces, transversely wrinkled capsule valves, and corolla lobes usually 1.7 to 2.3 millimeter (mm) (0.1 to 0.2 in.) long. Three varieties of *Labordia tinifolia* are

recognized: var. *Ianaiensis* on Lanai and Molokai; var. *tinifolia* on Kauai, Oahu, Molokai, Maui, and Hawaii; and var. *wahiawaensis*, endemic to Kauai. The variety *wahiawaensis* is distinguished from the other two by its larger corolla (Wagner *et al.* 1999).

Little is known about the life history of *Labordia tinifolia* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Labordia tinifolia var. *wahiawaensis* has only ever been known from one population with a current total of approximately 100 individual plants on private land in the Wahiawa Drainage in the Wahiawa Mountains (GDSI 2000; HINHP Database 2000).

Labordia tinifolia var. *wahiawaensis* grows along streambanks in lowland wet forests dominated by *Metrosideros polymorpha* at elevations between 458 and 1,006 m (1,502 and 3,301 ft), with *Antidesma platyphyllum*, *Athyrium microphyllum* (akolea), *Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Hedyotis terminalis*, or *Psychotria* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with non-native plants, habitat degradation by feral pigs, trampling by humans, and a risk of extinction from catastrophic random events or reduced reproductive vigor due to the small number of individuals in a single population (61 FR 53070).

Lipochaeta fauriei (nehe)

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems. This short-lived perennial species differs from other species on Kauai by having a greater number of disk and ray flowers per flower head, longer ray flowers, and longer leaves and leaf stalks (Gardner 1976, 1979; Service 1995; Wagner *et al.* 1985, 1990).

Little is known about the life history of *Lipochaeta fauriei*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Lipochaeta fauriei* is known from Olokele Canyon on Kauai. This species is now found on State-owned land in Poopooiki Valley, Kuia Valley, Haelele Valley, and Kawaiiki Valley with the Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest

Reserve. Currently there is a total of four populations with 183 individuals. A population in Koaie Canyon previously thought to be *L. fauriei* was later identified as *L. subcordata* (Service 1995; Gardner 1979; K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

This species grows most often in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests at elevations between 436 and 947 m (1,432 and 3,108 ft). Associated native plant species include *Acacia koa*, *Carex meyenii*, *Carex wahuensis*, *Dicranopteris linearis*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pleomele aurea*, *Psychotria greenwelliae*, *Psychotria mariniana*, or *Sapindus oahuensis* (lonomea) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Lipochaeta fauriei* are predation and habitat degradation by feral goats and pigs and competition with invasive non-native plants. Fire is also a significant threat to *L. fauriei* due to the invasion of *Melinis minutiflora*, a fire-adapted grass that creates unnaturally high fuel loads. The small total number of individuals makes the species susceptible to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (59 FR 9304; Service 1995; HINHP Database 2000).

Lipochaeta micrantha (nehe)

Lipochaeta micrantha, a member of the aster family (Asteraceae), is a somewhat woody short-lived perennial herb. The small number of disk florets (one of the small flowers forming the head of a composite plant) separates this species from the other members of the genus on the island of Kauai. The two recognized varieties of this species, var. *exigua* and var. *micrantha*, are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life histories of *Lipochaeta micrantha* var. *exigua* or *L. m.* var. *micrantha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lipochaeta micrantha* var. *exigua* was only known from the Haupu Range on Kauai. Currently, two populations of *L. micrantha* var. *exigua*, with a total of 110 individuals, are

known from privately owned land in the vicinity of Haupu Range and southwest of Hokenui summit. Historically, *L. micrantha* var. *micrantha* was known from Olokele Canyon, Hanapepe Valley, and the Koloa District on Kauai. Currently, this variety is only known from three populations totaling 121 individuals on State land within the Na Pali-Kona Forest Reserve in Koaie Canyon and Kawaiiiki Valley (HINHP Database 2000; GDSI 2000).

Lipochaeta micrantha grows on cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities at elevations between 35 and 1,362 m (115 and 4,468 ft). Associated species include *Acacia koa*, *Artemisia australis*, *Antidesma* spp., *Bidens sandwicensis*, *Bobea* spp., *Chamaesyce celastroides* var. *hanapepens*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis grandis*, *Eragrostis variabilis*, *Hibiscus kokio* (kokio), *Lepidium bidentatum* (anaunau), *Lobelia niihauensis*, *Melicope* spp., *Metrosideros polymorpha*, *Neraudia kauaiensis*, *Nototrichium* spp. *Plectranthus parviflorus* (ala ala wai nui), *Pleomele aurea*, *Psydrax odoratum*, *Pipturus* spp., *Rumex albescens* (huahuako), *Sida fallax* (ilima), or *Xylosma hawaiiense* (maua) (Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to both varieties of *Lipochaeta micrantha* are habitat degradation by feral pigs and goats; and competition with non-native plant species, such as *Lantana camara*, *Pluchea carolinensis*, *Erigeron karvinskianus*, or *Stachytarpheta dichotoma*. The species is also threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations (Lorence and Flynn 1991; Service 1995; HINHP Database 2000).

Lipochaeta waimeaensis (nehe)

Lipochaeta waimeaensis, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb. This species is distinguished from other *Lipochaeta* on Kauai by leaf shape and the presence of shorter leaf stalks and ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life history of *Lipochaeta waimeaensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Lipochaeta waimeaensis has been known only from the original site of

discovery along the rim of Kauai's Waimea Canyon on State-owned land. There are no more than 100 individuals (HINHP Database 2000; GDSI 2000).

This species grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland forest at elevations between 44 and 460 m (145 and 1,509 ft) with *Artemisia australis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Lipochaeta connata*, *Santalum ellipticum* (iliahialoe), *Schiedea spergulina*, or *Panicum* spp. (NCN) (Wagner *et al.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Lipochaeta waimeaensis* are competition from non-native plants and habitat destruction by feral goats, whose presence exacerbates the existing soil erosion problem at the site. The single population, and thus the entire species, is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Melicope haupuensis (alani)

Melicope haupuensis, a member of the rue family (Rutaceae), is a small long-lived perennial tree. Unlike other species of this genus on Kauai, the exocarp (outermost layer of a fruit) and endocarp (innermost layer of a fruit) are hairless and the sepals are covered with dense hairs (Stone *et al.* 1999).

Little is known about the life history of *Melicope haupuensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

For 62 years, *Melicope haupuensis* was known only from the site of its original discovery on the north side of Haupu Ridge on Kauai. This population is now gone. The species is now known from four populations with a total of five individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve in Kalahu, Awaawapuhi Valley, and Koaie Canyon (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Melicope haupuensis grows on moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha*-*Acacia koa* montane mesic forest at elevations between 111 and 1,141 m (364 and 3,745 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Cheirodendron trigynum*, *Claoxylon sandwicensis*, *Cryptocarya mannii* (holio), *Dianella sandwicensis*,

Diospyros hillebrandii, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope anisata*, *M. barbiger* (alani), *M. ovata* (alani), *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor* (loulou), *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra waimeae* (oheohe), or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats and competition with invasive non-native plant species are the major threats to *Melicope haupuensis*. In addition, this species may be susceptible to the black twig borer (*Xylosandrus compactus*). The existence of only five known trees constitutes an extreme threat of extinction from naturally occurring events, such as landslides or hurricanes, or reduced reproductive vigor (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; HINHP Database 2000).

Melicope quadrangularis (alani)

Melicope quadrangularis, a member of the rue family (Rutaceae), is a shrub or small tree. Young branches are generally covered with fine yellow fuzz but become hairless with age. The thin, leathery, elliptical leaves, are oppositely arranged. The upper leaf surface is hairless, and the lower surface is sparsely hairy, especially along the veins. Flowers are solitary or in clusters of two. The specific floral details are not known. The fruits are somewhat cube-shaped, flattened capsules, with a conspicuous central depression at the top of the fruit. The capsules are four-lobed and completely fused. The exocarp is sparsely hairy, and the endocarp is hairless. This species differs from others in the genus in having the following combination of characters: oppositely arranged leaves, only one or two flowers per cluster, cube-shaped capsules with fused lobes, and a deep central depression at the top of the fruit (Stone *et al.* 1999).

Little is known about the life history of *Melicope quadrangularis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Melicope quadrangularis is known from the type locality in the Wahiawa Bog region of Kauai. One adult plant and two seedlings were discovered in 1991 by Ken Wood of NTBG on an east-facing slope of Wahiawa Ridge at 853 m (2,800 ft) on privately owned land. Subsequent exploration has resulted in the location of a total of 13 individuals

of this species. Although a survey after hurricane Iniki in 1992 did not relocate any individuals, it is hoped that there is a seed bank or that undiscovered individuals remain to be found (Stone *et al.* 1999).

Melicope quadrangularis grows in *Metrosideros polymorpha* diverse lowland wet forest that ranges from mesic to wet conditions at elevations between 608 and 1,593 m (1,995 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cheirodendron fauriei* (olapa), *Cibotium nealii* (hapuu), *Cyrtandra pickeringii* (haiwale), *Dicranopteris lineraris*, *Machaerina angustifolia*, *Machaerina mariscoides* (uki), other *Melicope* spp., *Metrosideros waialealae* (NCN), *Psychotria hexandra*, *P. mariniana*, *P. wawraea* (kipiko), *Sadleria pallida*, *Scaevola gaudichaudiana* (naupaka kuahiwi), *Syzygium sandwicensis*, or abundant ferns and mosses (K. Wood, pers. comm., 2001).

This species is threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor, non-native plants and habitat disturbance by feral pigs (Service 1994).

Munroidendron racemosum (NCN)

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a small tree with a straight gray trunk crowned with spreading branches. This long-lived perennial species is the only member of a genus endemic to Hawaii. The genus is distinguished from other closely related Hawaiian genera of the family by its distinct flower clusters and corolla (Constance and Affolter 1999).

Reproduction occurs year-round, with flowers and fruits found throughout the year. Self pollination is assumed to occur since viable seeds have been produced by isolated individuals. Pollinators have not been observed, but insect pollination is likely. Dispersal mechanisms are unknown (Service 1995).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai. Populations are now known from Waiahuakua, Pohakuao, the left branch of Kalalau Valley, the right branch of Kalalau Valley, Nakeikionaiwi Valley, Awaawapuhi Valley Spring, Honopu Valley, Nualolo Valley, Poomau Valley, Kawaiiki Valley, Koaie Canyon, Nonou, Haupu, and Keopaweo. There are currently 14 known populations with approximately 101 individuals on State (Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona

Forest Reserve, Nonou Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands (HINHP Database 2000; GDSI 2000).

Munroidendron racemosum is typically found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests at elevations between 6 and 979 m (19 and 3,213 ft). Associated plant species include *Bobea brevipes*, *Brighamia insignis* (olulu), *Canavalia napaliensis* (awikiwiki), *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Pisonia sandwicensis* (papala kepau), *Pisonia umbellifera* (papala kepau), *Pleomele aurea*, *Pouteria sandwicensis* *Psychotria* spp., *Psydrax odoratum*, *Rauwolfia sandwicensis*, *Schiedea* spp. (NCN), *Sida fallax*, or *Tetraplasandra* spp. (59 FR 9304; Gagne and Cuddihy 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The threats to *Munroidendron racemosum* are competition with non-native plant species, such as *Aleurites moluccana*, *Psidium guajava*, *Lantana camara*, or *Leucaena leucocephala* (koa haole); habitat degradation by feral goats, fire, and fruit predation by rats; introduced insect of the long-horned beetle family (Cerambycidae); extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor (59 FR 9304; Service 1995; HINHP Database 2000).

Myrsine linearifolia (kolea)

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub. This long-lived perennial species is distinguished from others of the genus by the shape, length, and width of the leaves, length of the petals, and number of flowers per cluster (Wagner *et al.* 1999).

Little is known about the life history of *Myrsine linearifolia*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Myrsine linearifolia* was found at scattered locations on Kauai: Olokele Valley, Kaluaea, Kalalau Valley, Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit Plateau, and Haupu. There are currently eight populations with approximately 522 individuals on State (Alakai Wilderness Preserve and Na Pali Coast State Park) and privately owned lands. The populations are found in Limahuli Valley, Alealau, the left branch of Kalalau Valley, Puu O Kila, Koaie Canyon, Na Molokama, and Kapalaoa

(K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Myrsine linearifolia typically grows at elevations between 105 and 1,380 m (346 and 4,526 ft), in diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* spp., or *Dicranopteris linearis* as co-dominant species. Plants growing in association with this species include *Bobea brevipes*, *Cryptocarya mannii*, *Dubautia* spp., *Eurya sandwicensis* (anini), *Freycinetia arborea*, *Hedyotis terminalis*, *Lysimachia glutinosa*, *Machaerina angustifolia*, *Melicope* spp., *Myrsine* spp., *Nothocestrum* spp. (aiea), *Psychotria* spp., *Sadleria pallida*, *Syzygium sandwicensis*, or native ferns (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with non-native plants, such as *Erigeron karvinskianus*, *Lantana camara*, *Rubus argutus*, *Psidium cattleianum*, *Rubus rosifolius*, and *Kalanchoe pinnata* (air plant), and habitat degradation by feral pigs and goats are the major threats to *Myrsine linearifolia* (61 FR 53070).

Nothocestrum peltatum (aiea)

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree with ash-brown bark and woolly stems. The usually peltate leaves and shorter leaf stalks separate this species from others in the genus (Symon 1999).

Although plants of this long-lived perennial species have been observed flowering, they rarely set fruit. This could be the result of a loss of pollinators, reduced genetic variability, or an inability to fertilize itself. Little else is known about the life history of *Nothocestrum peltatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 9304).

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo. This species is now known from a total of six populations with 19 individuals, located at Kahuamaa Flats, Awaawapuhi Trail, Awaawapuhi Valley, Kawaiula Valley, and Makaha Valley all on State-owned land within the Kokee State Park, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and the Puu Ka Pele Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species generally grows in rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros*

polymorpha, at elevations between 725 and 1,290 m (2,378 and 4,232 ft).

Associated native plants include *Alphitonia ponderosa*, *Antidesma* spp., *Bobea brevipes*, *Broussaisia arguta*, *Cheirodendron trigynum*, *Claoxylon sandwicensis*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *M. barbiger*, *M. haupuensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra kauaiensis*, or *Xylosma* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with non-native plants (such as *Passiflora mollissima*, *Lantana camara*, *Rubus argutus*, or *Erigeron karvinskianus*), and habitat degradation by feral pigs, deer, and red jungle fowl (*Gallus gallus*) constitute the major threats to *Nothocestrum peltatum*. This species is also threatened by fire, risk of extinction from naturally occurring events (e.g., landslides or hurricanes), and reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; HINHP Database 2000).

Panicum niihauense (lau ehu)

Panicum niihauense, a member of the grass family (Poaceae), is a perennial bunchgrass with unbranched culms (aerial stems). This short-lived perennial species is distinguished from others in the genus by the shape of the inflorescence branches, which are erect, and the arrangement of the spikelets, which are densely clustered (Davidse 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Panicum niihauense was known historically from Niihau and one location on Kauai. Currently, this species is only known from one population of 23 individuals at the Polihale State Park area on State-owned land (HINHP Database 2000; GDSI 2000).

Panicum niihauense is found scattered in sand dunes in coastal shrubland at elevations between 0 and 103 m (0 and 337 ft). Associated native plant species include *Cassytha filiformis* (kaunaoa pehu), *Chamaesyce celastroides*, *Dodonaea viscosa*, *Nama sandwicensis* (nama), *Ophioglossum pendulum* ssp. *falcatum* (NCN), *Scaevola sericea* (naupaka kahakai), *Sida fallax*, *Vitex rotundifolia* (kolokolo kahakai), or *Sporobolus virginicus*

(akiaki) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Primary threats to *Panicum niihauense* are destruction by off-road vehicles, competition with non-native plant species, and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of individuals in the one remaining population (61 FR 53108; HINHP Database 2000).

Phyllostegia knudsenii (NCN)

Phyllostegia knudsenii, a member of the nonaromatic mint family (Lamiaceae), is an erect herb or vine. This short-lived perennial species is distinguished from others in the genus by its specialized flower stalk; it differs from the closely related *P. floribunda* by often having four flowers per group (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia knudsenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Until 1993, *Phyllostegia knudsenii* was only known from the site of its original discovery made in the 1800s from the woods of Waimea on Kauai. There is currently one known population with a total of 17 individuals on State-owned land in Koaie Canyon within the Alakai Wilderness Preserve (K. Wood, *in litt.* 1999; Wagner *et al.* 1999; HINHP Database 2000; GDSI 2000).

Phyllostegia knudsenii is found in *Metrosideros polymorpha* lowland mesic or wet forest at elevations between 399 and 1,059 m (1,309 and 3,475 ft). Associated native plant species include *Bobea timonioides* (ahakea), *Claoxylon sandwicensis*, *Cryptocarya mannii*, *Cyrtandra kauaiensis*, *Cyrtandra paludosa* (hai wale), *Diospyros sandwicensis*, *Elaeocarpus bifidus*, *Ilex anomala*, *Myrsine linearifolia*, *Perrottetia sandwicensis*, *Pittosporum kauaiense* (hoawa), *Pouteria sandwicensis*, *Pritchardia minor*, *Selaginella arbuscula* (lepelepeamo), *Tetraplasandra oahuensis* (ohe ohe), or *Zanthoxylum dipetalum* (61 FR 53070; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia knudsenii* include habitat degradation by feral pigs and goats, competition with non-native plants, and a risk of extinction from naturally occurring events (e.g., landslides and hurricanes) and reduced reproductive vigor due to the small number of individuals in the

only known population (61 FR 53070; Service 1998a).

Phyllostegia waimeae (NCN)

Phyllostegia waimeae, a nonaromatic member of the mint family (Lamiaceae), is a climbing perennial plant with hairy four-angled stems that are woody at the base. The oval leaves are 5 to 13 cm (2 to 5 in.) long, 2.5 to 6 cm (1 to 2.4 in.) wide, and have rounded, toothed margins. They are wrinkled and sparsely dotted with oil glands. Flowers grow in groups of six along an unbranched leafy stalk usually 10 to 15 cm (3.9 to 5.9 in.) long. The bracts below each flower stalk are broad and partially overlap the flowers. The calyx resembles an inverted cone with broad lobes. The corolla, 8 to 12 mm (0.3 to 0.5 in.) long, is pinkish or may be white. The fruits, probably nutlets, have not been observed. Characteristics that distinguish this species from others in the genus are the nearly stalkless bracts that partially overlap and cover the flowers, and relatively fewer oil glands on the leaves (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia waimeae*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Phyllostegia waimeae* was known from Kaholuamanu and Kaaha on Kauai. Currently, one population with six individuals persists from State land in Kawaiiki Valley within the Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 2001).

This species typically grows in *Acacia koa*-*Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Broussaisia arguta*, *Claoxylon sandwicense*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Elaphoglossum* spp., *Gunnera* spp., *Hedyotis* spp., *Myrsine lanaiensis*, *Pleomele aurea*, *Psychotria* spp., *Sadleria* spp., *Scaevola procera* (naupaka kuahiwi), *Syzygium sandwicense*, or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

Habitat destruction by feral goats, erosion, and competition with introduced grasses are the major threats to *Phyllostegia waimeae*. The species is also threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals (Service 1995).

Phyllostegia wawrana (NCN)

Phyllostegia wawrana, a nonaromatic member of the mint family (Lamiaceae), is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. This short-lived perennial species can be distinguished from the related *P. floribunda* and *P. knudsenii*, by its less specialized flower stalk (Wagner *et al.* 1999).

Seeds were observed in the wild in August 1993. No additional life history information for this species is currently known (Service 1998a).

Phyllostegia wawrana was reported to be found at Hanalei on Kauai in the 1800s and along Kokee Stream in 1926. Currently, populations are reported from Koaie Canyon, Moaalele, Awaawapuhi Valley, and Makaleha. A total of four populations with approximately 49 individuals are found on State-owned land within the Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, and Kokee State Park (HINHP Database 2000; GDSI 2000).

This species grows at elevations between 398 and 1,284 m (1,306 and 4,212 ft) in *Acacia koa*-*Metrosideros polymorpha*-*Cheirodendron* mixed mesic forest. Associated native plant species include *Alectryon* spp., *Asplenium polypodum* (NCN), *Athyrium microphyllum*, *Cadox* spp., *Claoxylon sandwicense*, *Cyanea fissa* (haha), *Delissea rivularis*, *Dianella sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Doodia kunthiana*, *Dryopteris wallichiana*, *Dubautia knudsenii*, *Dubautia laevigata*, *Hedyotis tryblum*, *Machaerina angustifolia*, *Panicum nephelophilum*, *Peperomia macraeana*, *Perrottetia sandwicensis*, *Poa sandwicensis*, *Pleomele aurea*, *Pteridium aquilinum* var. *decompositum*, *Sadleria pallida*, *Schiedea stellarioides*, *Scaevola procera*, *Syzygium sandwicensis*, *Touchardia latifolia*, or *Vaccinium dentatum* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia wawrana* include habitat degradation by feral pigs and competition with non-native plant species, such as *Rubus rosifolius*, *Passiflora mollissima*, *Rubus argutus*, *Melastoma candidum*, *Erigeron karvinskianus*, and *Erechtites valerianefolia* (61 FR 53070; Service 1998a).

Poa mannii (Mann's bluegrass)

Poa mannii, a member of the grass family (Poaceae), is a perennial grass with short rhizomes (underground stems) and erect, tufted culms. All three

native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *P. siphonoglossa* and *P. sandwicensis* by its fringed ligule (an appendage on the sheath of a blade of grass) and from *P. sandwicensis* by its shorter panicle (a pyramidal loosely-branched flower cluster) branches (O'Connor 1999).

Little is known about the life history of *Poa mannii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was found in Olokele Gulch on Kauai. Currently, there is a total of six populations with approximately 268 individuals on State-owned land in the right and left branches of Kalalau Valley, Awaawapuhi Valley, Kuia Valley, and Kauhao Valley within the Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Waimea Canyon State Park (K. Wood, *in litt.* 1999; O'Connor 1999; HINHP Database 2000; GDSI 2000).

This species typically grows on cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa*-*Metrosideros polymorpha* forest at elevations between 327 and 1,222 m (1,072 and 4,009 ft). Associated native plant species include *Antidesma platyphyllum*, *Artemisia australis*, *Bidens cosmoides*, *Bidens sandwicensis*, *Carex meyenii*, *C. wahuensis*, *Chamaesyce celastroides* var. *hanapepensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Lobelia niihauensis*, *Lobelia yuccoides* (NCN), *Luzula hawaiiensis* (woodrush), *Mariscus phloides* (NCN), *Melicope anisata*, *M. barbiger*, *M. pallida*, *Nototrichium* spp., *Panicum lineale*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Schiedea lydgatei* var. *attenuata*, *Schiedea membranacea*, or *Wilkesia gymnoxiphium* (59 FR 56330; HINHP Database 2000; K. Wood, pers. comm., 2001).

Poa mannii survives only in very steep areas that are inaccessible to goats, suggesting that goat herbivory may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai. Threats to *P. mannii* include habitat damage, trampling, and browsing by feral goats, and competition with invasive non-native plants. *Erigeron karvinskianus* has invaded Kalalau, Koaie, and Waialae Valleys, three of the areas where *P. mannii*

occurs. *Lantana camara* threatens all known populations, and *Rubus argutus* threatens the populations in Kalalau and Waialae Valleys. *Poa mannii* is also threatened by fire and reduced reproductive vigor and/or extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of existing populations and individuals (59 FR 56330).

Poa sandvicensis (Hawaiian bluegrass)

Poa sandvicensis is a perennial grass (Poaceae) with densely tufted, mostly erect culms. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes (horizontal subterranean plant stem), shorter culms (grass stalk) which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Connor 1999).

Little is known about the life history of *Poa sandvicensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was known from six areas on the island of Kauai: the rim of Kalalau Valley in Na Pali Coast State Park, Halemanu Ridge, Kumuwela Ridges, and Kauaikanana Drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu. Hillebrand's (1888) reference to a Maui locality is most likely an error. Currently, there is a total of nine populations with 1,740 individuals occurring on State-owned land. *Poa sandvicensis* is known to be extant at Alealau, Keanapuka, Awaawapuhi Trail, Kumuwela Ridge, Maile Flat Trail, Mohihi Stream, Mohihi Waialae Trail, Kawaiiki Valley, and Waialae Valley in the Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (57 FR 20580; HINHP Database 2000; GDSI 2000; K. Wood, *in litt.* 1999).

Poa sandvicensis grows on wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa*-*Metrosideros polymorpha* montane forest, at elevations between 498 and 1,290 m (1,635 and 4,232 ft). Associated native plant species include *Alyxia oliviformis*, *Bidens sandvicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Dianella sandwicensis*, *Dicranopteris linearis*, *Dodonaea viscosa*, *Dubautia* spp.,

Hedyotis spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp., *Scaevola procera*, *Schiedea stellarioides*, or *Syzygium sandwicensis* (57 FR 20580; HINHP Database 2000; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of *Poa sandvicensis* are competition from non-native plants, such as *Erigeron karvinskianus*, *Rubus argutus*, *Passiflora mollissima*, or *Hedychium* spp.; erosion caused by feral pigs and goats; and State forest reserve trail maintenance activities and human recreation. In addition, naturally occurring events could constitute a threat of extinction or reduced reproductive vigor due to the species' small population size (57 FR 20580; Service 1995).

Poa siphonoglossa (NCN)

Poa siphonoglossa is a perennial grass (Poaceae). It differs from *P. sandvicensis* principally by its longer culms, lack of a prominent tooth on the ligule, and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses. Short rhizomes, long culms, closed and fused sheaths, and lack of a tooth on the ligule separate *P. siphonoglossa* from *P. mannii* and other closely related species (O'Connor 1999).

Little is known about the life history of *Poa siphonoglossa*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Poa siphonoglossa* was known from five sites on the island of Kauai: Kohua Ridge in Na Pali-Kona Forest Reserve; near Kaholuamanu; Kaulaula Valley in Puu Ka Pele Forest Reserve; Kuia Valley; and Kalalau. Currently, there are a total of five populations with a total of 50 individuals on State-owned land at Kahuamaa Flats, Mohihi Waialai Trail, Kuia Valley, Makaha Ridge, and Kaulaula Valley in the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Poa siphonoglossa typically grows on shady banks on steep slopes in mesic *Metrosideros polymorpha*-*Acacia koa* forests at elevations between 498 and 1,290 m (1,635 and 4,232 ft). Associated native plant species include *Acacia koa*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Coprosma waimeae*, *Dianella*

sandwicensis, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Lobelia yuccoides*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Panicum nephelophilum*, *Poa sandvicensis*, *Psychotria* spp., *Scaevola procera*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Vaccinium* spp., *Wilkesia gymnoxiphium*, *Xylosma* spp., *Zanthoxylum dipetalum* (57 FR 20580, K. Wood, pers. comm., 2001).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation and/or herbivory by feral pigs and deer. The non-native plant *Rubus argutus* invading Kohua Ridge constitutes a probable threat to that population. Small population size and potential for one disturbance event to destroy the majority of known individuals are also serious threats to this species (57 FR 20580; Service 1995; HINHP Database 2000).

Pritchardia aylmer-robinsonii (wahane)

Pritchardia aylmer-robinsonii, a member of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments, tan woolly hairs on the underside of the petiole and the leaf blade base, stout hairless flower clusters that do not extend beyond the fan-shaped leaves, and the smaller spherical fruit (Read and Hodel 1999).

Little is known about the life history of *Pritchardia aylmer-robinsonii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (61 FR 41020).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 m (230 and 885 ft) on privately owned land. The most recent observations indicate that two plants still remain on Kaali Cliff (Read and Hodel 1999; HINHP Database 2000; GDSI 2000).

Pritchardia aylmer-robinsonii typically grows on rocky talus in seepage areas within coastal dry forest at elevations between 91 to 259 m (300 to 850 ft). Associated native plant species include *Brighamia insignis*, *Cyperus trachysanthos*, *Lobelia niihauensis* or *Lipochaeta lobata* var. *lobata* (nehe). Originally a component of the coastal dry forest, this species now occurs only in a rugged and steep area where it receives some protection from

grazing ungulates (61 FR 41020; HINHP Database 2000).

The species is threatened by habitat degradation and/or herbivory by cattle, feral pigs, and feral goats and seed predation by rats. Small population size, limited distribution, and reduced reproductive vigor makes this species particularly vulnerable to extinction (61 FR 41020).

Pritchardia napaliensis (loulu)

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small tree with about 20 leaves and an open crown. This species is distinguished from others of the genus that grow on Kauai by having about 20 flat leaves with pale scales on the lower surface that fall off with age, inflorescences with hairless main axes, and globose (having or consisting of globules) fruits less than 3 cm (1.2 in.) long (Read and Hodel 1999).

Little is known about the life history of *Pritchardia napaliensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Pritchardia napaliensis has only been known from three populations with 155 individuals on State-owned land in Pohakuao, Alealau, Waiahuakua; and Hoolulu Valley within the Hono o Na Pali Natural Area Reserve and Na Pali Coast State Park (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Pritchardia napaliensis typically grows in areas between elevations of 152 and 1,158 m (500 and 3,800 ft) in a wide variety of habitats ranging from lowland dry to diverse mesic forests dominated by *Diospyros* spp. or montane wet forests dominated by *Metrosideros polymorpha* and *Dicranopteris linearis*. Several associated native plant species besides those mentioned above include *Alsinidendron lychnoides*, *Alyxia oliviformis*, *Boehmeria grandis*, *Cheirodendron trigynum*, *Cibotium* spp., *Dubautia knudsenii*, *Elaeocarpus bifidus*, *Hibiscus kokio* ssp. *saintjohnianus* (*kokio*), *Lipochaeta connata* var. *acris* (*nehe*), *Melicope peduncularis* (*alani*), *Nesoluma polynesianum* (*keahi*), *Ochrosia kauaiensis* (*holei*), *Rauwolfia sandwicensis*, *Stenogyne purpurea* (NCN), *Syzygium sandwicensis*, *Phyllostegia electra* (NCN), *Pleomele* spp., *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Santalum freycinetianum* var. *pyrularium*, *Vaccinium dentatum*, *Xylosma hawaiiense*, or *Wilkesia*

gymnoxiphium (Service 1998a; 61 FR 53070; HINHP Database 2000).

Major threats to *Pritchardia napaliensis* include habitat degradation and grazing by feral goats and pigs; seed predation by rats; and competition with the non-native plants, such as *Kalanchoe pinnata*, *Erigeron karvinskianus*, *Lantana camara*, *Psidium guajava*, or possibly *Cordyline fruticosa*. The species is also threatened by vandalism and over-collection. In 1993, near the Wailua River, the Hawaii Department of Forestry and Wildlife (DOFAW) constructed a fenced enclosure around 39 recently planted *P. napaliensis* individuals. Shortly after being planted, the fence was vandalized and the 39 plants were removed. Also, because of the small number of remaining populations and individuals, this species is susceptible to a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor (61 FR 53070; Craig Koga, DOFAW, *in litt.* 1999; A. Kyono, pers. comm., 2000).

Pritchardia viscosa (loulu)

Pritchardia viscosa, a member of the palm family (Arecaceae), is a small tree 3 to 8 m (10 to 26 ft) tall. This species differs from others of the genus that grow on Kauai by the degree of hairiness of the lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1999).

Historically, *Pritchardia viscosa* was known only from a 1920 collection from Kalihiwai Valley. It was not seen again until 1987, when Robert Read observed it in the same general area as the type locality, off the Powerline Road at 512 m (1,680 ft) elevation (HINHP Database 2000). Currently, there is one population with three individuals on State-owned land within the Halelea Forest Reserve (61 FR 53070; HINHP Database 2000; GDSI 2000).

This species is found in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest at elevations between 488 to 518 m (1,600 to 1,700 ft). Associated native species include *Antidesma* spp., *Bobea* spp., *Cibotium* spp., *Cyanea fissa*, *Cyrtandra kauaiensis*, *Cyrtandra longiflora*, *Dubautia knudsenii*, *Nothoecstrum* spp., *Perrottetia sandwicensis*, *Psychotria* spp., *Sadleria pallida*, or *Syzygium sandwicensis* (Service 1998a; 61 FR 53070).

Pritchardia viscosa is threatened by *Psidium cattleianum* and non-native grasses, such as *Paspalum conjugatum*; and seed predation by rats. At least one of the remaining mature trees has been damaged by spiked boots used either by

a botanist or seed collector to scale the tree. In mid-1996, a young plant and seeds from mature *Pritchardia viscosa* plants were removed from the only known location of this species. Because of this past activity, it is reasonable to assume that these plants are threatened by over-collection and vandalism. Also, because of the small numbers of individuals in the only known population, this species is susceptible to extinction since a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants (61 FR 53070; C. Koga, *in litt.* 1999; A. Kyono, pers. comm., 2000).

Pteralyxia kauaiensis (kaulu)

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a long-lived perennial tree 3 to 8 m (10 to 26 ft) tall. The leaves are dark green and shiny on the upper surfaces, but pale and dull on the lower surfaces. This species differs from the only other species of this endemic Hawaiian genus in having reduced lateral wings on the seed (Wagner *et al.* 1999).

Little is known about the life history of *Pteralyxia kauaiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai. This species is now known from 15 populations, with a total of 807 individuals in the following scattered locations on State land: Limahuli Valley, the left branch of Kalalau Valley, Pohakuao, the right branch of Kalalau Valley, Makaha Valley, Kuia Valley, Haelele Valley, Koaie Canyon, Kawaiiki Valley, Hipalau, Haupu, Blue Hole, Poomau Valley, and Kapalikea within the Lihue-Koloa Forest Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve. There is also an undocumented sighting of one individual at Makaleha, above the town of Kapaa (59 FR 9304; K. Wood, *in litt.* 1999; Wagner *et al.* 1999; HINHP Database 2000).

This taxon is typically found in diverse mesic or *Diospyros* *sandwicensis* mixed mesic forests with *Pisonia* spp. between elevations of 915 and 1,007 m (3,002 and 3,305 ft). Associated native plant species include *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Carex* spp., *Charpentiera elliptica*, *Claoxylon sandwicense*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros* spp. (*lama*), *Dodonaea*

viscosa, *Diplazium sandwichianum*, *Euphorbia haeleleana*, *Freycinetia arborea*, *Gahnia* spp., *Gardenia remyi* (nanu), *Hedyotis terminalis*, *Hibiscus kokio*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Neraudia* spp. (NCN), *Nesoluma polynesianum*, *Nestegis sandwichensis*, *Peperomia* spp., *Pleomele aurea*, *Pipturus* spp., *Pisonia sandwichensis*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pritchardia* spp., *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Schiedea* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum* (59 FR 9304; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats and pigs, and, possibly, rats, which may eat the fruit. Fire could threaten some populations. Introduced plants competing with this species include *Psidium guajava*, *Erigeron karvinskianus*, *Aleurites moluccana*, *Lantana camara*, *Psidium cattleianum*, or *Cordyline fruticosa* (59 FR 9304; Service 1995; HINHP Database 2000).

Remya kauaiensis (NCN)

Remya kauaiensis, one of three species of a genus endemic to the Hawaiian Islands, is in the aster family (Asteraceae). *Remya kauaiensis* is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many slender, sprawling branches which are covered with a fine tan fuzz near their tips. The leaves, coarsely toothed along the edges, are green on the upper surface while the lower surface is covered with a dense mat of fine white hairs (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya kauaiensis* may be self-incompatible (56 FR 1450; Herbst 1988; Service 1995).

Historically, this species was found in the Na Pali Kona Forest Reserve at Koaie, Mohihi, Kalalau, Makaha, Nualolo, Kawaiula, Kuia, Honopu, Awaawapuhi, Kopakaka, and Kauhao, on Kauai. There are currently 12 known populations with a total of 124 individuals on State-owned land. They occur in Hipalau Valley, Awini Valley, Koaie Canyon, Mohihi Stream, the left branch of Kalalau Valley, Awaawapuhi and Nualolo Valleys, Kuia and Kawaiula

Valleys, Makaha Valley, Kauhao Valley, and Kaulaula Valley within the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Remya kauaiensis grows chiefly on steep, north or northeast-facing slopes at elevations between 560 and 1,247 m (1,836 and 4,090 ft). It is found primarily in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest with *Chamaesyce* spp. (akoko), *Claoxylon sandwicense*, *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Hedyotis terminalis*, *Melicope* spp., *Nestegis sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Schiedea* spp., or *Tetraplasandra* spp. (56 FR 1450; Herbst 1988; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Remya kauaiensis* include herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from non-native plant species. Other threats include erosion, fire, and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of remaining populations and individuals (56 FR 1450; Service 1995).

Remya montgomeryi (NCN)

The genus *Remya*, in the aster family (Asteraceae), is endemic to the Hawaiian Islands. *Remya montgomeryi* was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai. It is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many slender, sprawling to weakly erect, smooth branches. The leaves are coarsely toothed along the edges, and are green on the upper as well as lower surfaces (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya montgomeryi* may be self-incompatible (Herbst 1988; 56 FR 1450).

Remya montgomeryi is known only from Kauai. Three populations with 113 individuals are reported on State-owned land in the left and right branches of Kalalau Valley, Koaie Canyon, and Kuia Valley within the Alakai Wilderness Preserve and Na Pali Coast State Park (Herbst 1988; K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Remya montgomeryi grows at elevations between 336 and 1,344 m

(1,102 and 4,411 ft), primarily on steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha* dominated mixed mesic forest. Associated native plant species include *Artemisia australis*, *Bobea* spp., *Boehmeria grandis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Cyrtandra* spp., *Dubautia* spp., *Ilex anomala*, *Lepidium serra*, *Lysimachia* spp. (kolokolo kuahiwi), *Myrsine linearifolia*, *Nototrichium* spp., *Pleomele aurea*, *Poa mannii*, *Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata*, *Tetraplasandra* spp., or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Remya montgomeryi* are herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from non-native plant species. Other threats include erosion, fire, and an increased risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) because of the small size of the populations and their limited distribution (56 FR 1450; Service 1995).

Schiedea apokremnos (maolioli)

Schiedea apokremnos, a member of the pink family (Caryophyllaceae), is a low, branching short-lived perennial shrub 20 to 51 cm (8 to 20 in.) tall. The leaves are oppositely arranged, oblong, and somewhat fleshy and glabrous (having a surface without hairs). *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1999).

Some *S. apokremnos* individuals are functionally female and must be cross-pollinated to set seed. This reproductive strategy may be ineffective in populations with few individuals. Little is known about the life history of *Schiedea apokremnos*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Schiedea apokremnos has been collected from Nualolo Kai, Kaaweiki Ridge, and along a 10.5 km (6.5 mi) long section of the Na Pali coast including Milolii Valley, Kalalau Beach, Kaalahina and Manono Ridges, Haelele Ridge, and, as far north as, Pohakuao Valley, all on the island of Kauai. There is currently a total of five populations containing 751 individuals on State-owned lands. The species is extant at Nakeikionaiwi, Pohakuao, Nualolo Valley, Haelele Valley, and Kawaiiki Valley within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (56

FR 49639; HINHP Database 2000; GDSI 2000).

Schiedea apokremnos grows in the crevices of near-vertical basalt coastal cliff faces, at elevations between 12 and 391 m (40 and 1,283 ft). The species grows in sparse dry coastal cliff shrub vegetation along with *Artemisia australis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Lepidium serra*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia* spp., *Pleomele aurea*, *Psydrax odoratum*, or *Wilkesia* spp. (56 FR 49639; HINHP Database 2000; K. Wood, pers. comm., 2001).

The restriction of this species to inaccessible cliffs suggests that goat herbivory may have eliminated them from more accessible locations. The greatest current threat to the survival of *Schiedea apokremnos* is still herbivory and habitat degradation by feral goats, as well as competition from the non-native plants *Leucaena leucocephala* and *Hyptis pectinata* (comb hyptis), and trampling by humans. Given the small size of most populations and restricted distribution, depressed reproductive vigor may be a serious threats to the species. In addition, a single environmental disturbance (such as a landslide or fire) could destroy a significant percentage of the extant individuals (56 FR 49639; Service 1995).

Schiedea helleri (NCN)

Schiedea helleri, a member of the pink family (Caryophyllaceae), is a short-lived perennial vine. The stems, smooth below and minutely hairy above, are usually prostrate and at least 15 cm (6 in.) long with internodes at least 4 to 15 cm (1.6 to 6 in.) long. The opposite leaves are somewhat thick, triangular, egg-shaped to heart-shaped, conspicuously three-veined, and nearly hairless to sparsely covered with short, fine hairs, especially along the margins. This species is the only member of the genus on Kauai that grows as a vine (Wagner *et al.* 1999).

Three plants were observed flowering in February. No additional life history information for this species is currently known (Service 1998a).

Schiedea helleri was originally found only at a single location above Waimea, at Kaholuamano on the island of Kauai, over 100 years ago. There is currently a total of three populations with 63 individuals on State-owned land at Mohihi Stream, Nawaimaka Valley, and Mohihi Waialae Trail within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Schiedea helleri is found on ridges and steep cliffs in closed *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest, *M. polymorpha*-*Cheirodendron* spp. montane wet forest, or *Acacia koa*-*M. polymorpha* montane mesic forest at elevations between 941 and 1,223 m (3,088 and 4,011 ft). Other native plants growing in association with this species include *Broussaisia arguta*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis*, *Dubautia* spp., *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope* spp., *Myrsine* spp., *Poa sandwicensis* *Scaevola procera*, *Syzygium sandwicensis*, or *Viola wailenalenae* (pamakani) (K. Wood, pers. comm., 2001; HINHP Database 2000).

Competition with the non-native plant *Rubus argutus*, a risk of extinction from naturally occurring events (e.g., landslides or hurricanes), and reduced reproductive vigor due to the small number of extant individuals are serious threats to *Schiedea helleri* (61 FR 53070).

Schiedea kauaiensis (NCN)

Schiedea kauaiensis, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic. Lacking petals, the perfect flowers are borne in open branched inflorescences, and are moderately covered with fine, short, curly, white hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, larger leaves, the hairiness of the inflorescence, the number of flowers in each inflorescence, larger flowers, and larger seeds (Wagner *et al.* 1999).

Little is known about the life history of this taxon. Fruit and flowers have been observed in July and August, and flowering material has been collected in September. There is no evidence of regeneration from seed under field conditions. Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown (Service 1998a).

Historically, *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papaa to Mahanaloa. It was thought to be extinct until the two currently known populations in Mahanaloa and Kalalau Valleys, with a total of 22 individuals, were found. Both populations occur on State land within the Kuia Natural Area Reserve and Na Pali Coast State Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Schiedea kauaiensis typically grows in diverse mesic to wet *Acacia koa*-*Metrosideros polymorpha* forest on steep slopes at elevations between 192 and 1,290 m (631 and 4,232 ft). Associated native plant species include *Alphitonia ponderosa*, *Cryptocarya mannii*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Pisonia* spp., *Peucedanum sandwicense*, *Psychotria* spp., *Psydrax odoratum*, or *Styphelia tameiameia* (61 FR 53108; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral goats, pigs, and cattle; competition from several non-native plant species; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the low number of individuals in only two known populations. *Schiedea kauaiensis* is also potentially threatened by fire (61 FR 53108; Service 1998a; HINHP Database 2000).

Schiedea membranacea (NCN)

Schiedea membranacea, a member of the pink family (Caryophyllaceae), is a perennial herb. The unbranched, fleshy stems rise upwards from near the base and are somewhat sprawling. During dry seasons, the plant dies back to a woody, short stem at or beneath the ground surface. The oppositely arranged leaves are broadly elliptic to egg-shaped, generally thin, have five to seven longitudinal veins, and are sparsely covered with short, fine hairs. The perfect flowers have no petals, are numerous, and occur in large branched clusters. This short-lived perennial species differs from others of the genus that grow on Kauai by having five-to seven-nerved leaves and a herbaceous habit (Wagner *et al.* 1999).

Research suggests that this species largely requires outcrossing for successful germination and survival to adulthood. Pollinators for *Schiedea membranacea* are unknown, since none have been seen during the daytime, and none were observed during one set of night observations. Little else is known about the life history of *Schiedea membranacea*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. (Service 1998a).

Schiedea membranacea is currently known from the western side of the island of Kauai, on State and privately

owned lands at Poopooiki Valley, Milolii Ridge, Kuia Valley, Awaawapuhi Valley, Nualolo Valley, Kahuamaa Flats, Waialae Falls, Koaie Canyon, and the right branch of Wainiha Valley. On State lands it occurs within the Alakai Wilderness Preserve, Halelea Forest Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve. There are currently seven populations containing 195 individuals (Wood and Perlman 1993; 61 FR 53070; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species is typically found on cliffs and cliff bases in mesic or wet habitats, in lowland, or montane shrubland, or forest communities dominated by *Acacia koa*, *Pipturus* spp. and *Metrosideros polymorpha* or *Urticaceae* shrubland on talus slopes at elevations between 422 and 1,205 m (1,386 and 3,953 ft). Associated native plant species include *Alphitonia ponderosa*, *Alyxia oliviformis*, *Asplenium* spp., *Athyrium sandwicensis* (akolea), *Bohea brevipes*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Joinvillea ascendens* ssp. *ascendens* (ohe), *Labordia helleri* (kamakahala), *Lepidium serra*, *Lysimachia kalalauensis* (NCN), *Machaerina angustifolia*, *Mariscus pennatifolius*, *Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis*, *Pisonia* spp., *Pleomele aurea*, *Poa mannii*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Remya kauaiensis*, *Sadleria cyatheoides* (amau), *Scaevola procera*, *Thelypteris cyatheoides* (kikawaio), *Thelypteris sandwicensis* (palapalaia), or *Touchardia latifolia* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats, and pigs, and deer; competition with the non-native plant species *Erigeron karvinskianus*, *Lantana camara*, *Rubus argutus*, *R. rosifolius*, *Psidium cattleianum*, *Ageratina riparia* (Hamakua pamakani), or *Passiflora mollissima*; loss of pollinators; and landslides are the primary threats to *Schiedea membranacea*. Based on observations indicating that snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53070; Wood and Perlman 1993; Service 1998a).

Schiedea spergulina var. *leiopoda* and *Schiedea spergulina* var. *spergulina* (NCN)

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a

short-lived perennial subshrub. The opposite leaves are very narrow, one-veined, and attached directly to the stem. The flowers are unisexual, with male and female flowers on different plants. Flowers occur in compact clusters of three. The capsular fruits contain nearly smooth, kidney-shaped seeds. Of the 22 species in this endemic genus, only two other species have smooth seeds. *Schiedea spergulina* differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness of the inflorescences, with *S. s.* var. *leiopoda* being the less hairy of the two (Wagner *et al.* 1999).

Little is known about the life histories of either *Schiedea spergulina* var. *leiopoda* or *Schiedea spergulina* var. *spergulina*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai. One population with approximately 50 individuals is now known to grow in Lawai Valley on Kauai on privately owned land (HINHP Database 2000; GDSI 2000).

Schiedea spergulina var. *spergulina* was historically found in Olokele Canyon, but is now known only from the right branch of Kalalau Valley, Koaie Canyon, and Waimea Canyon. A total of three populations numbering approximately 206 individuals is reported on State-owned land within the Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and the Puu Ka Pele Forest Reserve. However, it has been estimated that this species may number in the thousands on Kauai (Service 1995; HINHP Database 2000; GDSI 2000).

Both varieties of *Schiedea spergulina* are usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests at elevations between 21 and 87 m (69 and 284 ft) for *Schiedea spergulina* var. *leiopoda* and elevations between 144 and 828 m (474 and 2,718 ft) for *Schiedea spergulina* var. *spergulina*. Associated native plant species include *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp. (kumuniu), *Eragrostis variabilis*, *Erythrina sandwicensis* (wiliwili), *Gahnia* spp., *Heliotropium* spp. (ahinahina), *Lepidium serra*, *Lipochaeta*

connata, *Microlepis strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium* (59 FR 9304; Lorence and Flynn 1991; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Schiedea spergulina* var. *leiopoda* are habitat destruction by feral goats and competition with non-native plants such as *Leucaena leucocephala*, *Lantana camara*, or *Furcraea foetida* (Mauritius hemp). Individuals have also been damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields, as well as a risk of extinction from naturally occurring events (e.g., hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Lorence and Flynn 1991; Service 1995).

Schiedea spergulina var. *spergulina* is threatened by competition with non-native plant species, including *Erigeron karvinskianus*, *Lantana camara*, *Melia azedarach*, or *Triumfetta semitriloba* (Sacramento bur). The area in which this variety grows is used heavily by feral goats, and there is evidence that plants are being browsed and trampled (59 FR 9304; Lorence and Flynn 1991; HINHP Database 2000).

Schiedea stellarioides (lauhilihi)

Schiedea stellarioides, a member of the pink family (Caryophyllaceae), is a slightly erect to prostrate subshrub with branched stems. The opposite leaves are very slender to oblong-elliptic, and one-veined. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the number of veins in the leaves, shape of the leaves, presence of a leaf stalk, length of the flower cluster, and shape of the seeds (Wagner *et al.* 1999).

Plants were observed flowering in the field in February. Little else is known about the life history of *Schiedea stellarioides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea stellarioides* was found at the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka Valleys, and Haupu Range on the island of Kauai. Currently it is found in Kawaiiki Valley and Waialae Falls within the Na Pali-Kona Forest Reserve. There is a total of two populations with 400 individuals on

State-owned land (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Chiedeia stellarioides is found on steep slopes in closed *Acacia koa*-*Metrosideros polymorpha* lowland to montane mesic forest or shrubland at elevations between 476 and 1,216 m (1,561 and 3,990 ft). Associated native plant species include *Alsinidendron viscosum*, *Artemisia australis*, *Bidens cosmoides*, *Chenopodium* spp. (ahe ahea), *Dianella sandwicensis*, *Dodonaea viscosa*, *Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense*, *Pipturus* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, or *Zanthoxylum dipetalum* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to this species include habitat degradation and herbivory by feral pigs and goats, competition with the non-native plants *Melinis minutiflora* and *Rubus argutus*, and a risk of extinction of the two remaining populations from naturally occurring events, such as landslides or hurricanes (61 FR 53070).

Stenogyne campanulata (NCN)

Stenogyne campanulata, a member of the mint family (Lamiaceae), is a vine with four-angled, hairy stems. A short-lived perennial species, *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1999).

Little is known about the life history of *Stenogyne campanulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Stenogyne campanulata is known from two populations with 66 individuals which were originally discovered in the left branch of Kalalau Valley on State-owned land in the Na Pali Coast State Park (GDSI 2000; HINHP Database 2000).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff in diverse lowland or montane mesic forest at elevations between 335 and 1,290 m (1,100 and 4,232 ft). The associated native plant species include *Lepidium serra*, *Lobelia niihauensis*, *Lysimachia* spp., *Metrosideros polymorpha*, *Melicope pallida*, *Neraudia kauaiensis*, *Nototrichium divaricatum* (kului), *Poa mannii*, *Remya montgomeryi*, or *Wilkesia gymnoxiphium* (57 FR 20580;

Weller and Sakai 1999; K. Wood, pers. comm., 2001).

The restriction of this species to virtually inaccessible cliffs suggests that herbivory by feral goats may have eliminated it from more accessible locations. Goat herbivory and habitat degradation remain the primary threat. Feral pigs have disturbed vegetation in the vicinity of these plants. Erosion caused by feral goats or pigs exacerbates the potential threat of landslides. *Erigeron karvinskianus* and *Rubus argutus* are the primary non-native plants threatening *Stenogyne campanulata*. The small number of individuals and its restricted distribution are serious potential threats to the species. The limited population size may depress reproductive vigor, or a single environmental disturbance, such as a landslide, could destroy all known extant individuals (57 FR 20580).

Viola helenae (NCN)

Viola helenae is a small, unbranched perennial subshrub with an erect stem in the violet family (Violaceae). The hairless leaves are clustered on the upper part of the plant and are lance-shaped with a pair of narrow, membranous stipules below each leaf. The small, pale lavender or white flowers are produced on stems either singly or in pairs in the leaf axils. The fruit is a capsule that splits open at maturity, releasing the pale olive brown seeds (Wagner *et al.* 1999).

Little is known about the life history and ecology of *Viola helenae*. Wagner *et al.* (1999) stated that the flowers are all chasmogamous (open at maturity for access by pollinators) and not cleistogamous (remain closed and self-fertilize in the bud) as in certain other violets. Therefore, it is likely that its flowers require pollination by insects for seed set. Mature flowering plants do produce seed; however, seed viability may be low and microhabitat requirements for germination and growth may be very specific. Seeds planted at NTBG on Kauai failed to germinate, although they may not have been sufficiently mature when collected and violet seeds are often very slow to germinate. The seeds are jettisoned when the capsule splits open, as in most species of the genus (Service 1994).

Historically, *Viola helenae* was known from four populations, two along either branch of the Wahiawa Stream on Kauai. Currently, there is one known population, with a total of 137 individual plants, on privately owned land within the Wahiawa Drainage (56 FR 47695; Service 1994; GDSI 2000; HINHP Database 2000).

This species is found in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha*-*Cheirodendron* wet forest growing on stream drainage banks or adjacent Valley bottoms in light to moderate shade at elevations between 522 and 1,006 m (1,712 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Broussaisia arguta*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Freycinetia arborea*, *Hesperomannia lydgatei*, *Melicope* spp., or *Pritchardia* spp. (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats include competition from non-native plant species, including *Psidium cattleianum*, *Melastoma candidum*, potentially *Melaleuca quinquenervia*, *Stachytarpheta dichotoma*, *Rubus rosifolius*, *Elephantopus mollis*, *Erechtites valerianifolia*, or various non-native grasses; trampling and browsing damage by feral pigs; landslides and erosion; and hurricanes (56 FR 47695; Service 1994).

Viola kauaiensis var. *wahiawaensis* (nani waialeale)

Viola kauaiensis, a member of the violet family (Violaceae), is a short-lived perennial herb with upward curving or weakly rising, hairless, lateral stems. The species is distinguished from others of the genus by its nonwoody habit, widely spaced kidney-shaped leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers. Two varieties of the species are recognized, both occurring on Kauai: var. *kauaiensis* and var. *wahiawaensis*. *Viola kauaiensis* var. *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases (Service 1998a; Wagner *et al.* 1999).

Five *Viola kauaiensis* var. *wahiawaensis* plants were observed in flower in December. Little else is known about the life history of *Viola kauaiensis* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. (Service 1998a).

Viola kauaiensis var. *wahiawaensis* is known only from two populations in the Wahiawa Mountains of Kauai with a total of 13 individual plants, on privately owned land. This taxon is not known to have occurred beyond its current range (HINHP Database 2000; GDSI 2000).

Viola kauaiensis var. *wahiawaensis* is found in *Machaerina angustifolia*-*Rhynchospora rugosa* (kuolohia)

lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest at elevations between 393 and 1,006 (1,291 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii* (kookoolau), *Chamaesyce remyi* (akoko), *Chamaesyce sparsiflora* (akoko), *Coprosma grayana* (pilo), *Cyanea fissa*, *Dicranopteris linearis*, *Diplopterygium pinnatum* (NCN), *Dubautia imbricata* (naenae), *Dubautia raillardoides*, *Gahnia vitiensis* (NCN), *Lobelia kauaensis* (NCN), *Machaerina angustifolia*, *Machaerina mariscoides*, *Melicope* spp., *Psychotria wawrae*, *Sadleria pallida*, *Scaevola gaudichaudii*, *Sphenomeris chinensis*, *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra oahuensis*, or *Vaccinium dentatum* (Lorence and Flynn 1991; 61 FR 53070; Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Viola kauaiensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor due to the small number of existing populations and individuals; habitat degradation through the rooting activities of feral pigs; and competition with non-native plants, such as *Juncus planifolius* (NCN) or *Pterolepis glomerata* (NCN) (61 FR 53070; Lorence and Flynn 1991; Service 1994; HINHP Database 2000).

Wilkesia hobbdi (dwarf iliau)

Wilkesia hobbdi, a member of the sunflower family (Asteraceae), is a short-lived perennial shrub which branches from the base. The tip of each branch bears a tuft of narrow leaves growing in whorls joined together into a short sheathing section at their bases. The cream-colored flower heads grow in clusters (Carr 1982a, 1999b).

This species is probably pollinated through outcrossing and is probably self-incompatible. Insects are the most likely pollinators. In 1982, Carr reported that reproduction and seedling establishment were occurring and appeared sufficient to sustain the populations. Flowering was observed most often in the winter months, but also during June. Fruits may be dispersed when they stick to the feathers of birds. Densities reach one plant per square meter (approximately one square yard) in localized areas, and hybridization with *Wilkesia gymnoxiphium* may be occurring (Carr 1982a).

First collected in 1968 on Polihale Ridge, Kauai, this species was not formally described until 1971 (St. John

1971). Currently, there are six populations with a total of 491 individuals. This species occurs on State-owned lands within the Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve and on land under Federal jurisdiction within the Pacific Missile Range Facility (PMRF) at Makaha Ridge. The plants occur in Milolii Valley, Makaha Ridge, Haelele Ridge, Kaaweiki Ridge, Polihale Spring, Pohakumano, and Pohakua (HINHP Database 2000; GDSI 2000).

Wilkesia hobbdi grows on coastal dry cliffs or very dry ridges at elevations between 12 and 685 m (40 and 2,246 ft). The associated native plant species include *Artemisia australis*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint johnianus*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia blanda* (ala ala wai nui), *Peperomia leptostachya* (ala ala wai nui), *Peperomia tetraphylla* (ala ala wai nui), *Peucedanum sandwicense*, *Psydrax odoratum*, *Sida fallax*, *Waltheria indica* (uhaloa), or *Wilkesia gymnoxiphium* (57 FR 27859; Service 1995; Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of this species are habitat disturbance and browsing by feral goats. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival of the species, the plant appears to have vigorous reproduction and may survive indefinitely if goats were eliminated from its habitat. Fire and extinction through naturally occurring events, such as landslides or hurricanes, could also be threats to the survival of the species (57 FR 27859; Service 1995).

Xylosma crenatum (NCN)

Xylosma crenatum is a dioecious (plant bears only male or female flowers, and must cross-pollinate with another plant to produce viable seed) long-lived perennial tree in the flacourtiaceae family (Flacourtiaceae). The tree grows up to 14 m (45 ft) tall and has dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, with coarsely toothed edges and moderately hairy undersides. More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *X. crenatum* from the other Hawaiian member of this genus (Wagner *et al.* 1999).

Little is known about the life history of *Xylosma crenatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Service 1995).

Historically, *Xylosma crenatum* was known from two sites on Kauai: along upper Nualolo Trail in Kuia Natural Area Reserve and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve. Currently, this species is extant on State-owned land in Kainamano, Nualolo Trail, and Mohihi Valley within the Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve. There are three populations with a total of eight individual plants (57 FR 20580; Service 1995; HINHP Database 2000; GDSI 2000).

Xylosma crenatum is known from diverse *Acacia koa*-*Metrosideros polymorpha* montane mesic forest, *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest, or *Acacia koa*-*Metrosideros polymorpha* montane wet forest at elevations between 936 and 1,284 m (3,070 and 4,212 ft). Associated native plant species include *Athyrium sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Cyanea hirta* (haha), *Diplazium sandwichianum*, *Dubautia knudsenii*, *Hedyotis* spp., *Ilex anomala*, *Lobelia yuccoides*, *Myrsine* spp., *Nestegis sandwicensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Scaevola procera*, *Streblus pendulinus*, *Tetraplasandra* spp., *Touchardia latifolia*, or *Zanthoxylum dipetalum* (57 FR 20580; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The small number of individuals and scattered distribution makes this species vulnerable to human or natural environmental disturbance. *Xylosma crenatum* is also threatened by competition from non-native plants, particularly *Psidium guajava*. In addition, feral pigs may threaten this species (57 FR 20580; Service 1995; HINHP Database 2000).

Multi-Island Species

Acaena exigua (liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves and slender flowering stalks 5–15 cm (2–5.9 in.) long. It is easily hidden among the other low, tufted bog plants with which it grows. The narrow, oblong leaves are usually 10–25 mm (0.4–1.0 in.) long with 6–17 leaflets 1–4 mm (0.04–0.16 in.) long and 1–2 mm (0.04–0.08 in.) wide. The leaflet on the end is wider (to 3 mm (0.12 in.)). The upper surface of the leaves is glossy with conspicuous veins; the lower

surface is whitish. The flowers lack petals and are arranged in short, dense spikes 5–10 mm (0.2–0.4 in.) long held on slender, sparsely leafy stalks 5–15 cm (2–6 in.) tall. The base of the flower is urn-shaped, sometimes with very short spines or bristles, and encloses a single cone-shaped dry fruit (achene) 1 mm (0.04 in.) long (Wagner *et al.* 1999).

Little is known about the life history of *Acaena exigua*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Acaena exigua* was known from Puu-kukui on West Maui and from Mount Waialeale on Kauai. On Kauai, *Acaena exigua* was last collected by Wawra between 1869 and 1870, and it has not been seen in the wild since (Wagner *et al.* 1999).

Acaena exigua is known only from sites with extensive cloud cover and moderate to strong winds in wet montane shrub bog or bog margins characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs and elevations between 666 and 1,598 m (2,185 and 5,244 ft). Associated native plant species include *Deschampsia nubigena* (hair grass), *Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Dubautia* spp., *Melicope* spp., *Metrosideros polymorpha*, *Oreobolus furcatus* (NCN), or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

The reason for the disappearance of this species is not known. Though impact from herbivory and rooting by pigs is assumed and often cited, feral pigs have become established at Waialeale (Kauai) only within the past two decades. The main current threats to *Acaena exigua*, if it exists, are believed to include small population size; human impacts (collecting and site degradation); potentially consumption of vegetative or floral parts of this species by non-native slugs and/or rats; predation and habitat disturbance by feral pigs; and non-native plant species especially, *Juncus planifolius* (57 FR 20772).

Achyranthes mutica (NCN)

Achyranthes mutica, a member of the amaranth family (Amaranthaceae) and a short-lived perennial, is a many-branched shrub with egg-shaped leaves and stalkless flowers. This species is distinguished from others in the genus by the shape and size of the sepals and by characteristics of the spike, which is

short and congested (Wagner *et al.* 1999).

Historically, *Achyranthes mutica* was known from three collections from opposite ends of the main archipelago: Kauai and Hawaii. Currently, this species is known only from Hawaii island, from the Kilohana Gulch on private land. It was last observed on Kauai in the 1850s (61 FR 53108; HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Achyranthes mutica* on the island of Kauai.

Nothing is known of the threats to *Achyranthes mutica* on the island of Kauai.

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 2000). On Kauai, there is a total of seven populations on private and State-owned lands (Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, and Kealia Forest Reserve), with approximately 80 individuals, that occur at Pihea, Pali Elelee, Waioli Valley, Mount Namahana, Lumahai Valley, Wainiha Valley, and Kapalaoa (59 FR 56333; GDSI 2000; HINHP Database 2000).

This species, an epiphyte (a plant that derives moisture and nutrients from the air and rain) usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 107 and 1,593 m (351 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Athyrium sandwichianum*, *Broussaisia* spp., *Cheirodendron trigynum*, *Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, or *Tetraplasandra oahuensis* (59 FR 56333; Linney 1989; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include habitat degradation by feral pigs and goats and competition with the non-native plant *Psidium cattleianum* (59 FR 56333; HINHP Database 2000).

Alectryon macrococcus var. *macrococcus* (mahoe)

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in *A. macrococcus* var. *auwahiensis*, but only on leaves of young *A. macrococcus* var. *macrococcus* plants. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.3 cm (0.9 in.) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *Alectryon macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997).

Alectryon macrococcus var. *macrococcus* historically and currently occurs on Kauai, Oahu, Molokai and Maui. On Kauai, *Alectryon macrococcus* var. *macrococcus* occurs on State-owned land in the Alakai Wilderness

Preserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve on Kauai. A total of six populations of 204 individuals is known from Kalalau Valley, Kipalau Valley, Haeleele Valley, Waimea Canyon, Hipalau Valley, and Kawaiiki Falls (K. Wood, *in litt.* 1999; GDSI 2000). This variety is also found on Oahu, Molokai, and West Maui (57 FR 20772). *Alectryon macrococcus* var. *auwahiensis* is found only on leeward east Maui and will be reviewed further in a subsequent rule (Medeiros *et al.* 1986; HINHP Database 2000).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Kauai is *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest on dry slopes or in gulches, at elevations between 341 and 954 m (1,120 and 3,129 ft). Associated native plant species include *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea timonioides*, *Caesalpinia kauaiense* (uhiuhi), *Canavalia* spp. (awikiwiki), *Carex meyenii*, *Carex wahuensis*, *Doodia kunthiana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Melicope knudsenii*, *Microlepis strigosa*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Pisonia* spp., *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia* spp., *Rauwolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum* spp. (57 FR 20772; HINHP Database 2000; K. Wood, pers. comm., 2001).

Alectryon macrococcus var. *macrococcus* on Kauai is threatened by feral goats and pigs; the non-native plant species *Melinis minutiflora*, *Schinus terebinthifolius* (Christmasberry), or *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; depressed reproductive vigor; seed predation by insects (probably the endemic microlepidopteran *Prays cf. fulvocanella*); loss of pollinators; and, due to the very small remaining number of individuals and their limited distribution, natural or human-caused environmental disturbances which could easily be catastrophic (57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and

petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, one location on West Maui, and eastern Hawaii.

Currently, it is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Kauai, there are eight total populations with 62 individuals on State (Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, Lihue-Koloa Forest Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands in Waiahuakua, Kalalau Valley, Awaawapuhi Valley, Paaiki Valley, Kipalau Valley, Hulua, Wahiawa Falls, and Laauhihaihai (Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Bonamia menziesii is found in dry, mesic, or wet *Metrosideros polymorpha*-*Cheirodendron-Dicranopteris* forest at elevations between 351 and 1,415 m (1,151 and 4,644 ft). Associated native plant species include *Antidesma platyphyllum*, *Alphitonia ponderosa*, *Acacia koa*, *Cyanea* spp., *Cyrtandra pickeringii*, *Cyrtandra limahuliensis*, *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Dubautia knudsenii*, *Hedyotis terminalis*, *Isodendron longifolium*, *Labordia hirta*, *Melicope anisata*, *Melicope barbigerata*, *Myoporum sandwicense*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Psychotria hexandra*, *Psydrax odoratum*, *Sapindus oahuensis*, *Scaevola procera*, or *Syzygium sandwicensis* (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to this species on Kauai include habitat degradation and possible predation by feral pigs and goats, deer, and cattle; competition with a variety of non-native plants; and fire (59 FR 56333).

Centaurium sebaeoides (awiwii)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched

arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. It is possible that heavy rainfall induces flowering. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on the islands of Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Kauai, there are a total of three populations with approximately 52 individuals on State-owned land. This species is found at Punaiaiea Point, the caves at Nakeikionaiwi, and Pohakuao within the Na Pali Coast State Park (HINHP Database 2000; GDSI 2000).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas at elevations between 0 and 147 m (0 and 483 ft). Associated native plant species include *Artemisia* spp. (hinahina), *Bidens* spp., *Chamaesyce celastroides*, *Dodonaea viscosa*, *Fimbristylis cymosa* (mauu akiaki), *Heteropogon contortus*, *Jacquemontia ovalifolia* (pauohiiaaka), *Lipochaeta succulenta*, *Lipochaeta heterophylla* (nehe), *Lipochaeta integrifolia* (nehe), *Lycium sandwicense*, *Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phleoides*, *Panicum fauriei* (NCN), *P. torridum* (kakonakona), *Scaevola sericea*, *Sida fallax*, or *Wikstroemia uva-ursi* (akia) (56 FR 55770; K. Wood, pers. comm., 2001).

The major threats to this species on Kauai include habitat degradation by feral goats and cattle; competition from the non-native plant species *Casuarina equisetifolia* (ironwood), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala*, *Prosopis pallida* (kiawe), *Schinus terebinthifolius*, *Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling by humans on or near trails; and fire (56 FR 55770; Medeiros *et al.* 1999; Service 1999).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial of the spleenwort family (Asplenaceae). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in.) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf

stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in.) long and 1 mm (0.04 in.) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments. The indusium (an outgrowth of a fern frond that invests the sori) is whitish before wrinkling, thin and suborbicular (less than completely, perfectly round), with a narrow sinus extending about half way, glabrous except for a circular margin which is ciliolate (fringed with minute hairs) with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. It was last seen on Kauai in 1896 (HINHP Database 2000).

This species is found on rock faces in gulches in the forest understory at elevations between 568 and 1,069 m (1,863 and 3,507 ft), in *Metrosideros polymorpha-Diospyros* spp. mesic forest and diverse mesic forest. Associated native plant species include *Myrsine* spp., *Psychotria* spp., and *Xylosma* spp. (Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs and goats, competition with non-native plant species, especially *Psidium cattleianum* or *Schinus terebinthifolius*; fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the

shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau, Kauai, scattered locations on Oahu, Molokai, and Lanai. It was last observed on Molokai in 1912 and on Lanai in 1919. Currently, this species is reported from the Nualolo Valley on Kauai on State-owned land and west of Mokouia Valley on the privately owned island of Niihau. There is one known population with about 300 individuals on the island of Kauai and an unknown number of individuals on Niihau (HINHP Database 2000; GDSI 2000).

Cyperus trachysanthos is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes at elevations between 0 and 234 m (0 and 767 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (61 FR 53108; Koyama 1999; K. Wood, pers. comm., 2001).

On Kauai, the threats to this species are the loss of wetlands and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of populations. The threats on Niihau are unknown (61 FR 53108; Service 1999).

Delissea undulata (NCN)

Delissea undulata, a member of the bell flower family (Campanulaceae), is an unbranched, palm-like, woody-stemmed perennial tree, with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. The three recognized subspecies are distinguishable on the basis of leaf shape and margin characters: *D. undulata* ssp. *kauaiensis*, leaf blades are oval and have a flat-margin with sharp teeth; *D. undulata* ssp. *niihauensis*, leaf blades are heart shaped and have a flat-margin with shallow, rounded teeth; and *D. undulata* ssp. *undulata*, leaf blades are elliptic to lance-shaped and wavy-margin with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases (Lammers 1990).

On the island of Hawaii, *Delissea undulata* ssp. *undulata* was observed in flower and fruit (immature) in August and outplanted individuals were observed in flower in July. Little else is known about the life history of *Delissea*

undulata. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996; 61 FR 53124).

Historically and currently, *Delissea undulata* ssp. *kauaiensis* is known only from Kauai. Currently, there is one known population of three individuals on State-owned land in Kuia Valley within the Kuia Natural Area Reserve. *Delissea undulata* ssp. *niihauensis* was known only from Niihau, but has not been seen since 1865. *Delissea undulata* ssp. *undulata* was known from southwestern Maui and western Hawaii. Currently, this variety occurs only on the island of Hawaii (K. Wood, *in litt.* 1999; Lammers 1999; GDSI 2000; 61 FR 53124; HINHP Database 2000).

Delissea undulata ssp. *kauaiensis* occurs in dry or open *Acacia koa-Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest at elevations between 139 and 1,006 m (456 and 3,299 ft). Associated native species include *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Eragrostis variabilis*, *Euphorbia haeleeleana*, *Kokia kauaiensis*, *Microlepis strigosa*, *Panicum* spp., *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum* (K. Wood, pers. comm., 2001).

The threats to this subspecies on Kauai are feral goats, pigs, and cattle; small population size; competition with the non-native plants *Passiflora mollissima* and *Delairea odorata* (cape ivy); fire; introduced slugs; seed predation by rats and introduced game birds; and a risk of extinction due to random naturally occurring events, such as landslides or hurricanes (Service 1996).

Diellia erecta (asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, scattered locations on Maui, and various locations on the Island of Hawaii. Currently, it is only known from Moloka'i, Maui, and Hawaii and recently rediscovered on Kauai. On Kauai there is one known population with 30 individuals in Kawaiiki Valley on State-owned land within the Na Pali-Kona Forest Reserve (Service 1999; HINHP Database 2000).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic with *Acacia koa* and *Acacia koaia* as codominants, at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Asplenium aethiopicum* (NCN), *Asplenium contiguum* (NCN), *Asplenium macraei* (NCN), *Coprosma* spp., *Dodonaea viscosa*, *Dryopteris fusco-atra* (NCN), *Dryopteris unidentata*, *Hedyotis terminalis*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, or *Wikstroemia* spp. (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Diellia erecta* on Kauai are habitat degradation by pigs and goats; competition with non-native plant species, including *Blechnum occidentale*, *Grevillea robusta* (silk oak), *Lantana camara*, *Mariscus meyenianus* (NCN), *Myrica faya*, *Passiflora mollissima*, *Rubus argutus*, or *Setaria palmifolia* (palm grass); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 56333; Service 1996).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific

environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is only known from Maui. It was last seen on Kauai in 1909 (HINHP Database 2000).

This species occurs in brown soil with basalt outcrops near water falls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 476 and 1,284 m (1,562 and 4,212 ft) (Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats on Kauai are habitat degradation by feral goats, and pigs and competition with non-native plant species (59 FR 49025; Service 1998a; HINHP Database 2000).

Euphorbia haeleleana (akoko)

Euphorbia haeleleana, a member of the spurge family (Euphorbiaceae), is a dioecious tree with alternate papery leaves. This short-lived perennial species is distinguished from others in the genus in that it is a tree, whereas most of the other species are herbs or shrubs, as well as by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. *Euphorbia haeleleana* sets fruit between August and October. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Wagner *et al.* 1999; Service 1999).

Euphorbia haeleleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu. On Kauai, there is a total of seven populations with 597 individuals occurring on State-owned land. It is found at Pohakuao, Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haelele Valley within the Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (61 FR 53108; Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000).

Euphorbia haeleleana is usually found in lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This plant is typically found at elevations between 284 and 1,178 m (931 and 3,866 ft).

Associated native plant species include *Acacia koaia* (koaia), *Antidesma platyphyllum*, *Claoxylon sandwicense*, *Carex meyenii*, *Carex wahuensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauwolfia sandwicensis*, *Reynoldsia sandwicensis* (ohe), *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, *Pouteria sandwicensis*, *Pisonia sandwicensis*, or *Xylosma* spp. (61 FR 53108; K. Wood, pers. comm., 2001).

Threats to this species on Kauai include habitat degradation and destruction by deer, feral goats, and pigs; seed predation by rats; fire; and competition with non-native plants (61 FR 53108; Service 1999).

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large dioecious tree with white oblong pores covering its scaly, pale brown bark. This long-lived perennial species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Neal 1965; Linney 1982; Hayden 1999; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999).

Historically, *Flueggea neowawraea* was known from Kauai, Oahu, Maui, Molokai, and the island of Hawaii. Currently, it is known from Kauai, Oahu, east Maui, and Hawaii. On Kauai, this species is reported from Limahuli Valley, Pohakuao, the left branch of Kalalau Valley, Kuia and Paaiki Valleys, Kipalau Valley, Koaie Falls, Kawaiiki Valley, and Waimea Canyon. There are eight populations with 85 known individuals occurring on State (Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands. However, it has been estimated that the total number of individuals may be slightly over 100 (Hayden 1999; Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Flueggea neowawraea occurs in dry or mesic forests at elevations between 210

and 1,178 m (689 and 3,865 ft). Associated native plant species include *Alectryon macrococcus*, *Antidesma pulvinatum* (hame), *A. platyphyllum*, *Bidens sandwicensis*, *Bohea timonioides*, *Caesalpinia kavaensis*, *Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Hibiscus* spp., *Isodendron laurifolium*, *Kokia kauaiensis*, *Melicope* spp., *Metrosideros polymorpha*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Tetraplasandra* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Xylosma crenatum* (59 FR 56333; HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with non-native plant species; fire; small population size; depressed reproductive vigor; and a potential threat of predation on the fruit by rats (59 FR 56333; HINHP Database 2000; Service 1999).

Gouania meyenii (NCN)

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub with entire, papery leaves. This short-lived perennial species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild. Little else is known about the life history of *Gouania meyenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Gouania meyenii* was known only from Oahu. It was discovered on Kauai in 1993 (Lorence *et al.*) and published in the supplement to the Manual of Flowering Plants of Hawaii (Wagner *et al.* 1999). Currently, this species is found on Oahu and on Kauai on State-owned land within the Na Pali Coast State Park and the Na Pali-Kona Forest Reserve. There is a total of three populations on Kauai with nine individuals found in the Kalalau and Hipalau Valleys (56 FR 55770; Wagner

et al. 1999; GDSI 2000; HINHP Database 2000).

This species typically grows on rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest at elevations between 375 and 1,179 m (1,231 and 3,867 ft). Associated native plant species include *Bidens* spp., *Carex meyenii*, *Chamaesyce* spp., *Dodonaea viscosa*, *Diospyros* spp., *Eragrostis variabilis*, *Euphorbia haeleleana*, *Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida*, *Neraudia kauaiensis*, *Nestegis sandwicensis*, *Nototrichium divaricatum*, *Panicum lineale*, *Poa mannii*, *Psychotria* spp., *Senna gaudichaudii* (kolomona), or *Wilkesia gymnoxiphium* (56 FR 55770; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Gouania meyenii* on Kauai include competition from the non-native plants *Schinus terebinthifolius*, *Melinis minutiflora*, or *Psidium cattleianum*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and individuals (56 FR 55770; Service 1998b).

Hedyotis cookiana (awiwi)

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hedyotis cookiana* was known from the islands of Hawaii, Kauai, Molokai, and Oahu. Currently, it is only known from one population of 80 individuals on State-owned land within Hono O Na Pali Natural Area Reserve in Waiahuakua Valley on Kauai (GDSI 2000; HINHP Database 2000).

This species generally grows in streambeds or on steep cliffs close to water sources in relict *Metrosideros polymorpha* low mesic and low wet forest communities at elevations between 119 and 553 m (392 and 1,814 ft). Associated native plant species include *Boehmeria grandis*, *Chamaesyce celastroides* var. *hanapepense*, *Hibiscus kokio* ssp. *saintjohnianus*, *Machaerina angustifolia*, *Nototrichium sandwicense*,

Pleomele aurea, *Pipturus kauaiensis* (mamaki), *Pouteria sandwicensis*, *Psydrax odoratum*, or *Rauvolfia sandwicensis*. *Hedyotis cookiana* is believed to have formerly been much more widespread on several of the main Hawaiian Islands (Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The threats to this species on Kauai are risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population; flooding; competition with non-native plants; and habitat modification by feral pigs and goats (59 FR 9304; Service 1995; HINHP Database 2000).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae). The species is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii (Bates 1990; Service 1999; HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Hibiscus brackenridgei* on the island of Kauai.

Nothing is known of the threats to *Hibiscus brackenridgei* on the island of Kauai.

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived perennial member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-branched (two- or three-tiered) inflorescence (O'Connor 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1996).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, Kauai and the island of Hawaii. Currently, this species is found on Molokai, Hawaii, Maui, and recently rediscovered on the north shore of Kauai. On Kauai, there are two populations with at least two individuals at Kaweonui Point and Kauapea Beach on privately owned land (59 FR 10305; HINHP Database 2000).

The habitat of *Ischaemum byrone* is coastal shrubland, occurring near the ocean among rocks and seepy cliffs at elevations between 0 and 297 m (0 and 975 ft). Associated native plant species include *Bidens* spp., *Chamaesyce celastroides*, *Fimbristylis cymosa*, *Lipochaeta succulenta*, *Lysimachia mauritiana*, or *Scaevola sericea* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Ischaemum byrone* include the invasion of non-native plants, fire, grazing and browsing by goats and pigs. Disturbance incurred from these ungulates further promotes the introduction and establishment of non-native weeds. Some populations are also threatened from residential development (59 FR 10305; Service 1996; HINHP Database 2000).

Isodendron laurifolium (aupaka)

Isodendron laurifolium, a member of the violet family (Violaceae), is a slender, straight shrub with few branches. The short-lived perennial species is distinguished from others in the genus by its leathery, oblong-elliptic or narrowly elliptic lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the life history of *Isodendron laurifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Isodendron laurifolium* is known from scattered locations on

Kauai and Oahu. Currently, on Kauai, this species is found on State-owned land within the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve in the following locations: Paaiki, Poopooiki, Kawaiula Valley, Mehanaloa Valley, Makaha Valley, Haelele Valley, Kipalau Valley, Kawaiiki Valley and Kaluahaulu Ridge. There are a total of five populations with 151 individuals (HINHP Database 2000; GDSI 2000; Service 1999).

Isodendron laurifolium is usually found at elevations between 376 and 1,163 m (1,233 and 3,817 ft) in diverse mesic forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. Associated native species include *Alphitonia ponderosa*, *Antidesma* spp., *Claoxylon sandwicense*, *Dodonaea viscosa*, *Dubautia* spp., *Elaeocarpus bifidus*, *Euphorbia haeleleana*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Melicope anisata*, *Melicope barbigerata*, *Melicope ovata*, *Melicope peduncularis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum glabrum* (hoawa), *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Streblus pendulinus*, or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Isodendron laurifolium* on Kauai are habitat degradation by feral goats, pigs and deer and competition with non-native plants (61 FR 53108; HINHP Database 2000; Service 1999).

Isodendron longifolium (aupaka)

Isodendron longifolium, a member of the violet family (Violaceae), is a slender, straight shrub. Hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of *Isodendron longifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Isodendron longifolium* is known from scattered locations on Kauai and Oahu. On Kauai, this species is reported from Limahuli Valley, Manoa Stream, Hanakapiai, Pohakea, Waioli Valley, the left branch of Kalalau Valley, Honopu Valley, Kawaiula Valley, Wahiawa, and Haupu. There is a total of nine populations containing approximately 521 individual plants on State (Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned

lands (Lorence and Flynn 1991, 1993; 61 FR 53108; Service 1999; HINHP Database 2000; GDSI 2000).

Isodendron longifolium is found on steep slopes and some flats in certain undisturbed areas, gulches, or stream banks in mesic or wet *Metrosideros polymorpha*-*Acacia koa* forests, usually at elevations between 38 and 1,541 m (125 and 5,057 ft). Associated native plant species include *Antidesma* spp., *Bidens* spp., *Bobea brevipes*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diospyros* spp., *Eugenia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Nestegis sandwicensis*, *Peperomia* spp., *Perrottetia sandwicensis*, *Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odoratum*, or *Syzygium* spp. (61 FR 53108; Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Isodendron longifolium* on Kauai are habitat degradation or destruction by feral goats and pigs, and competition with various non-native plants (Lorence and Flynn 1993; 61 FR 53108; Service 1999; HINHP Database 2000).

Isodendron pyriformium (wahine noho kula)

Isodendron pyriformium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole is subtended by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The pedicel (flower stalk) is white-hairy, and subtended by two bracts. Bracts arise at the tip of the peduncle. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendron pyriformium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. No other life history information is currently known for this species (Service 1996).

Isodendron pyriformium is known historically from six of the Hawaiian Islands. Locations of the populations on Niihau, Molokai, and Lanai were

unspecified. Specific populations were found in Oahu's central Waianae Mountains, Maui's southwestern Mountains, and on the western slope of Hualalai mountain on the island of Hawaii. It is currently found only on the island of Hawaii. It was last seen on Niihau in the 1850s (59 FR 10305; Service 1996; GDSI 2000; HINHP Database 2000; Marie Brueggemann, pers. comm., 2000).

Information on the physical and biological features that are essential to the conservation of *Isodendron pyriformis* on the island of Niihau is not known.

Information on the threats of *Isodendron pyriformis* on the island of Niihau is not known.

Lobelia niihauensis (NCN)

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This short-lived perennial species is distinguished from others in the genus by lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flowers (Lammers 1999).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature a month to six weeks later. Plants are known to live as long as 20 years. Little else is known about the life history of *Lobelia niihauensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Lobelia niihauensis* was known from Oahu, Niihau, and Kauai. It is now known to be extant only on Kauai and Oahu. On Kauai, 11 populations containing 1,106 individuals can be found on State (Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands in Limahuli Valley, Hoolulu Valley, Hanakoa Valley, Pohakuao, the left and right branches of Kalalau Valley, Koaie Canyon, Kipalau Valley, Polihale Spring, Kaaweiki Valley, and Keopaweo (Service 1998b; HINHP Database 2000; GDSI 2000).

Lobelia niihauensis typically grows on exposed, mesic mixed shrubland or coastal dry cliffs at elevations between 11 and 887 m (37 and 2,911 ft). Associated native plant species include *Artemisia australis*, *Bidens sandwicensis*, *Chamaesyce celastroides*, *Charentiera* spp., *Eragrostis variabilis*, *Hibiscus kokia* ssp. *saint-johnianus*, *Lipochaeta connata* var. *acris*, *Lythrum* spp. (pukamole), *Nototrichium* spp., *Plectranthus parviflorus*, *Schiedea*

apokremnos, or *Wilkesia hobdyi* (Service 1998b; Lammers 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

On Kauai, the major threats to this species are habitat degradation and browsing by feral goats and competition from non-native plants (56 FR 55770).

Lysimachia filifolia (NCN)

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub. This short-lived perennial species is distinguished from other species of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai. This species is now also known from Oahu, and the "Blue Hole" area of Waialeale, Kauai. There is currently one population containing a total of 75 individuals on State-owned land on Kauai within the Lihue-Koloa Forest Reserve (Service 1995; HINHP Database 2000; GDSI 2000).

This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations between 177 and 1,088 m (581 and 3,568 ft). Associated native plant species include mosses, ferns, liverworts, *Antidesma platyphyllum*, *Bidens valida* (kookoolau), *Bobea elatior* (ahakea lau nui), *Cyanea asarifolia*, *Chamaesyce remyi* var. *kauaiensis* (akoko), *Dubautia plantaginea* ssp. *magnifolia* (naenae), *Eragrostis variabilis*, *Metrosideros polymorpha*, *Machaerina angustifolia*, *Melicope* spp., or *Panicum lineale* (59 FR 9304; Service 1995; Wagner *et al.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Lysimachia filifolia* on Kauai include competition with non-native plant species; feral pigs; and the risk of extinction on Kauai from naturally occurring events (*e.g.*, landslides and hurricanes), due to the small number of individuals in the only known population (59 FR 9304; HINHP Database 2000).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with

brown scales. *Mariscus pennatiformis* is a subdivided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui, the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands). *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. It was last seen on Kauai in 1927 (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Mariscus pennatiformis is found at elevations between 544 and 1,104 m (1,785 and 3,621 ft) in open sites in *Metrosideros polymorpha-Acacia koa* mixed mesic forest. Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Alsinidendron viscosum*, *Carex alligata* (NCN), *Cyperus laevigatus* (makaloo), *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Myrsine linearifolia*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Poa sandwicensis*, *Psydrax odoratum*, *Schiedea stellarioides*, *Styphelia tameiameia*, or endemic ferns (Koyama 1990; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Mariscus pennatiformis* on Kauai include grazing and habitat destruction caused by ungulates; competition from non-native plant species; and extinction from random naturally occurring events (59 FR 56333; Service 1999).

Melicope knudsenii (alani)

Melicope knudsenii, a member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The long-lived perennial species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in

the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope knudsenii* is known from Maui and Kauai. On Kauai, this species is known from seven populations on State-owned land, with a total of 10 individuals, in Poopooiki Valley, Kuia Valley, Mahanaloa Valley, Makaha Ridge, Koaie Canyon, Koaie Falls, and Kawaiiki Valley within the Kuia Natural Area Reserve and Na Pali-Kona Forest Reserve (59 FR 9304; Service 1995; GDSI 2000; HINHP Database 2000; K. Wood, pers. comm., 2001).

Melicope knudsenii grows on forested flats with brown granular soil in lowland dry to montane mesic forests at elevations between 111 and 1,141 m (364 and 3,745 ft) with *Alectryon macrococcus*, *Antidesma platyphylla*, *Bobea brevipes*, *Carex meyenii*, *Cryptocarya mannii*, *Diospyros sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Euphorbia haeleleana*, *Gahnia becheyi* (NCN), *Hedyotis* spp., *Hibiscus waimeae*, *Isodendron laurifolium*, *Metrosideros polymorpha*, *Melicope* spp., *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Peucedanum sandwicense*, *Pisonia sandwicensis*, *Pittosporum kauaiensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria hobdyi*, *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Remya kauaiensis*, *Scaevola procera*, *Styphelia tameiameia*, or *Xylosma hawaiiense* (Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Melicope knudsenii* on Kauai include competition with the non-native plant *Lantana camara*; habitat degradation by feral goats and pigs; fire; black twig borer; and the risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals and populations (59 FR 9304; Service 1995).

Melicope pallida (alani)

Melicope pallida, a member of the rue family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The long-lived perennial species differs from *M. haupuensis*, *M.*

knudsenii, and other members of the genus by presence of resinous new growth, leaves folded in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope pallida* is known from Oahu and Kauai. On Kauai, the species is currently known in the following locations: Pohakua, the left branch of Kalalau Valley, Honopu Trail, Awaawapuhi Valley, and Koaie Canyon. There is a total of five populations with 181 individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (K. Wood, in litt. 1999; D.W. Mathias, U.S. Navy (Navy), in litt. 1999; HINHP Database 2000; GDSI 2000).

Melicope pallida usually grows on steep rock faces in lowland to montane mesic to wet forests or shrubland at elevations between 359 and 1,081 m (1,179 and 3,546 ft). Associated native plant species include *Abutilon sandwicense*, *Alyxia oliviformis*, *Artemisia australis*, *Boehmeria grandis*, *Carex meyenii*, *Chamaesyce celastroides* var *hanapepensis*, *Coprosma waimeae*, *Coprosma kauensis* (koi), *Dodonaea viscosa*, *Dryopteris* spp., *Hedyotis terminalis*, *Lepidium serra*, *Melicope* spp., *Metrosideros polymorpha*, *Nototrichium* spp., *Pipturus albidus* (mamaki), *Pleomele aurea*, *Poa mannii*, *Psychotria mariniana*, *Pritchardia minor*, *Sapindus oahuensis*, *Schiedea membranacea*, *Tetraplasandra waialealae*, or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Melicope pallida* are habitat destruction by feral goats and pigs; the black twig borer; fire; susceptibility to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations; and competition with non-native plant species (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; Service 1995; HINHP Database 2000).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This short-lived perennial species is the only

member of the genus in the Hawaiian Islands, one of three genera of the family with species endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the Waianae Mountains on the island of Oahu. Additionally, a population is known from State-owned Keopuka Rock, an islet off the coast of Maui. On Kauai, there are 14 populations on State (Haena State Park, Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands, containing approximately 340 individuals, in Maunahou Valley, Limahuli Valley, Hoolulu, Hanakoa, Pohakua, Kanakou, the left branch of Kalalau Valley, Nualolo Valley, Kuia Valley, Mahanaloa Valley, Koaie Canyon, and Haupu (59 FR 9304; Service 1995; K. Wood, in litt. 1999; HINHP Database 2000; GDSI 2000).

This species grows on cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest between 0 and 1,232 m (0 and 4,041 ft). Associated native plant species include *Acacia koa*, *Artemisia australis*, *Brighamia insignis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokia*, *Lobelia niihauensis*, *Metrosideros polymorpha*, *Panicum lineale*, *Psydrax odoratum*, *Psychotria* spp., or *Wilkesia* spp. (59 FR 9304; Constance and Affolter 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Peucedanum sandwicense* on Kauai include competition with introduced plants; habitat degradation and browsing by feral goats and deer; and trampling and trail clearing (Hanakapiai population) (59 FR 9304; Service 1995; HINHP Database 2000).

Phlegmariurus mannii (wawaeiole)

Phlegmariurus mannii, a member of the clubmoss family (Lycopodiaceae) and a short-lived perennial, is a pendant (hanging) epiphyte with clustered,

delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Holub 1991).

Little is known about the life history of *Phlegmariurus mannii*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui, and Hawaii island. Currently, this species is extant on Maui and Hawaii island. It was last observed on Kauai in 1900 (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Phlegmariurus mannii* on the island of Kauai.

Nothing is known of the threats to *Phlegmariurus mannii* on the island of Kauai.

Phlegmariurus nutans (waewaeiole)

Phlegmariurus nutans is an erect of pendulous herbaceous epiphyte (plant not rooted in the ground) of the clubmoss family (Lycopodiaceae). Its stiff, light green branches, 25 to 40 cm (10 to 16 in.) long and about 6 mm (0.2 in.) thick, are covered with stiff, flat, leathery leaves, 12 to 16 mm (0.5 to 0.6 in.) long and about 2.5 mm (0.1 in.) wide that overlap in acute angles. The leaves are arranged in six rows and arise directly from the branches. The branches end in thick, 7 to 13 cm (2.8 to 5.1 in.) long fruiting spikes that are unbranched or branch once or twice, and taper toward a downward-curving tip. Bracts on the fruiting spikes, between 3 to 6 mm (0.6 and 0.2 in.) long, are densely layered and conceal the spore capsules. This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, simple or forking fruiting spikes, and larger and stiffer leaves (Wagner and Wagner 1987).

Phlegmariurus nutans has been observed fertile, with spores, in May and December. Little else is known about the life history of *Phlegmariurus nutans*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Phlegmariurus nutans* was known from the island of Kauai and from scattered locations in the Koolau Mountains of Oahu. It is currently only known from Oahu. It was last observed on Kauai in 1900 (Service 1998b; HINHP Database 2000).

Phlegmariurus nutans grows on tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha*-

Dicranopteris linearis wet forests and occasionally mesic forests at elevations between 601 and 1,594 m (1,971 and 5,228 ft). The vegetation in those areas typically include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cibotium chamissoi* (hapuu), *Cheirodendron fauriei*, *Diploterygiun pinnatum*, *Hedyotis terminalis*, *Hibiscus kokia* ssp. *kokia*, *Melicope waialealae* (alani wai), *Scaevola gaudichaudii*, *Syzygium sandwicensis*, *Perrottetia sandwicensis*, *Psychotria hexandra*, *P. mariniana*, or *P. wawrae* (K. Wood, pers. comm., 2001).

The primary threat to *Phlegmariurus nutans* is extinction due to naturally-occurring events and/or reduced reproductive vigor because of the small number of remaining individuals and limited distribution. Additional threats to *Phlegmariurus nutans* are feral pigs and the noxious non-native plants *Clidemia hirta* or *Psidium cattleianum* (Service 1998b).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This short-lived perennial species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala*, *laxiflora*, *longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (Service 1999).

Historically, *Plantago princeps* was found on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. It no longer occurs on the island of Hawaii. Two varieties of the species, totaling six populations, with 471 individuals, are extant on the island of Kauai, on both State (Halelea Forest Reserve, Lihue-Koloa Forest Reserve, and Na Pali Coast State Park) and privately owned lands. Historically on Kauai, *Plantago princeps* var. *anomala* was reported from a ridge west of Hanapepe River. Currently, this variety is found in the left branch of Kalalau Valley and Puu Ki. *Plantago princeps* var. *longibracteata* was historically known from Hanalei, the

Wahiawa Mountains, and Hanapepe Falls. Currently, populations are known from Waioli Valley, Alakai Swamp, the left branch of Wainiha Valley, and Blue Hole (59 FR 56333; Service 1999; GDSI 2000; HINHP Database 2000).

Plantago princeps var. *longibracteata* is found in windswept areas near waterfalls in *Metrosideros polymorpha*-*Cheirodendron montane* wet forest with riparian vegetation at elevations between 347 and 1,598 m (1,139 and 5,244 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Bobea elatior*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis elatior*, *Huperzia* spp., *Hedyotis centranthoides*, *Isachne pallens* (NCN), *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pilea peploides* (NCN), *Pipturus* spp., *Sadleria cyatheoides* (amau), or *Tetraplasandra* spp. (K. Wood, pers. comm., 2001).

Plantago princeps var. *anomala* is found in *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops. Associated native plant species include *Bidens sandwicensis*, *Carex meyenii*, *Carex wahuensis*, *Charpentiera elliptica*, *Hedyotis* spp., *Lipochaeta connata*, *Lysimachia glutinosa*, *Lysimachia kalalauensis*, *Melicope* spp., *Myrsine linearifolia*, *Poa mannii*, or *Wilkesia gymnoxiphium* (K. Wood, pers. comm., 2001).

The primary threats to both species of *Plantago princeps* on Kauai are herbivory and habitat degradation by feral pigs and goats and competition with various non-native plant species. Ungulate herbivory is especially severe, with numerous observations of *P. princeps* individuals exhibiting browse damage (61 FR 53108; Service 1999).

Platanthera holochila (NCN)

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped, and the greenish-yellow flowers occur in open spikes. This short-lived perennial is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Platanthera holochila* was known from the Alakai Swamp, Kahouamano area, and the Wahiawa Mountains on Kauai, and scattered locations on Oahu, Molokai, and Maui. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Kauai, there are two populations with 28 individuals reported on State (Alakai Wilderness Preserve) owned lands at Kilohana and the Alakai Swamp (HINHP Database 2000; GDSI 2000).

Platanthera holochila is found in montane *Metrosideros polymorpha*-*Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog at elevations between 803 and 1,563 m (2,635 and 5,128 ft). Associated native plant species include mosses, grammitid ferns, *Carex montis-eeka* (NCN), *Cibotium* spp., *Clermontia fauriei* (ohawai), *Coprosma elliptica* (pilo), *Dichantherium* spp., *Lobelia kauaensis*, *Machaerina angustifolia*, *Myrsine denticulata* (kolea), *Oreobolus furcatus*, *Rhynchospora laxa* (kuolohia), *Styphelia tameiameia*, or *Vaccinium* spp., or *Viola kauaensis* (61 FR 53108; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Platanthera holochila* on Kauai are habitat degradation and destruction by pigs; competition with non-native plants; and a risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by introduced slugs may also be a potential threat to this species (61 FR 53108; Service 1999).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect shrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (a flower containing both male and female sexual parts). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet

season but can be found throughout the year (Service 1999).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai. On Kauai, one population with 50 individuals is found on Haupu Peak on privately owned land. The status of individuals previously found in the Limahuli Valley is currently unknown (61 FR 53108; HINHP Database 2000; GDSI 2000; Service 1999).

Schiedea nuttallii typically grows on cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* at elevations between 37 and 702 m (120 and 2,303 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens valida*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Hedyotis acuminata*, *Hedyotis fluviatilis*, *Heteropogon contortus*, *Lepidium* spp. (anaunau), *Lobelia niihauensis*, *Psychotria* spp., *Perrottetia sandwicensis*, or *Pisonia* spp. (Service 1999; K. Wood, pers. comm., 2001).

Schiedea nuttallii is threatened on Kauai by habitat degradation and/or destruction by feral pigs, goats, and possibly deer; competition with several non-native plants; landslides; predation by the black twig borer; and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor, due to the small number of individuals in the only known population. Based on observations that indicate that introduced snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53108; Service 1999).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptical leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many

insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown year (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands. On Kauai, *S. tomentosa* is known from one population, with 18 individuals, on State-owned land from the Polihale State Park (59 FR 56333; HINHP Database 2000; GDSI 2000).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 0 and 212 m (0 and 694 ft). It commonly occurs in coastal dry shrublands or mixed coastal dry cliffs with the associated native plant species *Chamaesyce celastroides*, *Cluscuta sandwichiana* (kaunaoa), *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, *Vitex rotundifolia* or *Waltheria indica* (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Kauai are habitat degradation caused by competition with various non-native plant species; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; Service 1999).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in.) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *S. alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.* 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed

dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 46325; Service 1996).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and the island of Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and the island of Hawaii. It was last observed on Kauai in the 1850s (57 FR 46325; GDSI 2000; Service 1996).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Kauai.

Nothing is known of the threats to *Silene lanceolata* on the island of Kauai.

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in.) long, and berries 1 to 2 cm (0.4 to 0.8 in.) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333).

Historically, *Solanum incompletum* was known Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. The reported presence on Kauai may be erroneous (HINHP Database 2000; Christopher Puttock, Bernice P. Bishop Museum, pers. comm., 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Kauai.

Nothing is known of the threats to *Solanum incompletum* on the island of Kauai.

Solanum sandwicense (aiakeakua, popolo)

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to 4 lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Symon 1999).

Little is known about the life history of *Solanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Solanum sandwicense* was known from both Oahu and Kauai. Currently, this species is only known from Kauai. On Kauai, this species was historically reported from locations in the Kokee region bounded by Kalalau Valley, Milolii Ridge, and extending to the Hanapepe River. Currently, *Solanum sandwicense* is only known from six populations of 14 individual plants on private and State lands (Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve) at Kahuamaa Flats, Awaawapuhi Valley, Kumuwela Ridge, Waialae Valley, and Mokuone Stream (59 FR 9304; Service 1995; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000; Joan Yoshioka, The Nature Conservancy of Hawaii (TNCH), pers. comm., 2000).

This species is typically found under forest canopies at elevations between 445 and 1,290 m (1,460 and 4,232 ft) in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic forests or occasionally in wet forests. Associated native plant species include *Alphitonia ponderosa*, *Athyrium sandwicense*, *Bidens* spp., *Carex meyenii*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Poa* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Syzygium sandwicense*, or *Xylosma hawaiiense* (59 FR 9304; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs, and competition with non-native plant species (*Passiflora mollissima*, *Rubus argutus*, *Psidium cattleianum*, *Hedychium gardnerianum* (kahili ginger), or *Lonicera japonica*); fire; human disturbance and development;

and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Service 1995; HINHP Database 2000).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and the island of Hawaii. Currently, it is found on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii. On Kauai, this species is known from State-owned land at Koaie Canyon, the rim of Waimea Canyon, and Kapahili Gulch within the Na Pali-Kona Forest Reserve. There are three known populations with five individuals total on Kauai (59 FR 56333; Service 1999; HINHP Database 2000; GDSI 2000).

Spermolepis hawaiiensis is known from *Metrosideros polymorpha* forest and *Dodonaea viscosa* lowland dry shrubland, at elevations between 56 and 725 m (184 and 2,377 ft). Associated native plant species include *Bidens sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax* (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Kauai are habitat degradation by feral goats; competition with various non-native plants; and erosion, landslides, and rock slides due to natural weathering which result in the death of individual plants as well as habitat destruction (59 FR 56333; Service 1999).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender twining short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish-yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain seven to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Maui, Molokai, Lanai, Kahoolawe, and the island of Hawaii. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. It was last observed on Niihau in the 1912 (59 FR

56333; HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Vigna o-wahuensis* on the island of Niihau.

Nothing is known of the threats to *Vigna o-wahuensis* on the island of Niihau.

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. On

Kauai, this species is only known from two populations with three individuals on State-owned land in Kawaiiki and Kipalau Valleys within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (HINHP Database 2000; GDSI 2000).

Zanthoxylum hawaiiense is reported from lowland dry or mesic forests, at elevations between 464 and 887 m (1,522 and 2,911 ft). This species is typically found in forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* with associated native plant species including *Antidesma platyphyllum*, *Alectryon macrococcus*, *Charpentiera elliptica*, *Dodonaea viscosa*, *Melicope* spp., *Myrsine lanaiensis*, *Pisonia* spp., *Pleomele aurea*, *Streblus pendulinus*, *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Kauai include competition with the non-native plant species *Melia azedarach* and *Lantana camara*; fire; human disturbance; and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population (59 FR 10305; Service 1996).

A summary of populations and landownership for the 95 plant species reported from the islands of Kauai and Niihau is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Acaena exigua</i>	0			
<i>Achyranthes mutica</i>	0			
<i>Adenophorus periens</i>	7		X	X
<i>Alectryon macrococcus</i>	6		X	
<i>Alsinidendron lychnoides</i>	2		X	
<i>Alsinidendron viscosum</i>	5		X	
<i>Bonamia menziesii</i>	8		X	X
<i>Brighamia insignis</i>	4		X	X
<i>Centaurium sebaeoides</i>	3		X	
<i>Chamaesyce halemanui</i>	6		X	
<i>Ctenitis squamigera</i>	0			
<i>Cyanea asarifolia</i>	1		X	
<i>Cyanea recta</i>	7		X	X
<i>Cyanea remyi</i>	7		X	X
<i>Cyanea undulata</i>	1			X
<i>Cyperus trachysanthos</i>	2		X	X
<i>Cyrtandra cyaneoides</i>	5		X	X
<i>Cyrtandra limahuliensis</i>	11		X	X
<i>Delissea rhytidosperma</i>	3		X	X
<i>Delissea rivularis</i>	2		X	
<i>Delissea undulata</i>	1		X	
<i>Diellia erecta</i>	1		X	
<i>Diellia pallida</i>	4		X	
<i>Diplazium molokaiense</i>	0			
<i>Dubautia latifolia</i>	9		X	

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Dubautia pauciflora</i>	2		X	X
<i>Euphorbia haeleeleana</i>	7		X	
<i>Exocarpos luteolus</i>	8		X	X
<i>Flueggea neowawraea</i>	8		X	X
<i>Gouania meyenii</i>	3		X	
<i>Hedyotis cookiana</i>	1		X	
<i>Hedyotis st.-johnii</i>	4		X	
<i>Hesperomannia lydgatei</i>	3		X	X
<i>Hibiscadelphus woodii</i>	1		X	
<i>Hibiscus brackenridgei</i>	0			
<i>Hibiscus clayi</i>	1		X	
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i>	3		X	X
<i>Ischaemum byrone</i>	2			X
<i>Isodendrion laurifolium</i>	5		X	
<i>Isodendrion longifolium</i>	9		X	X
<i>Isodendrion pyrifolium</i>	0			
<i>Kokia kauaiensis</i>	5		X	
<i>Labordia lydgatei</i>	6		X	X
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>	1			X
<i>Lipochaeta fauriei</i>	4		X	
<i>Lipochaeta micrantha</i>	5		X	X
<i>Lipochaeta waimeaensis</i>	1		X	
<i>Lobelia niihauensis</i>	11		X	X
<i>Lysimachia filifolia</i>	1		X	
<i>Mariscus pennatifolius</i>	0			
<i>Melicope haupuensis</i>	4		X	
<i>Melicope knudsenii</i>	7		X	
<i>Melicope pallida</i>	5		X	
<i>Melicope quadrangularis</i>	0			
<i>Munroidendron racemosum</i>	14		X	X
<i>Myrsine linearifolia</i>	8		X	X
<i>Nothoestrum peltatum</i>	6		X	
<i>Panicum niihauense</i>	1		X	
<i>Peucedanum sandwicense</i>	14		X	X
<i>Phlegmariurus mannii</i>	0			
<i>Phlegmariurus nutans</i>	0			
<i>Phyllostegia knudsenii</i>	1		X	
<i>Phyllostegia waimeae</i>	1		X	
<i>Phyllostegia wawrana</i>	4		X	X
<i>Plantago princeps</i>	6		X	X
<i>Platanthera holochila</i>	2		X	
<i>Poa mannii</i>	6		X	
<i>Poa sandwicensis</i>	9		X	
<i>Poa siphonoglossa</i>	5		X	
<i>Pritchardia aylmer-robinsonii</i>	1			X
<i>Pritchardia napaliensis</i>	3		X	
<i>Pritchardia viscosa</i>	1		X	
<i>Pteralyxia kauaiensis</i>	15		X	
<i>Remya kauaiensis</i>	12		X	
<i>Remya montgomeryi</i>	3		X	
<i>Schiedea apokremnos</i>	5		X	
<i>Schiedea helleri</i>	3		X	
<i>Schiedea kauaiensis</i>	2		X	
<i>Schiedea membranacea</i>	7		X	X
<i>Schiedea nuttallii</i>	1			X
<i>Schiedea spergulina</i> var. <i>leiopoda</i>	1			X
<i>Schiedea spergulina</i> var. <i>spergulina</i>	3		X	
<i>Schiedea stellarioides</i>	2		X	
<i>Sesbania tomentosa</i>	1		X	
<i>Silene lanceolata</i>	0			
<i>Solanum incompletum</i>	0			
<i>Solanum sandwicense</i>	6		X	X
<i>Spermolepis hawaiiensis</i>	3		X	
<i>Stenogyne campanulata</i>	2		X	
<i>Vigna o-wahuensis</i>	0			
<i>Viola helena</i>	1			X
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i>	2			X
<i>Wilkesia hobbyi</i>	6	X*	X	
<i>Xylosma crenatum</i>	3		X	

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Zanthoxylum hawaiiense</i>	2	.....	X	.....

*Pacific Missile Range Facility at Makaha Ridge.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Argyroxiphium kauense*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii* (as *Cyanea carlsonii*), *Cyanea platyphylla* (as *Cyanea bryanii*), *Cyanea shipmanii*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. “from Hawaii”), *Ischaemum byrone*, *Melicope zahlbruckneri* (as *Pelea zahlbruckneri*), *Neraudia ovata*, *Nothocestrum breviflorum* (as *Nothocestrum breviflorum* var. *breviflorum*), *Portulaca sclerocarpa*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata*, *Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum*, var. *incompletum*, and var.

mauiensis), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*) were considered endangered; *Cyrtandra giffardii*, *Diellia erecta*, *Silene hawaiiensis* (as *Silene hawaiiensis* var. *hawaiiensis*), *Zanthoxylum dipetalum* ssp. *tomentosum*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Clermontia pyrularia*, *Delissea undulata* (as *Delissea undulata* var. *argutidentata* and var. *undulata*), *Gouania vitifolia*, *Hedyotis coriacea*, *Isodendrion hosakae*, *Isodendrion pyriformium*, *Nothocestrum breviflorum* (as *Nothocestrum breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium*, var. *confertum*, and var. *dentatum*) were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant

to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except for *Cyrtandra giffardii* and *Silene hawaiiensis*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51, and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 95 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 95 species as endangered or threatened between 1991 and 1996. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Acaena exigua</i>	C1	C1	C1	.....
<i>Achyranthes mutica</i> .....	.....	.....	.....	.....
<i>Adenophorus periens</i>	C1	C1	C1	.....
<i>Alectryon macrococcus</i>	C1	3C	C1	.....
<i>Alsinidendron lychnoides</i> .....	.....	C1*	.....	C2
<i>Alsinidendron viscosum</i> .....	.....	C1*	3A	.....
<i>Bonamia menziesii</i>	C1	C1	C1	.....
<i>Brighamia insignis</i>	C1	C1	C1	.....
<i>Centaureium sebaeoides</i> .....	.....	.....	C1	.....
<i>Chamaesyce halemanui</i>	C1	C1	C1	.....
<i>Ctenitis squamigera</i>	C1*	C1*	C1*	.....
<i>Cyanea asarifolia</i> .....	.....	.....	C1	.....
<i>Cyanea recta</i> .....	.....	.....	3A	.....
<i>Cyanea remyi</i> .....	.....	.....	.....	.....
<i>Cyanea undulata</i> .....	.....	.....	3A	.....

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Cyperus trachysanthos</i>				C2
<i>Cyrtandra cyaneoides</i>				C2
<i>Cyrtandra limahuliensis</i>			C1	
<i>Delissea rhytidosperra</i>	C1	C1	C1	
<i>Delissea rivularis</i>	C2	C2	3A	
<i>Delissea undulata</i>	C1	C1*	C1*	
<i>Diellia erecta</i>	C1	C1	C1	
<i>Diellia pallida</i>			C1*	
<i>Diplazium molokaiense</i>	C1*	C1*	C1	
<i>Dubautia latifolia</i>	C1	C1	C1	
<i>Dubautia pauciflora</i>			C1	
<i>Euphorbia haeleeeleana</i>	C1	C1	C1	
<i>Exocarpos luteolus</i>		C1	C1	
<i>Flueggea neowawraea</i>	C1	C1	C1	
<i>Gouania meyenii</i>	3A	3A	C1	
<i>Hedyotis cookiana</i>	3A	3A	C1	
<i>Hedyotis st.-johnii</i>	C1	C1	C1	
<i>Hesperomannia lydgatei</i>	C1	C1	C1	
<i>Hibiscadelphus woodi</i>				
<i>Hibiscus brackenridgei</i>	C1	C1	C1	
<i>Hibiscus clayi</i>	C1	C1	C1	
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i>				
<i>Ischaemum byrone</i>	3C	3C	C2	C2
<i>Isodendron laurifolium</i>	C1	C1	C1	C2
<i>Isodendron longifolium</i>	C1	C1	C1	C2
<i>Isodendron pyrifolium</i>				
<i>Kokia kauaiensis</i>	C2	C2	C2	
<i>Labordia lydgatei</i>	C2	C2	C2	
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>				
<i>Lipochaeta fauriei</i>	C1*	C1*	C1	
<i>Lipochaeta micrantha</i>	C1	C1	C1	
<i>Lipochaeta waimeaensis</i>	C1	C1	C1	
<i>Lobelia niihauensis</i>	C1	C1	C1	
<i>Lysimachia filifolia</i>	C2	C2	C1	
<i>Mariscus pennatifolius</i>		C1	C1	
<i>Melicope haupuensis</i>	C1	C1	C1	
<i>Melicope knudsenii</i>	C1*	C1*	C1	
<i>Melicope pallida</i>			C1*	
<i>Melicope quadrangularis</i>	C1	C1	C1*	
<i>Munroidendron racemosum</i>	C1	C1	C1	
<i>Myrsine linearifolia</i>	C1	C1	C2	C2
<i>Nothoestrum peltatum</i>	C1	C1	C1	
<i>Panicum niihauense</i>				C2
<i>Peucedanum sandwicense</i>	C2	C2	C2	
<i>Phlegmariurus mannii</i>	C1	C1	C1	
<i>Phlegmariurus nutans</i>	C1	C1	C1	
<i>Phyllostegia knudsenii</i>	C1	C1	3A	
<i>Phyllostegia waimeae</i>			C1	
<i>Phyllostegia wawrana</i>			3A	
<i>Plantago princeps</i>	C2	C2	C1	
<i>Platanthera holochila</i>	C1	C1	C1	C2
<i>Poa mannii</i>	C1	C1	C1*	
<i>Poa sandwicensis</i>	C1	C1	C1	
<i>Poa siphonoglossa</i>	C1	C1	C1	
<i>Pritchardia aylmer-robinsonii</i>	C1	C1	C1	
<i>Pritchardia napaliensis</i>			C2	C2
<i>Pritchardia viscosa</i>			C2	C2
<i>Pteralyxia kauaiensis</i>	C1	C1	C1	
<i>Remya kauaiensis</i>	C1*	C1*		
<i>Remya montgomeryi</i>				
<i>Schiedea apokremnos</i>		C1	C1	
<i>Schiedea helleri</i>		C1*	3A	
<i>Schiedea kauaiensis</i>				
<i>Schiedea membranacea</i>	C2	C2	C2	C2
<i>Schiedea nuttallii</i>				C2
<i>Schiedea spergulina</i> var. <i>leiopoda</i>		C1	C1*	
<i>Schiedea spergulina</i> var. <i>spergulina</i>		C1	C1	
<i>Schiedea stellarioides</i>		C1*	3A	
<i>Sesbania tomentosa</i>	C1*	C1*	C1	
<i>Silene lanceolata</i>	C1	C1	C1	

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Solanum incompletum</i>	C1*	C1*	C1	
<i>Solanum sandwicense</i>	C1*	C1*	C1	
<i>Spermolepis hawaiiensis</i> .....	.....	.....	C1	
<i>Stenogyne campanulata</i> .....	.....	.....	C1	
<i>Vigna o-wahuensis</i>	C1	C1	C1	
<i>Viola helenae</i>	C1	C1	C1	
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i>	C1	C1	C2	C2
<i>Wilkesia hobdyi</i>	C1	C1		
<i>Xylosma crenatum</i>	C2	C2	C1	
<i>Zanthoxylum hawaiiense</i>	C1	C1	C1	

Key:

C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.

Federal Register Notice of Review:

1980: 45 FR 82479

1985: 50 FR 39525

1990: 55 FR 6183

1993: 58 FR 51144

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Acaena exigua</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20787	12/18/2000	65 FR 79192
<i>Achyranthes mutica</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	NA	NA
<i>Adenophorus periers</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000,	65 FR 66808,
<i>Alectryon macrococcus</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772	12/29/2000,	66 FR 83157
<i>Alsiniidendron lychnoides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000,	65 FR 66808,
<i>Alsiniidendron viscosum</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Bonamia menziesii</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000,	65 FR 66808,
<i>Brighamia insignis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	12/18/2000,	65 FR 79192,
<i>Centaurium sebaeoides</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	12/27/2000,	65 FR 82086,
<i>Chamaesyce halemanui</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Ctenitis squamigera</i>	E	06/24/1993	58 FR 34231	09/09/1994	59 FR 49025	12/18/2000,	65 FR 79192,
<i>Cyanea asarifolia</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	12/29/2000	66 FR 83157
<i>Cyanea recta</i>	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyanea remyi</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyanea undulata</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Cyperus trachysanthos</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Cyrtandra cyaneoides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyrtandra limahuliensis</i>	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Delissea rhytidosperra</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Delissea rivularis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Delissea undulata</i>	E	06/27/1994	59 FR 32946	10/10/1996	61 FR 53124	11/07/2000	65 FR 66808
<i>Diellia erecta</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000,	65 FR 79192,
<i>Diellia pallida</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	12/29/2000	66 FR 83157
<i>Diplazium molokaiense</i>	E	06/24/1993	58 FR 34231	09/09/1994	59 FR 49025	11/07/2000	65 FR 66808
<i>Dubautia latifolia</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	12/18/2000	65 FR 79192
<i>Dubautia pauciflorula</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Euphorbia haeleeleana</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Exocarpos luteolus</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.—Continued

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Flueggea neowawraea</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000	65 FR 66808, 65 FR 79192
<i>Gouania meyenii</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	11/07/2000	65 FR 66808
<i>Hedyotis cookiana</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Hedyotis st. johnii</i>	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639	11/07/2000	65 FR 66808
<i>Hesperomannia lydgatei</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Hibiscadelphus woodii</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Hibiscus brackenridgei</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000, 12/27/2000	65 FR 79192, 65 FR 82086
<i>Hibiscus clayi</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Ischaemum byrone</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	12/18/2000, 12/29/2000	65 FR 79192, 65 FR 83157
<i>Isodendron laurifolium</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Isodendron longifolium</i>	T	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Isodendron pyriformis</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	NA	NA
<i>Kokia kauaiensis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Labordia lydgatei</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Lipochaeta fauriei</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Lipochaeta micrantha</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Lipochaeta waimeae</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Lobelia niihauensis</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	11/07/2000	65 FR 66808
<i>Lysimachia filifolia</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Meliscus pennatifolius</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000	65 FR 79192
<i>Melicope haupuensis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Melicope knudsenii</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000, 12/18/2000	65 FR 66808, 65 FR 79192
<i>Melicope pallida</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Melicope quadrangularis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Munroidendron racemosum</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Myrsine linearifolia</i>	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Nothoestrum peltatum</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Panicum niihauense</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Peucedanum sandwicense</i>	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Phlegmariurus mannii</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772	12/18/2000	65 FR 79192
<i>Phlegmariurus nutans</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	NA	NA
<i>Phyllostegia knudsenii</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Phyllostegia waimeae</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Phyllostegia wawrana</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Plantago princeps</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Platanthera holochila</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Poa mannii</i>	E	04/07/1993	58 FR 18073	11/10/1994	59 FR 56330	11/07/2000	65 FR 66808
<i>Poa sandwicensis</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Poa siphonoglossa</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Pritchardia aylmer-robinsonii</i>	E	12/17/1992	57 FR 59970	08/07/1996	61 FR 41020	11/07/2000	65 FR 66808
<i>Pritchardia napaliensis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Pritchardia viscosa</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Pteralyxia kauaiensis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Remya kauaiensis</i>	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450	11/07/2000	65 FR 66808
<i>Remya montgomeryi</i>	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450	11/07/2000	65 FR 66808
<i>Schiedea apokremnos</i>	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639	11/07/2000	65 FR 66808
<i>Schiedea helleri</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Schiedea kauaiensis</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Schiedea membranacea</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Schiedea nuttallii</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000, 12/29/2000	65 FR 66808, 65 FR 83157
<i>Schiedea spergulina</i> var. <i>leiopoda</i> .	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Schiedea spergulina</i> var. <i>spergulina</i> .	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.—Continued

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Schiedea stellarioides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Sesbania tomentosa</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Silene lanceolata</i>	E	09/20/1991	56 FR 47718	10/08/1992	57 FR 46325	12/29/2000	65 FR 83157
<i>Solanum incompletum</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	NA	NA
<i>Solanum sandwicense</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Spermolepis hawaiiensis</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/29/2000	65 FR 66808, 65 FR 83157
<i>Stenogyne campanulata</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Vigna o-wahuensis</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000, 12/27/2000, 12/29/2000	65 FR 79192, 65 FR 82086, 65 FR 83157
<i>Viola helenae</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Wilkesia hobdyi</i>	E	10/02/1989	54 FR 40444	06/22/1992	57 FR 27859	11/07/2000	65 FR 66808
<i>Xylosma crenatum</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Zanthoxylum hawaiiense</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157

Key:E = Endangered.
T = Threatened.**Critical Habitat**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii. Among other things, the court held that, in most cases, we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the

designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found

that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the DOFAW, county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation

because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On October 5, 1999, we mailed letters to more than 160 landowners on the islands of Kauai and Niihau requesting any information considered germane to the management of any of the 95 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or whether hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19 to 21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 48 people attended the three open houses. In addition, we met with Kauai County Division of Forestry and Wildlife staff and Kauai State Parks staff to discuss their management activities on the island.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for 76 Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat

designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court's order. In those proposals we determined that critical habitat was prudent for 85 species (*Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Vigna o-wahuensis*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*) that are reported from Kauai and/or Niihau as

well as on Maui, Kahoolawe, Lanai, and Molokai.

In the November 7, 2000, proposal we determined that it was prudent to designate approximately 24,348 ha (60,165 ac) of lands on the island of Kauai and approximately 191 ha (471 ac) of lands on the island of Niihau as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on January 7, 2001. On January 18, 2001, we published a notice (66 FR 4782) announcing the reopening of the comment period until February 19, 2001, on the proposal to designate critical habitat for 76 plants from Kauai and Niihau and a notice of a public hearing. On February 6, 2001, we held a public hearing at the Radisson Kauai Beach Resort in Lihue, Kauai.

On March 7, 2001, we published a notice announcing the reopening of the comment period, and announced the availability of the draft economic analysis on the proposal to designate critical habitat for 76 plants from Kauai and Niihau (66 FR 13691). This third public comment period was open until April 6, 2001.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Kauai and Niihau is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the November 7, 2000, proposed rule (65 FR 66808), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on December 7, 2000. We reopened the comment period from January 18, 2001, to February 19, 2001 (66 FR 4782), to accept comments on the proposed designations and to hold a public hearing on February 6, 2001, in Lihue, Kauai. The comment period was reopened from March 7, 2001, to April 6, 2001 (66 FR 13691), to allow for additional comments on the proposed rule and comments on the

draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on November 13, 2000, and the *Garden Island* on November 15, 2000. We received two requests for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and in the *Garden Island* newspaper on January 19, 2001. A transcript of the hearing held in Lihue, Kauai on February 6, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Kauai and Niihau plants to peer review the proposed critical habitat designations. All three peer reviewers submitted comments on the proposed critical habitat designations, providing updated biological information, critical review, and editorial comments.

We received a total of 37 oral and 202 written comments during the three comment periods. These included responses from one Federal agency, seven State offices, one local agency, one elected official, and 207 private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Kauai and Niihau plants. Of the 239 comments we received, 157 supported designation, 25 were opposed to it, and eight provided information or declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat determinations and draft economic analysis on the proposed determinations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c,

1999) identify the need to expand existing populations and reestablish wild populations within historic range. We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species.

(2) *Comment:* The data cited in the critical habitat proposal documenting the habitat losses and threats is questionable. We do not agree with the threats to the species as described in the proposed rule.

Our Response: In the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau, we provided information on the status of and threats to, the Kauai and Niihau plants. The threats to these species, and the species status, were documented in the listing rules for the Kauai and Niihau plants (56 FR 1450, 56 FR 47695, 56 FR 49639, 56 FR 55770, 57 FR 20580, 57 FR 20772, 57 FR 20787, 57 FR 27859, 57 FR 46325, 59 FR 9304, 59 FR 10305, 59 FR 49025, 59 FR 56330, 59 FR 56333, 61 FR 53070, 61 FR 53108, 61 FR 53124, and 61 FR 41020), and in the recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, and 1999), and in the supporting documentation in the files at the Pacific Islands Office (See **ADDRESSES** section).

(3) *Comment:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, some of the data used by the Service was 30 years old or older.

Our Response: When developing the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the three informational open houses held on Kauai at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19 to 21, 1999, respectively; recent biological surveys and reports; our recovery plans for these species; information received in response to

outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. This additional information comes from the Geographic Information System (GIS) coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); new information; completed recovery plans, and information received during the public comment periods and public hearings.

(4) *Comment:* We received comments that the proposed critical habitat designations were not specific enough, and were over broad and therefore, failed to comply with Congressional intent to restrict critical habitat to those areas "essential to the conservation of the species." On the other hand, we also received comments that the designation was not inclusive enough and failed to include areas where Kauai and Niihau plants have occurred and which are necessary for recovery of the species.

Our Response: We used the best scientific information available to develop the November 7, 2000, proposal to designate critical habitat for 76 Kauai and Niihau plants. This information is detailed above in our response to Comment (3). Based on the information described above, we believe we have identified those areas essential to the conservation of the Kauai and Niihau plant species at issue in this proposed rule.

(5) *Comment:* We are concerned that our property infrastructure (*i.e.*, roads, buildings, etc.) is within proposed critical habitat boundaries, even though it does not contain any habitat for listed plants. Areas seaward of the vegetation line were included in the maps. Also, Units J, G, and H (on Navy lands) appear to include missile launch pads, buildings, towers, and paved roads. Modify specific units in order to avoid areas where existing projects (*i.e.*, agricultural lands with irrigation infrastructure) are planned or may occur.

Our Response: When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands

unlikely to contribute to the conservation of these species. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features do not contain, and are not likely to develop, constituent elements, and would be specifically excluded from designation under this proposed rule. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

(6) *Comment:* The presence of non-native plants makes habitat unsuitable and inappropriate for designation as critical habitat.

Our Response: The presence of non-native plant competitors does not preclude designation of an area as critical habitat, if the area contains physical and biological features that are essential to the conservation of the species, and that may require special management considerations or protection. We defined the primary constituent elements on the basis of the habitat features of the areas in which the plants are reported from, such as the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation.

(7) *Comment:* The Service avoided a statutory obligation to determine whether the benefits of excluding particular areas (e.g., areas with conservation agreements, etc.) from critical habitat designation outweigh the benefits of including each area.

Our Response: Section 4(b)(2) of the Act requires that we consider the economic and other impacts of critical habitat designation and allows us to exclude potentially suitable areas when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We base our decision to exclude an area from critical habitat designation on the best scientific data available, taking into consideration the economic and other impacts of specifying any particular area as critical habitat. We completed an economic analysis of the November 7, 2000, proposal. However, we will revise that analysis to reflect this new proposal and provide another opportunity for public comment. We will use that final

economic analysis in determining whether exclusions under section 4(b)(2) are appropriate (see 50 CFR 424.19).

We will provide technical assistance and work closely with applicants throughout the development of any future Habitat Conservation Plans (HCPs) or other conservation plans to identify lands essential for the long-term conservation of the Kauai and Niihau plants and appropriate management for those lands. If an HCP or other conservation management plan is approved by us, we will reassess the critical habitat boundaries in light of the conservation plan. We will seek to undertake this review when an HCP or conservation management plan is approved, but funding constraints may influence the timing of such a review.

Issue 2: Site-Specific Biological Comments

(8) *Comment:* Critical habitat should be designated for *Phyllostegia waimeae* and *Melicope quadrangularis* because habitats have not been adequately surveyed and these species may still be extant in the wild.

Our Response: We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information and/or address comments and new information received during the comment periods including information on the recent rediscovery in August 2000 of *Phyllostegia waimeae* on Kauai. In light of this new information we have reconsidered an earlier not prudent finding and determine that the designation of critical habitat is prudent for *Phyllostegia waimeae*. We determined on November 7, 2000, that critical habitat designation is not prudent for *Melicope quadrangularis* because it has not been seen recently in the wild on Kauai and no viable genetic material of this species is known to exist. Therefore, critical habitat designation would be of no benefit to this species and no change is made to that determination here. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available.

(9a) *Comment:* Critical habitat should be designated for *Pritchardia* or loulu palm species if the units are of adequate ecological size and because the habitat is too inaccessible and remote for vandals. (9b) *Comment:* Critical habitat for *Pritchardia* should not be designated because of previous acts of vandalism to listed plant species.

Our Response: We have revised the November 7, 2000, proposal to designate

critical habitat for 76 plants from Kauai and Niihau to incorporate new information, and/or address comments and new information received during the comment periods. However, no additional information was provided during the comment periods that would ensure the protection of *Pritchardia* from vandalism or collection if critical habitat was designated for the three Kauai and Niihau species. We believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection of these three species of *Pritchardia*.

(10) *Comment:* Include *Sesbania tomentosa* on the border of the Navy's PMRF at Barking Sands and *Munroidendron racemosum* on the border of unit E.

Our Response: We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information, and/or address comments and new information received during the comment periods, including information on *Sesbania tomentosa* and *Munroidendron racemosum*. We have proposed critical habitat for *Sesbania tomentosa* in units Kauai D, H, and I; and for *Munroidendron racemosum* in units Kauai B, E, I, J and O in this revised rule.

(11) *Comment:* U.S. Navy lands should be excluded from the critical habitat designation because protections and management afforded the Kauai and Niihau plants under the Integrated Natural Resource Management Plans (INRMP), pursuant to the Sikes Act and amendments, and under existing programmatic biological opinions were sufficient, thereby resulting in these lands not requiring special management or protection and not meeting the definition of critical habitat. In addition, the PMRF should be excluded from critical habitat because its existing programmatic, habitat-based management efforts reflected in the *Cooperative Agreement for the Conservation and Management of Fish and Wildlife Resources at Pacific Missile Range Facility, Barking Sands, Kauai, Hawaii*, and signed between the Service and the Navy in 1986, ensures long-term conservation of Federal trust species. Furthermore, designation of critical habitat would detrimentally restrain and limit the installation's flexibility, adversely affecting its ability to perform its national defense mission.

Our Response: We agree that an INRMP can provide special management for lands such that they no longer meet the definition of critical habitat when the plan meets the following criteria: (1)

The plan must be complete and provide a conservation benefit to the species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation management strategies will be effective, *i.e.*, provide for periodic monitoring and revisions as necessary. If all of these criteria are met, the lands covered under the plan would no longer meet the definition of critical habitat.

We believe that occupied and unoccupied areas that contain the primary constituent elements for plants occurring on the Barking Sands and Makaha Ridge Facility lands are needed for recovery of these species. Management at the Barking Sands and Makaha Ridge Facility lands currently consists of restricting human access and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of *Panicum niihauense* and *Wilkesia hobyi* and address the primary threats to these species. Also, we believe that the INRMP may not ensure that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. If the Navy completes and implements an INRMP or other endangered species management plans that addresses the maintenance and improvement of the essential elements for these two plant species, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

(12) *Comment*: The State of Hawaii identified specific areas that they thought should not be designated as critical habitat.

Our Response: During the public comment periods for the November 7, 2000, proposal for plants from Kauai and Niihau, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We have revised the November 7, 2000, proposed designations to incorporate new information, and/or address comments and new information received during the comment periods,

including information received from DOFAW.

We evaluated DOFAW's comments on a species by species basis and incorporated information that was consistent with our methodology. DOFAW recommended deletion of some of the proposed critical habitat units as they do not believe these areas are suitable for the recovery of some species because they (DOFAW) would not be able to manage these areas with their limited staff and funding. Because the basis for identifying areas by DOFAW was made on the manageability of the area, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Issue 3: Legal Issues

(13) *Comment*: A premise for the proposed rule is that the Service was ordered by the court on August 10, 1998, to designate critical habitat by November 30, 2000. The court may not order critical habitat to be designated. Rather, the court may order the Service to make a decision on whether to designate critical habitat. The designation of critical habitat is an action that is ultimately discretionary, and the Service must apply the criteria in the Act and its regulations to decide whether to designate critical habitat. Thus, the Service should seek correction of that court order and reconsider whether, and to what extent, critical habitat should be designated.

Our Response: As stated earlier, on August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074). Among other things, the court did not order us to designate critical habitat for all species. In fact, the court state that it "expresse[d] no opinion as to whether or not critical habitat should be designated for any of the subject species." (24 F. Supp. at 1288). Instead, Judge Kay remanded our 245 "not prudent" decisions to the Service to consider designation of critical habitat consistent with his opinion (*Id.* at 1288-89). The court explicitly stated that the designation of critical habitat was beneficial because it: (1) Triggers section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied, or the occupancy is in question; (2) focuses conservation activities on the most essential areas; (3) provides educational benefits to State or county governments or private entities; and (4) prevents people from causing

inadvertent harm to the species (see 24 Supp.2d 1280 for the full text of Judge Kay's opinion). In the November 7, 2000, proposal we published proposed determinations of whether designation of critical habitat is prudent for 81 plants from Kauai and Niihau, and proposed designations of critical habitat for 76 of those plants. We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods.

(14a) *Comment*: In the State of Hawaii, Native Hawaiians have a constitutional right to access and gather certain resources for traditional and cultural purposes. The proposal will limit and extinguish these rights. (14b) *Comment*: The designations of areas as critical habitat will affect human access to those areas. (14c) *Comment*: Hunting and recreational opportunities need to be considered when designating critical habitat. Also, the designation of critical habitat will prohibit recreational, commercial, and subsistence activities from taking place, as well as access for these activities.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some sort of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies.

Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives.

Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(15) *Comment*: The Service needs to make its decisions on objective studies based on science rather than let the courts dictate its decisions.

Our Response: We must comply with the orders of Federal courts. See also our response to comment 13. When developing the proposed critical habitat designations, we used the best scientific and commercial data available at the time. We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. All of the information that we used in our decision-making process is part of our administrative record and can be reviewed at the Pacific Islands Field Office (see **ADDRESSES** section).

Issue 4: Section 7 Consultation Issues

(16) *Comment*: Does section 7 apply to State and county agencies with permit authority such as the Hawaii Pollution Discharge Elimination System permit issued by the State of Hawaii and authorized by the Environmental Protection Agency, and programs administered under the Natural Resources Conservation Service?

Our Response: Section 7 of the Act requires each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat. Section 7 also requires that Federal agencies consult with us if their actions may affect a listed species. State or county agencies are not required to consult with us under section 7 of the Act if their programs are not authorized, permitted, or funded by a Federal agency.

The Environmental Protection Agency (EPA) may delegate the National Pollutant Discharge Elimination System (NPDES) permit authority to the State. Therefore, any individual permit that is issued by the State of Hawaii is not subject to section 7 consultation. Instead, procedures in the January 2001 Memorandum Of Understanding between ourselves and the EPA would apply. These procedures provide for us to notify EPA of any concerns we may have with individual permits, and the EPA would take corrective action if an individual permit has severe enough impacts on a listed species or designated critical habitat and the State fails to correct the problem. The Natural Resources Conservation Service (NRCS) does consult with us on projects and specific actions that they fund, authorize, or permit.

(17) *Comment*: The State of Hawaii endangered species law does not require critical habitat.

Our Response: There is no State equivalent of critical habitat designation under the State of Hawaii's endangered species law. However, the Federal Endangered Species Act of 1973, as amended, is applicable to all federally listed species, including those in the State of Hawaii.

Issue 5: Mapping and Primary Constituent Elements

(18a) *Comment*: The designated areas are too large. (18b) *Comment*: The units are not large enough, and don't allow for changes that occur during known environmental processes.

Our Response: We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. Areas that contain habitat necessary for recovery were identified and delineated on a species by species basis. When species units overlapped, we combined units for ease of mapping (see also **Methods** section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of these plant species.

(19) *Comment*: Map exhibits in the proposed rule and at the public hearings did not show enough detail.

Our Response: The maps in the **Federal Register** are meant to provide a general location and shape of critical habitat. At the public hearing, these maps were expanded to wall-size to assist the public in better understanding the proposal. These larger scale GIS products also were provided to individuals upon request. The legal descriptions are readily plotted and transferable to a variety of mapping formats.

(20) *Comment*: Once the designations are made, they will become permanent.

Our Response: The Act specifically provides that we may, from time to time, revise designations as appropriate (16 U.S.C. 1533(a)(3)(B)). Thus, if new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, under the section 3(5)(A) definition, or because the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species, under section 4(b)(2), we may revise critical habitat designations to exclude these areas. Also, we can always revise the critical habitat designations to add land at a later date.

Critical habitat designations are removed at the time a species is no longer protected under the Act (*i.e.*, delisted).

Issue 6: Definition of Critical Habitat

(21) *Comment*: Critical habitat is being designated in otherwise protected areas, such as State conservation lands, Navy lands with an INRMP, and State parks. Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat.

Our Response: In the November 7, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Kauai and Niihau plant species to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Kauai and Niihau with a known occurrence of one of the plant species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at three locations (Waimea, Lihue, and Kilauea) on the island of Kauai from October 19 to 21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Kauai under State of Hawaii jurisdiction, we met with staff from Kauai's DOFAW office and Kauai State Parks to discuss their current management for the plants on their lands. And, we contacted the State's Department of Hawaiian Home Lands (DHHL) regarding management for the plants on lands under their jurisdiction. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas newly proposed for designation by this revised proposal, we have also reviewed any management information available to use at this time. In addition, we are requesting information on management

of these lands during the comment period. Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections."

Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and, (3) provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

Based upon review of the information available to us at this time, we have not been able to find that management on these lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii, the Navy, and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the island of Kauai. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of

management actions for the conservation of these species should proceed; however, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available.

(22) *Comment:* Critical habitat for Kauai and Niihau plants is not determinable because their biological needs are not sufficiently known. Hawaiian plants are "biologically incompetent" and cannot maintain self-sustaining wild populations. Recovery plans for the species recommend significant research; without such information it cannot be determined with reasonable scientific certainty which areas are essential to the species.

Our Response: We are required under section 4 of the Act to designate critical habitat based on what we know at the time of designation. When we designate critical habitat at the time of listing, or, as in this case, under court-ordered deadlines we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designation on the best available information we have at the time.

(23) *Comment:* There is no direct relationship between the recovery plans for these species and critical habitat.

Our Response: Development and completion of the recovery plans and designation of critical habitat for these plant species are two separate processes with two separate timeframes. The recovery plans for these species were completed between 1994 and 1999. We recognize that information contained within the recovery plans is directly relevant to the development of the critical habitat designations, and we relied heavily upon them. In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas, and that new survey information or research finding may also lead to additional refinements. Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species, and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined

by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the listed species at issue. As a result, the proposed critical habitat designations in this revised proposed rule include habitat that was not identified as essential in the 1998 recommendations.

Issue 7: Effects of Designation

(24) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson program).

Our Response: We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat requires Federal agencies to consult under section 7 of the Act with us on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies can not result in jeopardy to listed species, and they can not adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the recovery of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs are implemented consistent with this need.

(25) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. It's regulatory implications apply only to activities sponsored at least in part by

Federal agencies. Land uses such as logging, grazing, and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans.

(26) *Comment:* The designation of critical habitat would justify the "destruction of private property rights," harassment from Federal agents, and lawsuits.

Our Response: Section 3(5) of the Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are to be made on the basis of the best scientific and commercial data available, after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species).

To a property owner, the designation of critical habitat becomes important when viewed in the context of section 7 of the Act, which requires all Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by the agency does not result in the destruction or adverse modification of designated critical habitat. If, after consultation, our biological opinion concludes that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives to the action which would avoid the destruction or adverse modification of the critical habitat (16 U.S.C. 1536(b)(3)(A)). If we cannot suggest acceptable reasonable and prudent alternatives, the agency (or the applicant) may apply for an exemption from the Endangered Species Committee under section 7(e)-(p) of the Act.

The mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins v. City of Tiburon*, 447 U.S. 255, 260-263 (1980); *Hodel v. Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992)). The designation of critical habitat alone does not deny

anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives.

We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for on-going projects. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

Since these 83 plant species were listed (between 1990 and 1996), there have been no formal consultations on them, and we have conducted only one informal consultation on Kauai, in addition to consultations on purely Federal activities (ie. Defense installations). That informal consultation was conducted with the NRCS through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinitiate consultation for these on-going actions as these actions are not occurring within the areas of proposed critical habitat (Terrell Kelly, NRCS, pers. comm., 2001). There have been no consultations on any of these 83 species on the island of Niihau.

Nearly all of the land within the critical habitat units is unsuitable for development or economically productive land uses because of the remote locations, lack of access, and rugged terrain of these lands. Also, nearly all of this land (99.2 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 0.7 percent of this land is within the State Agricultural District, and about 0.1 percent is within the State Urban District.

The limited economic activities that may occur consist of improvements to roads and communications and tracking facilities; recreational use such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and crop farming. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch

system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant future activities that would require Federal permitting or authorization in these coastal areas.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (DAHI 2001).

The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D-4), and thus would have received some protections even without the Act.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously available draft economic analysis of the likely economic impacts of designating critical habitat for 76 plants from the islands of Kauai and Niihau (66 FR 13691). In that analysis, which included proposed designations of critical habitat within 23 units on 24,349 ha (60,166 ac) on Kauai and 191 ha (471 ac) on Niihau, we determined that the designations would have modest economic impacts because nearly all of the land within the critical habitat units has limited suitability for development, land uses, and activities

because of the remote locations, lack of access, and rugged terrain, of the land, and their inclusion within the State Conservation District where State land-use controls severely limit development and most activities. The proposed critical habitat designations were expected to cause little or no increase in the number of section 7 consultations; and few, if any, increases in costs of projects or delays in, or modifications to planned projects, land uses and activities.

Issue 8: Economic Issues

(27) *Comment:* We should have been directly contacted for our opinions on the economic impacts of critical habitat designation.

Our Response: The methodology outlined in the economic analysis report relies primarily on information provided by the Service, the State of Hawaii's Department of Land and Natural Resources (DNLR), and the consultant, Decision Analysts Hawaii, Inc. (DAHI). To better understand the concerns of stakeholders, the Service solicited comments and suggestions from the public, other concerned government agencies, the scientific community, industry, and other interested parties concerning aspects of the proposed rule and the proposed critical habitat. These comments and suggestions were taken into consideration in conducting the economic analysis. Additional clarifications were obtained directly from landowners and other parties.

In addition, we have revised the November 7, 2000, proposed designations to incorporate new information, and/or address comments and new information received during the three comment periods. In addition, we will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination and revise the economic analysis. When completed, we will announce the availability of the draft revised economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the revised draft economic analysis and proposed rule at that time. In addition, we will mail letters to landowners and other interested parties and publish a notice in the *Garden Island* newspaper announcing the availability of and seeking public comment on the draft economic analysis and proposed rule. We would strongly encourage anyone who has information or opinions concerning the economic impacts of this proposal to provide them to us.

(28) *Comment:* The Service failed to properly consider the economic (e.g., costs associated with hunting, costs associated with section 7 consultation, etc.) and other impacts (e.g., special management protections on private lands, planned highway projects, diminished activities on military lands, etc.) of designating particular areas as critical habitat.

Our Response: We originally proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. On March 7, 2001, we published a notice announcing the availability of the draft economic analysis on the November 7, 2000, proposal. That draft economic analysis concluded that for the most part the critical habitat designations for Kauai and Niihau generally will have modest economic impacts. They are expected to cause little or no increase in the number of section 7 consultations with the Service; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities. These findings reflect the following:

- Nearly all of the land within the critical habitat units is unsuitable for development as well as for most projects, land uses, and activities. This is due to the remote locations, lack of access, and rugged terrain.
- On Kauai, nearly all of this land (98.5 percent) is within the State Conservation District where State land-use controls, severely limits development and most activities.
- Very few of the current and planned projects, land uses, and activities that could affect the proposed critical habitat units have a federal involvement requiring section 7 consultations with the Service, so they are not restricted by the Service requirements.
- And most of the activities that do have federal involvement are operations and maintenance of existing facilities and structures, so they would not be impacted by the critical habitat designation.

We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. In addition, we will conduct another 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 open a 30-day public comment period on the

draft economic analysis and proposed rule at that time.

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat, for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoctrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobydi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808). In this proposal we have revised the proposed designations for the 76 plants based on new information received during the comment periods. In addition, we incorporate new information, and/or address comments and new information received during

the comment periods on the November 7, 2000, proposal.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these determinations here and they are hereby incorporated by reference (65 FR 66808). In that proposal, we also determined that critical habitat was not prudent for *Melicope quadrangularis* and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species because we believe that such designation would be beneficial to this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis* and it is hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not determine prudence nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). In this proposal, no change is made to the earlier prudence determinations for these nine species and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatiformis* on the island of Kauai, based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical

habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

No change is made here to the prudence determination for *Acaena exigua*, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000, and it is hereby incorporated by reference (65 FR 79192). In that proposal, we determined that critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material was known to exist.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyrifolium*, *Phlegmariurus nutans*, *Solanum incompletum*) for which prudence determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. These four plants were listed as endangered species under the Act, between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. In this proposal, we determine that critical habitat is prudent for these four species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyrifolium*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

Based on a review of new biological information and public comments received we have revised our November 7, 2000, proposal to incorporate the following changes in addition to those described above: changes in our approach to delineating proposed critical habitat (see Criteria Used to Identify Critical Habitat); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid nonessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and, inclusion of new areas within the proposed critical

habitat units that are essential for the conservation of one or more of the 83 plant species.

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 a 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 a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help 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, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take 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 the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be

necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent, and proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus warmeae* ssp. *hannetae*, *Idsodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa*

sandwicensis, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schieda nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hodbdvi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa*. Since publication of the listing rule for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa*, we learned of instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia* (65 FR 66808). In light of this information, we believed that the designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism and collection. We determined that the benefits of designation critical habitat designation did not outweigh the potential increased threats from vandalism or collection. Given these considerations, we determined that designation of critical habitat for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa* was not prudent. During the public comment periods for the November 7, 2000, proposal two commenters suggested that critical habitat should be designated for these three species of palm if the units are of adequate ecological size or because the habitat is too inaccessible and remote for vandals. We also received comments that critical habitat should not be designated for these three species of palm because of previous acts of vandalism to listed plant species. Given the considerations described in the November 7, 2000, proposal regarding instances of vandalism, collection, and commercial trade of these species no change is made to the earlier prudency determinations for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa* in this proposal and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal, we determined that critical habitat was not prudent for *Melicope*

quadrangularis and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Therefore, such designation would be of no benefit to these species. Since publication of the November 7, 2000, proposal we received new information during the comment periods regarding the rediscovery in August 2000 of six individuals of *Phyllostegia waimeae* in Kawaiiki Valley on Kauai, and have reconsidered our earlier prudency finding. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Phyllostegia waimeae* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Phyllostegia waimeae* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Phyllostegia waimeae* does not occur on Federal lands on Kauai where actions are subject to section 7 consultation. This species is located exclusively on State land with limited Federal activities, though there could be Federal actions affecting this land in the future. While a critical habitat designation for habitat currently occupied by *Phyllostegia waimeae* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there

may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Phyllostegia waimeae*.

No change is made here to the prudency determination for *Melicope quadrangularis*, a species known only from the Wahiawa drainage area on Kauai, published in the November 7, 2000, proposal and hereby incorporated by reference (65 FR 66808). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991 and has not been observed in this area in surveys following Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm., 2000). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Melicope quadrangularis* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

In November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatififormis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), or on December 29, 2000 (Molokai). No change is made to these prudency determinations for these nine species in this proposal and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatififormis* on the island of Kauai, based on new information and

information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to other conservation on these islands.

No changes is made here to the prudency determination for *Acaena exigua*, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000 and hereby incorporated by reference (65 FR 79192). On Kauai, this species was only known from a collection made between 1869 and 1870 (Wagner et al. 1999). On Maui, this species was last observed in 1997 and no individuals were observed during subsequent visits in 1998 and 1999 to the only known location (H. Oppenheimer and S. Perlman, pers. comm., 2000). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

To determine whether critical habitat would be prudent for four other species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands we analyzed the potential threats and benefits for each species in accordance with the court's order. These four plants were listed as endangered species under the Endangered Species Act of 1973, as amended (9Act) between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for these four species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do

not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. None of these four species are reported from Federal lands on Kauai (the entire island of Niihau is privately-owned) where actions are subject to section 7 consultation. However, two of these species, *Phlegmariurus nutans* and *Solanum incompletum*, are reported from Federal lands or lands that are administered by a Federal agency on other islands (*S. incompletum* is reported from the United States Army's Pohakuloa Training Area on the island of Hawaii; *Phlegmariurus nutans* is reported from the United States Army's Schofield Barracks Military Reservation and Kawaiiloa Training Area, and the Service's Oahu Forest National Wildlife Refuge on Oahu). Although *Achyranthes mutica* and *Isodendron pyriformis* are located exclusively on non-Federal lands with limited Federal activities on the island of Hawaii, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits

include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*.

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Achyranthes mutica*, *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Solanum sandwicense*,

Spermolepis hawaiiensis, *Stenogyne campanulata*, *Vigna o-wahuensis*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (e.g. vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 90 species; the November 7, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; CPC, *in litt.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001; M. Buck, *in litt.* 2001; 65 FR 66808).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been

gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of 83 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

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

In the November 7, 2000, proposal we determined that the designation of critical habitat was prudent for 76 plant species known currently from the islands of Kauai or Niihau and in that proposal we identified the physical and biological features that are considered essential to the conservation of the 76 species on the islands of Kauai or Niihau (65 FR 66808). In other proposals published on December 18, 2000, December 27, 2000, or on December 29, 2000, we determined that the designation of critical habitat was prudent for nine species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ishaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) that no longer occur on Kauai and Niihau but are reported from one or more other islands. Based on new information and information received during the comment periods on the November 7, 2000, proposal we have identified the physical and biological features that are considered essential to

the conservation of five of these nine species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatiformis*) on the island of Kauai. We are unable to identify these features for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau based on the information available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai or Niihau. However, proposed critical habitat designations for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* were included in proposals published on December 18, 2000, December 27, 2000, or December 29, 2000 (65 FR 79192, 65 FR 82086, 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* within the historic range for each species on other Hawaiian islands.

In this proposal, we determine that the designation of critical habitat is prudent for *Phyllostegia waimeae* based on new information received during the comment periods on the November 7, 2000, proposal regarding the rediscovery of this species on Kauai. Based on new information received during the comment periods we have identified physical and biological features that are considered essential to the conservation of *Phyllostegia waimeae* on the island of Kauai.

In this proposal, we determine that the designation of critical habitat is prudent for four species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudence determinations have not been made previously, and which no longer occur on Kauai but are reported from one or more other islands. Based on new information and information received during the comment periods on the November 7, 2000, proposal we have identified the physical and biological features that are considered essential to the conservation of *Phlegmariurus nutans* on the island of Kauai. We are unable to identify these features for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau

based on the information available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau. However, we will consider proposing designation of critical habitat for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* within the historic range for each species on other Hawaiian Islands.

All areas proposed as critical habitat are within the historical range of one or more of the 83 species at issue and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 83 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicated information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with these species, location, and elevation, as described in the Supplementary Information: Discussion of the Plant Taxa section above, constitute the primary constituent elements for these species on the islands of Kauai and Niihau.

D. Criteria Used To Identify Critical Habitat

In the November 7, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes, stream banks), and

elevation. The areas we proposed to designate as critical habitat provided some or all of the habitat components essential for the conservation of the 76 plant species. Specific details regarding the delineation of the proposed critical habitat units were given in the November 7, 2000, proposal (65 FR 66808). In that proposal we did not include potentially suitable unoccupied habitat that is important to the recovery of the 76 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

Based on a review of new biological information and public comments received following publication of the four proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), Lanai (65 FR 82086), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 83 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). Therefore, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. (However, there are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island (e.g., the Wahiawa plant cluster (Service 1994) and *Schiedea*

spergulina var. *leiopoda*), and the proposed critical habitat designations reflect this exception for these species.). To be considered recovered each population of a species endemic to the islands of Kauai or Niihau should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is defined as a unit in which the individuals within a population could be regularly cross-pollinated, individuals that could be influenced by the same small-scale events (such as landslides), and should be considered at recover-level numbers of individuals (e.g., 100–500 individuals) for each population (rather than current numbers).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides or hurricanes, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species, and are expected to be further refined as more information on the population biology of each species becomes available.

The general justification for these objectives is found in the current conservation biology literature addressing the coconservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery and reintroduction in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration. The long-term objectives, as reviewed by Pavlik, range from 50 to 2,500 individuals per population, based largely on research

and theoretical modeling on endangered animals. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of the afore-mentioned characteristics that can be uniformly applied to all species is longevity (i.e., long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 individuals per population for annual species. These guidelines are general and we expect to revise them for individual species to incorporate new data as it becomes available.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (e.g., population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion and professional judgement of non-Service scientists and members of the HPPRCC, to identify

potentially suitable habitat within the known historic range of each species.

The HPPRCC recommended the conservation and establishment of 8–10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach nevertheless employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plants. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm

et al. 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat—and implementation of recovery actions thereon—gives the species a reasonable likelihood of long-term survival and recovery, based on currently available information. These guidelines are general and we expect to revise for individual species to incorporate new data as it becomes available.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (e.g., hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

(1) We focused on designating units representative of the known current and historical geographic and elevational range of each species;

(2) Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

(3) Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (i.e., not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat

on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for full recovery would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on two Service biologists review of current literature on gene flow (Havens 1998; Barret and Kohn 1991; M.H. Schierup and F.B. Christiansen 1996; Fenster and Dudash 1994).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or elevations such as cultivated agriculture fields, housing developments or other areas that are unlikely to contribute to the conservation of one or more of the 83 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In

addition, existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features do not contain, and are not likely to develop, constituent elements and would be excluded under the terms of this proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 83 species.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. These areas are the Service's best estimation of the habitat necessary to provide for the recovery of these species.

E. Managed Lands

Currently occupied or historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 83 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Kauai and Niihau with a known occurrence of one of the 83 species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at three locations (Waimea, Lihue, and Kilauea) on the island of Kauai from October 19 to 21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of

the large amount of land on the island of Kauai under State of Hawaii jurisdiction, we met with staff from Kauai's DOFAW office and Kauai State Parks to discuss their current management for the plants on their lands. And, we contacted the State's DHHL regarding management for the plants on lands under their jurisdiction (any species of aquatic life, wildlife, or plant that is federally listed as endangered or threatened is State listed as well). In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it:

(1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan);

(2) Provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and,

(3) Provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985;

Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 83 species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.*

1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 83 species of plants are found on Federal, State, and private lands on the islands of Kauai and Niihau. In response to our public notices; letters to landowners; open houses; meetings; the November 7, 2000, proposal; public comment periods; the March 7, 2001, draft economic analysis; and the February 6, 2001, public hearing along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on

various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants.

Federal Lands

The PMRF at Barking Sands and Makaha Ridge, both on Kauai's west side, are on federally owned or State leased lands administered by the Navy for instrumented and multi-environment weapon testing and tracking. *Wilkesia hobdyi* occurs on lands at the Makaha Ridge Facility while *Sesbania tomentosa* and *Panicum niihauense* are reported from the dunes on State lands adjacent to the Barking Sands Facility at Polihale State Park. The dune system extends from Polihale State Park through the Barking Sands Facility to State-owned lands at Kekaha, and may be one of the best intact coastal dune systems remaining on the main Hawaiian Islands. We evaluated the dune habitat at the Barking Sands Facility for *Sesbania tomentosa* and *Panicum niihauense* and determined that these lands are not essential for the conservation of *Sesbania tomentosa* though they are essential for *Panicum niihauense*. The Navy is currently engaged in discussions with us to identify training-related impacts to *Wilkesia hobdyi* and *Panicum niihauense* and to develop an Integrated Natural Resources Management Plan (INRMP 2001) that will identify measures that will address the maintenance and improvement of the essential elements for these two plant species and provide for their long-term conservation.

Management at the Barking Sands and Makaha Ridge Facility lands currently consists of restricting human access and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of *Panicum niihauense* and *Wilkesia hobdyi*. Therefore, we can not at this time find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. If the Navy completes and implements an INRMP or other endangered species management plans that addresses the maintenance and improvement of the essential elements for these two plant species and provides for their long-term conservation we will reassess the critical habitat boundaries in light of these management plans. We will solicit specific comments from the Navy on their concerns on our proposed designation on military lands, and its effect of military activities. We will give full consideration to their comments,

and after completing our analysis of public comments, we may exclude some or all of these Navy lands under section 4(b)(2) of the Act.

State of Hawaii Lands

The State lands on the island of Kauai include ceded and leased lands, and those that are administered by the Department of Land and Natural Resources (DLNR). DLNR lands are made up of State Parks, which are administered by the State Division of State parks; and Forest Reserves, Natural Area Reserves, and the Alakai Wilderness Preserve which are administered by the DOWFAW. The DLNR also manages DHHL lands on the island of Kauai. We determined that habitat that is essential to the conservation of 74 of the 83 federally threatened or endangered plant species is found on State lands: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pritchardia napaliensis*, *Pritchardia viscosa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*.

Although the State conducts some conservation management actions on these lands and provides access to others who are conducting such activities, these programs do not adequately address the threats to these listed plant species on their lands. In addition, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands, no updated detailed reports on management actions conducted, and no assurances that management actions will be implemented. Therefore, we cannot, at this time, find that management on these State lands is adequate to preclude a proposed designation of critical habitat. However, we will work with the State in developing conservation planning efforts.

Private Lands

We determined that habitat that is essential to the conservation of 32 of the 83 federally listed plant species is found on privately owned lands on Kauai and Niihau: *Adenophorus periens*, *Bonamia menziesii*, *Brighamia insignis*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Dubautia pauciflorula*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron longifolium*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Schiedea*

membranacea, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Solanum sandwicense*, and *Viola helena*, and *Viola kauaiensis* var. *wahiawaensis*.

We received 25 responses from the over 160 private landowners who received letters inquiring about management actions on their lands. The main activities being conducted by several of these landowners are weeding, control of human access, and planting of native species. In addition, responses and comments we received during the three comment periods and the public hearing, and new information used in preparing this revised proposal did not adequately address the threats to these listed plant species on private lands on Kauai and Niihau. We are aware of only a few private landowners who are drafting management plans for their areas. Without such plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 83 listed species at issue in this revised proposed designation, in accordance with long term conservation plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat.

In addition, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or

agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We support these efforts and provide technical assistance whenever possible. We are also soliciting comments on whether future development and approval of conservation measures (e.g. HCPs, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands, and if so, by what mechanism.

The proposed critical habitat units described below constitute our best assessment of the physical and biological features needed for the conservation of the 83 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this revised proposal acknowledging that we may have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from the public hearing will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII ¹

Unit name	State/local	Private	Federal	Total
Kauai A1		2 ha (6 ac)		2 ha (6 ac)
Kauai A2		6 ha (16 ac)		6 ha (16 ac)
Kauai A3		6 ha (16 ac)		6 ha (16 ac)
Kauai B	271 ha (669 ac)			271 ha (669 ac)
Kauai C	<0.5 ha (<1 ac)	97 ha (239 ac)		97 ha (239 ac)
Kauai D1	2 ha (4 ac)	13 ha (31 ac)		15 ha (35 ac)
Kauai D2		240 ha (594 ac)		240 ha (594 ac)
Kauai E		563 ha (1,390 ac)		563 ha (1,390 ac)
Kauai F		5 ha (12 ac)		5 ha (12 ac)
Kauai G	317 ha (784 ac)			317 ha (784 ac)
Kauai H1	67 ha (165 ac)		71 ha (176 ac)	138 ha (341 ac)
Kauai H2	3 ha (7 ac)		104 ha (258 ac)	107 ha (265 ac)
Kauai H3	42 ha (103 ac)		42 ha (103 ac)	84 ha (206 ac)
Kauai I	8,226 ha (20,326 ac)	12 ha (29 ac)		8,237 ha (20,355 ac)
Kauai J	363 ha (898 ac)	5,173 ha (12,783 ac)		5,536 ha (13,681 ac)
Kauai K	718 ha (1,774 ac)	1,034 ha (2,556 ac)		1,752 ha (4,330 ac)
Kauai L	3,372 ha (8,333 ac)	35 ha (85 ac)		3,407 ha (8,418 ac)
Kauai M	1,459 ha (3,606 ac)	1,843 ha (4,554 ac)		3,302 ha (8,160 ac)
Kauai N	2,713 ha (6,704 ac)	3,886 ha (9,603 ac)		6,599 ha (16,307 ac)

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII¹—Continued

Unit name	State/local	Private	Federal	Total
Kauai O	9,451 ha (23,355 ac)	11 ha (27 ac)		9,462 ha (23,382 ac)
Kauai Total	27,004 ha (66,728 ac)	12,926 ha (31,941 ac)	217 ha (537 ac)	40,147 ha (99,206 ac)
Niihau A		282 ha (697 ac)		282 ha (697 ac)
Grand Total	27,004 ha (66,728 ac)	13,208 ha (32,638 ac)	217 ha (537 ac)	40,429 ha (99,903 ac)

¹ Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.

Proposed critical habitat includes habitat for 83 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense. Lands proposed as critical habitat have been divided into 15 units (Kauai A through Kauai O) on the island of Kauai, and one unit on the island of Niihau (Niihau A). A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Kauai A

The proposed unit Kauai A (units A1 through A3) provides occupied habitat

for one species: *Ischaemum byrone*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Ischaemum byrone*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species. This unit also provides unoccupied habitat for one species: *Centaurium sebaeoides*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological

features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 500 mature individuals per population for *Centaurium sebaeoides*, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai A).

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Table for Kauai A

Notes	*Species is wide ranging. † **Volcanic or clay coastal cliffs with native associates.	*Species is wide ranging. †, **Coastal shrubland, near the ocean among rocks and seepy cliffs.
14. Hybridization is possible.		
13. Restricted habitat requirements	X**	X**
12. Narrow endemic.		
11. Annual-500/pop.	X	
10. Short-lived perennial-300/pop.		X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		
7. Species with variable habitats.		
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines	X*	X*
Species	<u>Centaurium sebaeoides</u>	<u>Ischaemum byrone</u>

This unit (Kauai A) cluster contains a total of 15 ha (38 ac) on privately owned land. It is bordered on the northeast by the coastline and on the west by

Princeville or Kilauea Point. Areas of dense development and subdivisions are excluded. It is within portions of the Anini and Kauapea watersheds. The

natural features include: In unit A1, inland of the beach north of Princeville and north of Princeville Makai Golf Courses; unit A2, inland of the beach

north of Princeville, including Kaweonui Point; and in unit A3, inland of Kauapea Beach, between Niu flat and Kilauea Point.

Kauai B

The proposed unit Kauai B provides occupied habitat for two species: *Hibiscus clayi*, and *Munroidendron*

racemosum. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hibiscus clayi*, or 300 mature individuals per

population for *Munroidendron racemosum*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai B).

Table for Kauai B

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	
9. Long-lived perennial-100/pop.		X
8. Not all occupied habitat needed		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8-10 pop. guidelines	X*	X*
Species	<u>Hibiscus clayi</u>	<u>Munroidendron racemosum</u>

The unit (Kauai B) contains a total of 271 ha (669 ac) on State owned land. It is bounded on the south by the Wailua watershed and on the north by the

Waiakaea watershed. It contains the Nonou Forest Reserve. The natural features found in this unit are the

Nonou summit, and the Nonou Mountain or Sleeping Giant.

Kauai C

The proposed unit Kauai C provides occupied habitat for two species: *Brighamia insignis* and *Lobelia niihauensis*. It is proposed for designation because it contains the

physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population (*Brighamia insignis*) or 300 mature individuals per

population (*Lobelia niihauensis*), throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai C).

Table for Kauai C

Notes	*Rocky ledges and cliffs.	*Species is wide ranging.†
14. Hybridization is possible.		
13. Restricted habitat requirements	X*	
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.		X
9. Long-lived perennial-100/pop.	X	
8. Not all occupied habitat needed		
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines	X	X*
Species	<u>Brighamia insignis</u>	<u>Lobelia niihauensis</u>

This unit (Kauai C) contains a total of 97 ha (239 ac) on State and privately owned lands. It is within the Huleia watershed. The natural features found

in this unit are the cliffs north of Keopawee and Kalanipuu summits and south of Huleia Stream (as it empties into Nawiliwili Harbor).

Kauai D

The proposed unit Kauai D (units D1 and D2) provides unoccupied habitat for one species: *Sesbania tomentosa*.

Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides

habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population,

throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai D).

Table for Kauai D

Notes	*Species is wide ranging. †
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<i>Sesbania tomentosa</i>

This unit (Kauai D) cluster contains a total of 255 ha (629 ac) on State and privately owned lands. It is within the Mahaulepu and Kipu Kai watersheds. The natural features include: in unit D1, Haula bay, Kamala Point, Kawailoa Bay, Kaweliko Point, Kuahonu Point, Makawehi beach, Molehu cape, Naakea cape, Pakamoi bay, Paoo Point, and Puu Pihakapuu and in unit D2, Kaneaukai cape, Keoniloa Bay and Makahuena Point.

Kauai E

The proposed unit Kauai E provides occupied habitat for eight species: *Brighamia insignis*, *Delissea rhytidosperma*, *Isodendrion longifolium*, *Lipochaeta micrantha*,

Munroidendron racemosum, *Peucedanum sandwicense*, *Pteralyxia kauaiensis* and *Schiedea nuttallii*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia insignis*, *Munroidendron racemosum*, *Pteralyxia kauaiensis*, and *Schiedea nuttallii*, or 300 mature individuals per population for *Delissea rhytidosperma*, *Isodendrion longifolium*, *Lipochaeta micrantha*, and *Peucedanum sandwicense* throughout their known historical range considered by the recovery plans to be necessary for

the conservation of each species. This unit also provides unoccupied habitat for two species: *Melicope haupuensis* and *Myrsine linearifolia*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for each species, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai E).

This unit (Kauai E) contains a total of 563 ha (1,390 ac) on privately owned land. It is within the Huleia, Mahaulepu and Kipu Kai watersheds. The natural features include: the Haupu summit, Hokulei Peak, Naluakeina summit, and Queen Victoria's Profile (a natural stone pillar).

Kauai F

The proposed unit Kauai F provides occupied habitat for one species: *Schiedea spergulina* var. *leiopoda*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides

habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plans to be necessary for the conservation of the species (see the discussion of conservation requirements in Section D, and in the table for Kauai F).

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Bare rock outcrops or sparsely vegetated portions of rocky cliffs.
14. Hybridization is possible.	X
13. Restricted habitat requirements.	X* *
12. Narrow endemic.	X
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X*
Species	<u>Schiedea spergulina</u> var. <u>leipoda</u>

Table for Kauai F

The unit (Kauai F) contains a total of 5 ha (12 ac) on privately owned land. It is within the Lawai watershed. The natural features include: the north-eastern facing cliffs above Lawai Stream within the NTBG property and just below the Luawai Reservoir.

Kauai G

The proposed unit Kauai G provides occupied habitat for two species: *Lipochaeta waimeaensis* and *Spermolepis hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are

considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population (*Lipochaeta waimeaensis*), or 500 mature individuals per population (*Spermolepis hawaiiensis*), throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species: *Schiedea spergulina* var. *spergulina*. Designation of this unit

is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai G).

Table for Kauai G

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Eroded soil, precipitous shrub-covered gulches.	*Bare rock outcrops or sparsely vegetated portions of rocky cliffs.	*Species is wide ranging. †
14. Hybridization is possible.		X	
13. Restricted habitat requirements.	X**	X*	
12. Narrow endemic.	X		
11. Annual-500/pop.			X
10. Short-lived perennial-300/pop.	X	X	
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed.		X	
7. Species with variable habitats.			X
6. Several occ. vulnerable to	X		
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.			X
2. Island endemic.	X	X	
1. 8-10 pop. guidelines.	X*	X	X*
Species	<u>Lipochaeta waimaensis</u>	<u>Schiedea spergulina</u> var. <u>spergulina</u>	<u>Spermolepis hawaiiensis</u>

This unit (Kauai G) contains a total of 317 ha (784 ac) on State owned land. It is within the Waimea watershed. The natural features include the east-facing cliffs of Waimea Canyon.

Kauai H

The proposed unit Kauai H (units H1 through H3) provides occupied habitat

for two species: *Panicum niihauense* and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and

300 mature individuals per population for each species, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai H).

Table for Kauai H

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Scattered in sand dunes in coastal shrubland.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.	X	
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed.		
7. Species with variable habitats.		X
6. Several occ. vulnerable to	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.	X	
3. Multi-island/current other islands.		X
2. Island endemic.		
1. 8-10 pop. guidelines.	X*	X*
Species	<u>Panicum niihauense</u>	<u>Sesbania tomentosa</u>

This unit (Kauai H) cluster contains a total of 329 ha (812 ac) on Federal and State owned lands. It is within the Nohomalu, Kaawaloa, Niu, and Hoesa watersheds. The natural features include: in unit H1, inland and along the beach in the Polihale State Park and PMRF from Barking Sands up to Nohili Point; unit H2, inland and along the beach in the PMRF including the geographic features Mana Point and Waieli Draw stream; and in H3, inland and along the beach, partially in the PMRF, including Kokole Point and up to Second Ditch next to the drag strip.

Kauai I

The proposed unit Kauai I provides occupied habitat for 49 species: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyperus trachysanthos*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hibiscadelphus woodii*, *Hibiscus waimeae ssp. hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Lipochaeta fauriei*, *Lobelia niihauensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoctrum peltatum*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Poa*

mannii, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Solanum sandwicense*, *Stenogyne campanulata*, *Wilkesia hobdyi*, and *Xylosma crenatum*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Brighamia insignis*, *Flueggea neowawraea*, *Hibiscadelphus woodii*, *Hibiscus waimeae ssp. hannerae*, *Kokia kauaiensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoctrum peltatum*, *Pteralyxia kauaiensis*, and *Xylosma crenatum*, or 300 mature individuals per population for *Bonamia menziesii*, *Chamaesyce halemanui*, *Cyperus trachysanthos*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Isodendron laurifolium*, *Isodendron longifolium*, *Lipochaeta fauriei*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea*

apokremnos, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Solanum sandwicense*, *Stenogyne campanulata*, and *Wilkesia hobdyi*, or 500 mature individuals per population for *Centaurium sebaeoides*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for eleven species: *Ctenitis squamigera*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Diplazium molokaiense*, *Hesperomannia lydgatei*, *Ischaemum byrone*, *Labordia lydgatei*, *Panicum niihauense*, *Platanthera holochila*, and *Sesbania tomentosa*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one of more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, or 300 mature individuals per population for *Ctenitis squamigera*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Diplazium molokaiense*, *Ischaemum byrone*, *Labordia lydgatei*, *Panicum niihauense*, *Platanthera holochila*, and *Sesbania tomentosa*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai I).

Table for Kauai I

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	
9. Long-lived perennial–100/pop.		X
8. Not all occupied habitat needed		X
7. Species with variable habitats.		
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Alectryon macrococcus</u>

<u>Diellia pallida</u>	X	X																		*Bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep slopes in lowland mesic forest.
<u>Diplazium molokaiense</u>	X*	X																		*Species is wide ranging. † **Brown soil with basalt outcrops near waterfalls.
<u>Dubautia latifolia</u>	X*	X																		*Species is wide ranging. †
<u>Euphorbia haeleleana</u>	X*		X																	*Species is wide ranging. †
<u>Exocarpos luteolus</u>	X	X																		
<u>Flueggea neowawraea</u>	X*		X																	*Species is wide ranging. †
<u>Gouania meyenii</u>	X	X																		*Rocky ledges, cliff faces, ridge tops.
<u>Hedyotis cookiana</u>	X		X																	*Stream beds or steep cliffs close to waterfalls.

<u>Hedyotis st.-johnii</u>		X*	X																	*Species is wide ranging. † **Crevices of north-facing, near vertical, coastal, cliff faces.
<u>Hesperomannia lydgatei</u>		X	X		X		X		X											
<u>Hibiscadelphus woodii</u>		X*	X		X		X		X											*Not enough suitable habitat exists for 8 to 10 populations at this time. **Basalt tallus or cliff walls.
<u>Hibiscus waimeae ssp. hanneriae</u>		X	X		X		X		X											
<u>Ischaemum byrone</u>		X*									X									*Species is wide ranging. † **Coastal shrubland, near the ocean among rocks and seepy cliffs.
<u>Isodendron laurifolium</u>		X			X		X		X											X
<u>Isodendron longifolium</u>		X			X		X		X											X
																				*Steep slopes and some flats in gulches and stream banks.

This unit (Kauai I) contains a total of 8,238 ha (20,355 ac) on State and privately owned lands. It is bordered by the Kaulaula watershed in the west and Maunapulo watershed in the east and includes the Awaawapuhi, Haeleele, Hanakapiai, Hanakoa, Hikimoe, Honopu, Hoolulu, Kaaweiki, Kalalau, Kauhao, Limahuli, Makaha, Milolii, Nahomalu, Nakeikionaiwi, Nualolo, Pohakuao, Waiahuakua, Waimea, Wainiha, and Waiolaa watersheds. The natural features include: Alapii Point, Alealau summit, Awaawapuhi Valley, Haeleele Valley, Hanakapiai Stream, Hanakoa Stream, Honopu Valley, Hoolulu Stream, Kaaalahina Ridge, Kaahole Valley, Kainamanu summit, Kalahu summit, Kalalau Beach, Kalalau Stream, Kalalau Trail, Kalalau Valley, Kalepa Ridge, Kanakou summit, Kauhao Ridge, Kauhao Valley, Kaunuohua Ridge, Kawaiula Valley, Keanapuka summit, Kopakaka Ridge, Kuia Valley, Mahanaloa Valley, Makaha Ridge, Makaha Valley, Manono Ridge, Milolii Ridge, Milolii Valley, Moaalele summit, Mukuaiki Point, Na Pali, Nianiau summit, Nualolo Valley, Paaiki Valley, Pihea summit, Pohakea summit, Poopooiki Valley, Punaiea Point, Puu Ki summit, Puu o Kila summit, Waiahuakua summit, and Waiahuakua Stream. This unit contains portions of Haena State Park, Kokee State Park, Na Pali-Kona Forest Reserve, Polihale State

Park, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park and all of the Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and the PMRF Makaha Ridge Facility.

Kauai J

The proposed unit Kauai J provides occupied habitat for 14 species: *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendrion longifolium*, *Labordia lydgatei*, *Lobelia niihauensis*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Plantago princeps*, and *Schiedea membranacea*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendrion longifolium*, *Labordia lydgatei*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Plantago princeps*, and *Schiedea membranacea*, throughout their known

historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for 12 species: *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Delissea rivularis*, *Delissea undulata*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Munroidendron racemosum*, *Phyllostegia wawrana*, *Platanthera holochila*, *Remya montgomeryi*, and *Schiedea kauaiensis*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 100 mature individuals per population for *Alsinidendron lychnoides*, *Brighamia insignis*, and *Munroidendron racemosum*, or 300 mature individuals per population for *Bonamia menziesii*, *Delissea rivularis*, *Delissea undulata*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Phyllostegia wawrana*, *Platanthera holochila*, *Remya montgomeryi*, and *Schiedea kauaiensis*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai J).

Notes	*Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.
15. Hybridization is possible.	
14. Restricted habitat requirements	X*
13. Narrow endemic.	
12. Poss. 1 large pop per island.	X
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction	
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X
Species	<u>Adenophorus periens</u>

Table for Kauai J

<u>Alsinidendron lychnooides</u>	X	X																		X*	*Steep riparian clay or silty soil banks in montane wet forests.	
<u>Bonamia menziesii</u>	X*		X																			*Species is wide ranging.†
<u>Brighamia insignis</u>	X		X																			*Rocky ledges and cliffs.
<u>Cyanea recta</u>	X	X																				
<u>Cyanea remyi</u>	X	X																				*Tight drainages and wet stream banks in lowland wet forest or shrubland.
<u>Cyrtandra cyaneoides</u>	X	X																				*Tallus rubble on steep slopes or cliff with water seeps running below, near streams or waterfalls.
<u>Cyrtandra limahuliensis</u>	X	X																				*Stream banks in lowland wet forest.

This unit (Kauai J) contains a total of 5,536 ha (13,681 ac) on State and privately owned lands. It is bordered by the Limahuli watershed in the north, the Wainiha watershed in the south and contains a portion of the Manoa watershed. The natural features include: Hinalele Falls, Hono o Na Pali, Kilohana summit, Kulanaeililia summit, Limahuli Falls, Mahinakehau Ridge, Makana summit, Maunahina Stream, Maunapuluo summit, Pali Eleele summit, Pohakukane cliff, Puu Iliahi, Puwainui Falls, Waikanaloa Wet Cave, Waikapalae Wet Cave, and Wainiha Pali. It contains portions of the Halelea Forest Reserve.

Kauai K

The proposed unit Kauai K provides occupied habitat for ten species: *Adenophorus periens*, *Cyanea recta*,

Cyanea remyi, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Isodendron longifolium*, *Labordia lydgatei*, *Myrsine linearifolia*, and *Plantago princeps*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendron longifolium*, *Labordia lydgatei*, and *Plantago princeps*, throughout their known historical range considered by the recovery plans to be necessary for

the conservation of each species. This unit also provides unoccupied habitat for three species: *Alsinidendron lychnoides*, *Bonamia menziesii*, and *Schiedea membranacea*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alsinidendron lychnoides*, or 300 mature individuals per population for *Bonamia menziesii*, and *Schiedea membranacea*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai K).

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.
14. Hybridization is possible.	
13. Restricted habitat requirements.	X**
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to	
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8–10 pop. guidelines.	X*
Species	<u>Adenophorus periens</u>

Table for Kauai K

This unit (Kauai K) contains a total of 1,752 ha (4,330 ac) on State and privately owned lands. It is bordered on the west by the Lumahai watershed and on the east by Waioli watershed and contains a portion of the Waipa watershed. The natural features include: Hihimanu summit, Mamalahoa summit, Namolokama Mountain, and Puu Manu. The westernmost portion of this unit is in the Halelea Forest Reserve.

Kauai L

The proposed unit Kauai L provides occupied habitat for one species: *Plantago princeps*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to

support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species. This unit also provides unoccupied habitat for 12 species: *Adenophorus periens*, *Bonamia menziesii*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, *Myrsine linearifolia*, and *Platanthera holochila*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on

Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Bonamia menziesii*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, and *Platanthera holochila*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai L).

Table for Kauai L

Notes	* Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	* Species is wide ranging †	
14. Hybridization is possible.			
13. Restricted habitat requirements.	X*		
12. Narrow endemic.			
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.	X	X	X
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed.		X	X
7. Species with variable habitats.		X	X
6. Several occ. vulnerable to		X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.	X	X	
2. Island endemic.			X
1. 8-10 pop. guidelines.	X*	X*	X
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>	<u>Cyanea recta</u>

This unit (Kauai L) contains a total of 3,407 ha (8,418 ac) on State and privately owned lands. It is within the Hanalei watershed. The natural features include: Kaliko summit, Kaumanalehua summit, Kawailewa summit, Keanaawi Ridge, Kiloa summit, Maheo summit, and Pohakupele summit. This unit is within a portion of the Halelea Forest Reserve.

Kauai M

The proposed unit Kauai M provides occupied habitat for eight species: *Adenophorus periens*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*,

Cyrtandra cyaneoides, *Cyrtandra limahuliensis*, *Labordia lydgatei*, and *Phyllostegia wawrana*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species:

Bonamia menziesii. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai M).

Table for Kauai M

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	X
9. Long-lived perennial–100/pop.		
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>

This unit (Kauai M) contains a total of 3,302 ha (8,160 ac) on State and privately owned lands. It contains portions of the Anahola, Kalihiwai, Kapaa, and Kilauea watersheds. The natural features include: Haleone summit, Kahili summit, Kamahuna summit, Kamalii Ridge, Keahua summit, Kekoiki summit, Lelewi summit, Makaleha summit, Makaleha Mountains, Malamalamaiki summit, Namahana Mount, Pohakupili summit, Puu Awa, Puu Eu, Uluwaa summit, and Waihunehune Falls. It contains portions of Kealia Forest Reserve and Moloaa Forest Reserve.

Kauai N

The proposed unit Kauai N provides occupied habitat for 16 species: *Adenophorus periens*, *Bonamia menziesii*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Dubautia pauciflora*, *Exocarpos luteolus*, *Isodendron longifolium*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lysimachia*

filifolia, *Myrsine linearifolia*, *Plantago princeps*, *Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Labordia tinifolia* var. *wahiawaensis* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Bonamia menziesii*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Dubautia pauciflora*, *Exocarpos luteolus*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, *Plantago princeps*, *Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for

seven species: *Cyanea undulata*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Hesperomannia lydgatei*, *Phlegmariurus nutans*, *Phyllostegia wawrana*, and *Platanthera holochila*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, or 300 mature individuals per population for *Cyanea undulata*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Phlegmariurus nutans*, *Phyllostegia wawrana*, and *Platanthera holochila*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai N).

Table for Kauai N

Notes	*Species is wide ranging † **Epiphyte usually growing on <u>Metrosideros</u> <u>polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	X
9. Long-lived perennial–100/pop.		
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>

<u>Cyrtandra cyaneoides</u>	X	X		X	X		X			X											*Tallus on steep slopes or cliffs with water seeps running below, near streams or waterfalls.
<u>Cyrtandra limahuliensis</u>	X	X		X	X		X			X											*Stream banks in lowland wet forest.
<u>Delissea rivularis</u>	X*	X		X	X		X			X											*Not enough suitable habitat exists for 8 to 10 populations at this time. **Steep slopes near streams in wet or mesic forest.
<u>Dubautia pauciflora</u>	X	X		X	X		X			X											*Stream drainages.
<u>Exocarpos luteolus</u>	X	X		X	X		X			X											
<u>Hesperomannia lydgatei</u>	X	X		X	X		X			X											
<u>Isodendron longifolium</u>	X	X		X	X		X			X											*Steep slopes and some flats in gulches and stream banks.

<u>Plantago princeps</u>	X	X*		X		X	X	X	X	X	X	X		X	X		X		X	
<u>Platanthera holochila</u>		X*		X		X		X	X	X	X	X	X		X		X		X	
<u>Viola helenae</u>	X	X**	X	X		X		X	X	X	X	X	X	X		X	X		X*	
<u>Viola kauaiensis var. wahiawaensis</u>	X	X**	X	X		X		X	X	X	X	X	X	X		X	X		X*	

*Very specific, variable habitat requirements, i.e. windswept areas near waterfalls, cliff and ridges on rocky outcrops, windblown basalt cliffs with little vegetation.

*Mixed bogs – mid to high elevation, or montane bog, wet forest, mesic scrub.

*Species is wide ranging †

**Stream drainage bottoms and or adjacent valley bottoms.

*Species is wide ranging †

**Lowland bog and surrounding forest.

This unit (Kauai N) contains a total of 6,599 ha (16,307 ac) on State and privately owned lands. The majority of this unit is in the Wailua watershed

with the southernmost portion in the Wahiawa watershed with the Huleia watershed in between. The natural features include: Hanalei summit, Iole

summit, Iole Stream, Kahili summit, Kalalea summit, Kamanu summit, Kaneale Swamp, Kapakaiki Falls, Kapakanui Falls, Kapalaoa summit,

Kapehuaala summit, Kaulu Stream, Kawaikini summit, Kualapa summit, Kuilau Ridge, Palikea summit, and Wekiu summit. Includes a portion of the Lihue-Koloa Forest Reserve.

Kauai O

The proposed unit Kauai O provides occupied habitat for 41 species:

Alectryon macrococcus, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Chamaesyce halemanui*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Isodendron laurifolium*, *Kokia kauaiensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Platanthera holochila*, *Poa sandvicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*,

Solanum sandwicense, *Spermolepis hawaiiensis*, *Xylosma crenatum*, *Zanthoxylum hawaiiense*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Flueggea neowawraea*, *Kokia kauaiensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*, or 300 mature individuals per population for *Alsinidendron viscosum*, *Bonamia menziesii*, *Chamaesyce halemanui*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Gouania meyenii*, *Isodendron laurifolium*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Platanthera holochila*, *Poa sandvicensis*, *Poa siphonoglossa*, *Remya*

kauaiensis, *Remya montgomeryi*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, and *Solanum sandwicense*, or 500 mature individuals per population for *Spermolepis hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Adenophorus periens*, *Cyanea recta*, *Delissea rivularis*, *Diplazium molokaiensis*, *Isodendron longifolium*, *Mariscus pennatifolius*, *Plantago princeps*, *Poa mannii*, *Schiedea kauense*, and *Stenogyne campanulata*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objective of 8 to 10 populations and 300 mature individuals per population for each species, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai O).

Table for Kauai O

Notes	*Species is wide ranging. † ** Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	
9. Long-lived perennial-100/pop.		X
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Alectryon macrococcus</u>

<u>Diellia erecta</u>	X*						X	X												X*	*Species is wide ranging. † **Granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms.	
<u>Diellia pallida</u>	X	X					X	X												X*	*Bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep slopes in lowland mesic forest.	
<u>Diplazium molokatensis</u>	X*																			X**	*Species is wide ranging. † **Brown soil with basalt outcrops near waterfalls.	
<u>Dubautia latifolia</u>	X	X					X	X														
<u>Euphorbia haeleeleana</u>	X*						X	X														*Species is wide ranging. †
<u>Exocarpos luteolus</u>	X	X					X	X														
<u>Flueggea neowawraea</u>	X*						X	X														*Species is wide ranging. †
<u>Gouania meyenii</u>	X						X	X												X*	*Rocky ledges, cliff faces, ridge tops.	

<u>Schiedea helleri</u>	X*	X																		X	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Cliff faces.	
<u>Schiedea kauaiensis</u>	X*	X								X											X	Not enough suitable habitat exists for 8 to 10 populations at this time.
<u>Schiedea membranacea</u>	X	X								X											X	*Cliff and cliff bases.
<u>Schiedea spergulina</u> var. <u>spergulina</u>	X	X								X											X	*Bare rock outcrops or sparsely vegetated portions of rocky cliffs.
<u>Schiedea stellaroides</u>	X	X								X											X	
<u>Solanum sandwicense</u>	X									X												
<u>Spermolepis hawaiiensis</u>	X*									X												*Species is wide ranging †
<u>Stenogyne campanulata</u>	X*	X								X											X	*Species is wide ranging † **Rock faces of nearly vertical north-facing cliffs.
<u>Xylosma crenatum</u>	X*	X								X												*Species is wide ranging †
<u>Zanthoxylum hawaiiense</u>	X*	X								X												*Species is wide ranging †

This unit (Kauai O) contains a total of 9,462 ha (23,382 ac) on State and privately owned lands. This unit is predominately in the Waimea watershed with a small portion extending into upper reaches of the Haeleele, Hikimoe, Kaaweiki, Kaulaula, and Nahomalu watersheds. The natural features include: the Alakai Swamp, Awini Falls, Awini Stream, Halehaha Stream, Halemanu Stream, Halepaakai Stream, Hipalau Valley, Kaaha summit, Kaluahaulu Ridge, Kaou summit, Kauaikinana Stream, Kawaiiki Ridge, Kawaiiki Valley, Kawaiikoi Stream, Kipalau Valley, Koali summit, Kohua Ridge, Kokee Stream, Kumuwela Ridge,

Loli River, Moeloa Falls, Mohihi Falls, Mohihi Stream, Nawaimaka Stream, Puu Lua summit, Wahane Valley, Waiakoali Stream, Waialae Falls, and Waipoo Falls. This unit contains portions of Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park.

Niihau A

The proposed unit Niihau A provides occupied habitat for two species: *Brighamia insignis*, and *Cyperus*

trachysanthos. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Niihau, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia insignis* or 300 mature individuals per population for *Cyperus trachysanthos*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Niihau A).

Table for Niihau A

Notes	*Rocky ledges and cliffs.	*Species is wide ranging † **Wet sites on seepy flats or tallus slopes.
14. Hybridization is possible.		
13. Restricted habitat requirements.	X*	X**
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.		X
9. Long-lived perennial-100/pop.	X	
8. Not all occupied habitat needed.		
7. Species with variable habitats.		
6. Several occ. vulnerable to	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines.	X	X*
Species	<u>Brighamia insignis</u>	<u>Cyperus trachysanthos</u>

Key for Tables Kauai A–O and Niihau A

‡ Not all suitable habitat is designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self-perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide-ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals needed per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals needed per population.

11. Life history, annual—500 mature, reproducing individuals needed per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

This unit (Niihau A) contains a total of 282 ha (697 ac) on privately owned land. The natural features include Puu Alala, Mokouia Valley, and two unnamed intermittent bodies of water near Puu Alala.

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

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. 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, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) 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. 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 species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would 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 the

Director believes would avoid 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 under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or 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.

Activities on Federal lands that may affect critical habitat of one or more of the 83 plant species will require Section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly

adversely affect critical habitat include, but are not limited to—

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire.

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values.

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps.

(4) Recreational activities that appreciably degrade vegetation.

(5) Mining of sand or other minerals.

(6) Introducing or encouraging the spread of non-native plant species.

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to

encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species. If an HCP that addresses one or more of the 83 plant species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Critical habitat is defined in section 3, paragraph (5)(A) 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 a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of one or more of the 83 plant species and do not require special management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider—(1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides

assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether—(a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether—(a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2)

the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

Two species, *Panicum niihauense* and *Wilkesia hobyi*, occur on the Barking Sands and Makaha Ridge Facility lands, and we believe these lands are needed for the recovery of these species. Management on these lands currently consist of restricting human access and mowing landscaped areas. We do not believe that these measures are sufficient to address the primary threats to these species, nor do we believe that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for these two plant species, and provides for their long-term conservation and assurances that it will be completed and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Economic and Other Relevant Impacts

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 from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat if the exclusion will result in the extinction of the species concerned.

We prepared an analysis of the economic effects of critical habitat designation for 76 Kauai and Niihau plants (Decision Analysts Hawaii, Inc. (DAHI) 2001) and made it available for public review on March 7, 2001 (66 FR 13691). In that document, we concluded

that no significant economic impacts were expected from critical habitat designation above and beyond those already caused by the listing of the 76 plant species because nearly all of the land within the proposed critical habitat unit is unsuitable for development due to their remote locations, lack of access, and rugged terrain; nearly all of this land (98.5 percent) is within the State Conservation District where state land use controls severely limit development and most activities; very few of the current and planned projects, land uses, and activities that could affect the proposed critical habitat units have a Federal involvement requiring section 7 consultations and most of the activities that do have Federal involvement are operations and maintenance of existing facilities and structures, so they would not be impacted by the critical habitat designation. We will conduct a reanalysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits of the critical habitat designation regardless of whether the costs are coextensive with listing, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with critical habitat designation. When completed, we will announce the availability of the revised draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the revised draft economic analysis and re-open the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudence determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for the 83 species, and what habitat is

essential to the conservation of the species and why;

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

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the PMRF at Barking Sands and Makaha Ridge Facility lands, both on the island of Kauai. Whether there will be a significant impact on military readiness or national security if we designate critical habitat on these facilities. Whether these facilities should be excluded from the designation under section 4(b)(2) of the Act.

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, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish 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. To the extent consistent with applicable law, 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 (see **ADDRESSES** section).

The comment period closes on March 29, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **ADDRESSES** section.

Public Hearing

The Act provides for a public hearing on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal in the **Federal Register**. Given the high likelihood of requests and the need to publish the final determination by July 30, 2002, we have scheduled a public hearing to be held 6:00 p.m. to 8:00 p.m., Wednesday, February 13, 2002, at the Radisson Kauai Beach Resort.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service.

The public hearing will be held from 6:00 p.m. to 8:00 p.m. on Tuesday, January 29, 2002, on the island of Kauai, Hawaii. Prior to the public hearing, we will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m. The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai.

Peer Review

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 a review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day

comment period on this revised 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 and 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to the Field Supervisor, Pacific Islands Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a revised economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 83 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal

agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified 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, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 83 PLANTS FROM THE ISLANDS OF KAUAI AND NIIHAU

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation ¹
Federal Activities Potentially Affected ² .	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected ³ .	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

¹ This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

³ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as “jeopardy” under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in

areas currently unoccupied by the listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 83 plant species since their listing between 1991 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7

consultations would not have occurred but for the critical habitat designation 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) We do not expect this proposed rule, if made final, to significantly 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 a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues

and, as a result, this rule has undergone OMB review.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of substantial entities. However, should our revised economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae ssp. hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatiformis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*,

Schiedea apokremnos, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 83 plant species were listed (between 1990 and 1996), there have been no formal consultations, and we have conducted only six informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. On the island of Kauai there have been no formal consultations regarding *Alsinidendron lychnoides*, *Cyrtandra limahuliensis*, *Cyanea recta*, *Diellia erecta*, *Dubautia latifolia*, *Exocarpos luteolus*, *Panicum niihauense*, *Sesbania tomentosa*, and *Wilkesia hobdyi*, with the Corps, Navy, and the U.S. Department of Agriculture. One informal consultation was conducted on behalf of the Corps for the Defense Environmental Restoration Program, who requested a list of endangered species on a site formerly used by the Department of Defense at the Wailua Impact Area. Three of the 83 species, *Cyanea recta*, *Cyrtandra limahuliensis*, and *Exocarpos luteolus* were reported from the project area. Four informal consultations were conducted with the Navy: one for the construction of a missile support facility at the PMRF at Barking Sands regarding several listed birds, a turtle, the Hawaiian monk seal,

Hawaiian hoary bat, and the endangered plant *Sesbania tomentosa*; one on the PMRF's Enhanced Capability regarding several listed birds and turtles, the Hawaiian hoary bat, Hawaiian monk seal, several whale species, and the plants *Panicum niuhauense* and *Sesbania tomentosa*; one for the mountaintop surveillance sensor test integration center facility at PMRF at Barking Sands regarding several listed birds, the Hawaiian hoary bat, and the endangered plants *Panicum niuhauense* and *Sesbania tomentosa*; and, one for the Navy's INRMP for PMRF at Barking Sands regarding several listed birds, a listed turtle, the Hawaiian hoary bat, and *Wilkesia hobydi*. In addition, *Panicum niuhauense* and *Sesbania tomentosa* were identified as occurring in Polihale State Park, adjacent to the Naval facility. The fifth informal consultation was conducted on one listed bird, the Hawaiian hoary bat, and three plants (*Alsinidendron lychnoides*, *Dubautia latifolia*, and *Diellia erecta*) with the NRCS through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinstate consultation for these on-going actions as these actions are not occurring within the areas of proposed critical habitat (Terrell Kelly, NRCS, pers. comm., 2001).

Except for the NRCS project, none of these consultations affected or concerned small entities. In all five consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. None of these consultations affected or concerned small entities, and none of the proposed projects are ongoing. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on Kauai.

There have been no consultations on any of these 83 species on the island of Niihau. Therefore, the requirement to reinstate consultations for ongoing projects will not affect a substantial number of small entities on Niihau.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinstatement of already completed consultations for ongoing projects. As mentioned above, we have conducted only five informal

consultations under section 7 involving any of the species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Kauai, approximately 0.5 percent of the designations are on Federal lands, 66.8 percent are on State lands, and 32.7 percent are on private lands. Nearly all of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of the remote locations, lack of access, and rugged terrain of these lands. Also, nearly all of this land (99.2 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 0.7 percent of this land is within the State Agricultural District, and about 0.1 percent is within the State Urban District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and may affect only a small percentage of the small entities within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and

activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would be federally funded, permitted, or authorized in these coastal areas. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (DAHI 2001). The proposed rule would not affect a substantial number of small agricultural entities on the island of Niihau. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require

the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these 83 species from Kauai and Niihau, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because there are not a substantial number of small entities affected.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. In the absence of a revised economic analysis

at this time, we have reviewed our previously available draft economic analysis of the likely economic impacts of designating critical habitat for 76 plants from the islands of Kauai and Niihau (66 FR 13691). In that analysis, which included proposed designations of critical habitat within 23 units on 24,349 ha (60,166 ac) on Kauai and 191 ha (471 ac) on Niihau, we determined that the designations would have modest economic impacts because nearly all of the land within the critical habitat units has limited suitability for development, land uses, and activities because of the remote locations, lack of access, and rugged terrain, of the land, and their inclusion within the State Conservation District where State land-use controls severely limit development and most activities. The proposed critical habitat designations were expected to cause little or no increase in the number of section 7 consultations; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities).

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer “reasonable and prudent alternatives.” Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require

the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 67 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 33 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or

adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, since we are certifying that the proposed designation of critical habitat for the following species: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niuhauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niuhauense*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense* will not have a significant economic impact on a

substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the revised economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is 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 et seq.):

a. We believe this rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the 83 species from Kauai and Niihau in a preliminary takings

implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 83 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all but one of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation 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 does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. 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 83 plant species.

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

This rule does not contain any new collections of information that require

approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined 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 Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

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) E.O. 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 83 plant species. Therefore, designation of critical habitat for these 83 species has not been proposed on Tribal lands.

References Cited

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

Authors

The primary authors of this notice are Marigold Zoll, Gregory Koob, Christa Russell, and Michelle Stephens (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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. In § 17.12(h) revise the entries for "*Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea renyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*,

Hedyotis st.-johnii, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hanneriae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobydi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*" under "FLOWERING PLANTS" and "Adenophorus periens, *Ctenitis squamigera*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, and *Phlegmariurus nutans*" under "FERNS AND ALLIES" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species—Scientific name	Common name	Historic range	Family	Stat- us	When listed	Critical habitat	Special rules
FLOWERING PLANTS							
* * * * *							
<i>Alectryon macrococcus</i>	Mahoe	U.S.A. (HI)	Sapindaceae	E ...	467	17.96(a)	NA
* * * * *							
<i>Alsinidendron lychnoides</i>	Kuawawaenohu ..	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
* * * * *							
<i>Alsinidendron viscosum</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
* * * * *							
<i>Bonamia menziesii</i>	None	U.S.A. (HI)	Convolvulaceae	E ...	559	17.96(a)	NA
* * * * *							
<i>Brighamia insignis</i>	Olulu	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
* * * * *							
<i>Centaurium sebaeoides</i>	Awiwi	U.S.A. (HI)	Gentianaceae	E ...	448	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Chamaesyce halemanui</i>	None	U.S.A. (HI)	Euphorbiaceae	E ...	464	17.96(a)	NA
<i>Cyanea asarifolia</i>	Haha	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
<i>Cyanea recta</i>	Haha	U.S.A. (HI)	Campanulaceae	T ...	590	17.96(a)	NA
<i>Cyanea remyi</i>	Haha	U.S.A. (HI)	Campanulaceae	E ...	590	17.96(a)	NA
<i>Cyanea undulata</i>	None	U.S.A. (HI)	Campanulaceae	E ...	436	17.96(a)	NA
<i>Cyperus trachysanthos</i>	Puukaa	U.S.A. (HI)	Cyperaceae	E ...	592	17.96(a)	NA
<i>Cyrtandra cyaneoides</i>	Mapele	U.S.A. (HI)	Gesneriaceae	E ...	590	17.96(a)	NA
<i>Cyrtandra limahuliensis</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	T ...	530	17.96(a)	NA
<i>Delissea rhytidosperra</i>	None	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
<i>Delissea rivularis</i>	Oha	U.S.A. (HI)	Campanulaceae	E ...	590	17.96(a)	NA
<i>Delissea undulata</i>	None	U.S.A. (HI)	Campanulaceae	E ...	593	17.96(a)	NA
<i>Dubautia latifolia</i>	Naenae	U.S.A. (HI)	Asteraceae	E ...	464	17.96(a)	NA
<i>Dubautia pauciflora</i>	Naenae	U.S.A. (HI)	Asteraceae	E ...	436	17.96(a)	NA
<i>Euphorbia haeleeleana</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E ...	592	17.96(a)	NA
<i>Exocarpos luteolus</i>	Heau	U.S.A. (HI)	Santalaceae	E ...	530	17.96(a)	NA
<i>Flueggea neowawraea</i>	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E ...	559	17.96(a)	NA
<i>Gouania meyenii</i>	None	U.S.A. (HI)	Rhamnaceae	E ...	448	17.96(a)	NA
<i>Hedyotis cookiana</i>	Awiji	U.S.A. (HI)	Rubiaceae	E ...	530	17.96(a)	NA
<i>Hedyotis st.-johnii</i>	Na Pali beach hedyotis.	U.S.A. (HI)	Rubiaceae	E ...	441	17.96(a)	NA
<i>Hesperomannia lydgatei</i>	None	U.S.A. (HI)	Asteraceae	E ...	436	17.96(a)	NA
<i>Hibiscadelphus woodii</i>	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Hibiscus clayi</i>	Clay's hibiscus	U.S.A. (HI)	Malvaceae	E ...	530	17.96(a)	NA
<i>Hibiscus waimeae hannerae</i> spp.	Kokio keokeo	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Ischaemum byrone</i>	Hilo ischaemum	U.S.A. (HI)	Poaceae	E ...	532	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Isodendron laurifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	E ...	592	17.96(a)	NA
<i>Isodendron longifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	T ...	592	17.96(a)	NA
<i>Kokia kauaiensis</i>	Kokio	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Labordia lydgatei</i>	Kamakahala	U.S.A. (HI)	Loganiaceae	E ...	436	17.96(a)	NA
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>	Kamakahala	U.S.A. (HI)	Loganiaceae	E ...	590	17.96(a)	NA
<i>Lipochaeta fauriei</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lipochaeta micrantha</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lipochaeta waimeaensis</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lobelia niihauensis</i>	None	U.S.A. (HI)	Campanulaceae	E ...	448	17.96(a)	NA
<i>Lysimachia filifolia</i>	None	U.S.A. (HI)	Primulaceae	E ...	530	17.96(a)	NA
<i>Mariscus pennatiformis</i>	None	U.S.A. (HI)	Cyperaceae	E ...	559	17.96(a)	NA
<i>Melicope haupuensis</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Melicope knudsenii</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Melicope pallida</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Munroidendron racemosum</i>	None	U.S.A. (HI)	Araliaceae	E ...	530	17.96(a)	NA
<i>Myrsine linearifolia</i>	Kolea	U.S.A. (HI)	Myrsinaceae	T ...	590	17.96(a)	NA
<i>Nothocestrum peltatum</i>	Aiea	U.S.A. (HI)	Solanaceae	E ...	530	17.96(a)	NA
<i>Panicum niihauense</i>	Lau ehu	U.S.A. (HI)	Poaceae	E ...	592	17.96(a)	NA
<i>Peucedanum sandwicense</i>	Makou	U.S.A. (HI)	Apiaceae	T ...	530	17.96(a)	NA
<i>Phyllostegia knudsenii</i>	None	U.S.A. (HI)	Lamiaceae	E ...	590	17.96(a)	NA
<i>Phyllostegia waimeae</i>	None	U.S.A. (HI)	Lamiaceae	E ...	530	17.96(a)	NA
<i>Phyllostegia wawrana</i>	None	U.S.A. (HI)	Lamiaceae	E ...	590	17.96(a)	NA
<i>Plantago princeps</i>	Laukahi kuahiwi ..	U.S.A. (HI)	Plantaginaceae	E ...	559	17.96(a)	NA
<i>Platanthera holochila</i>	None	U.S.A. (HI)	Orchidaceae	E ...	592	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Poa mannii</i>	Mann's bluegrass	U.S.A. (HI)	Poaceae	E ...	558	17.96(a)	NA
<i>Poa sandvicensis</i>	Hawaiian bluegrass.	U.S.A. (HI)	Poaceae	E ...	464	17.96(a)	NA
<i>Poa siphonoglossa</i>	None	U.S.A. (HI)	Poaceae	E ...	464	17.96(a)	NA
<i>Pteralyxia kauaiensis</i>	Kaulu	U.S.A. (HI)	Apocynaceae	E ...	530	17.96(a)	NA
<i>Remya kauaiensis</i>	None	U.S.A. (HI)	Asteraceae	E ...	413	17.96(a)	NA
<i>Remya montgomeryi</i>	None	U.S.A. (HI)	Asteraceae	E ...	413	17.96(a)	NA
<i>Schiedea apokremnos</i>	Maolioli	U.S.A. (HI)	Caryophyllaceae	E ...	441	17.96(a)	NA
<i>Schiedea helleri</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Schiedea kauaiensis</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	592	17.96(a)	NA
<i>Schiedea membranacea</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Schiedea nuttallii</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	592	17.96(a)	NA
<i>Schiedea spergulina</i> var. <i>leiopoda</i> .	None	U.S.A. (HI)	Caryophyllaceae	E ...	530	17.96(a)	NA
<i>Schiedea spergulina</i> var. <i>spergulina</i> .	None	U.S.A. (HI)	Caryophyllaceae	T ...	530	17.96(a)	NA
<i>Schiedea stellarioides</i> (=Maolioli).	Laulihilihi	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Sesbania tomentosa</i>	Ohai	U.S.A. (HI)	Fabaceae	E ...	559	17.96(a)	NA
<i>Solanum sandwicense</i>	Aiakeakua, popolo.	U.S.A. (HI)	Solanaceae	E ...	530	17.96(a)	NA
<i>Spermolepis hawaiiensis</i>	None	U.S.A. (HI)	Apiaceae	E ...	559	17.96(a)	NA
<i>Stenogyne campanulata</i>	None	U.S.A. (HI)	Lamiaceae	E ...	464	17.96(a)	NA
<i>Viola helenae</i>	None	U.S.A. (HI)	Violaceae	E ...	436	17.96(a)	NA
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	Nani wai ale ale ..	U.S.A. (HI)	Violaceae	E ...	590	17.96(a)	NA
<i>Wilkesia hobdyi</i>	Dwarf iliau	U.S.A. (HI)	Asteraceae	E ...	473	17.96(a)	NA
<i>Xylosma crenatum</i>	None	U.S.A. (HI)	Flacourtiaceae	E ...	464	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Sta-tus	When listed	Critical habitat	Special rules
* <i>Zanthoxylum hawaiiense</i>	* Ae	* U.S.A. (HI)	* Rutaceae	* E ...	* 532	* 17.96(a)	* NA
FERNS AND ALLIES							
* <i>Adenophorus periens</i>	* Pendant kahi fern	* U.S.A. (HI)	* Grammitidaceae	* E ...	* 559	* 17.96(a)	* NA
* <i>Ctenitis squamigera</i>	* Pauoa	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 553	* 17.96(a)	* NA
* <i>Diellia erecta</i>	* Asplenium-leaved diellia.	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 559	* 17.96(a)	* NA
* <i>Diellia pallida</i>	* None	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 530	* 17.96(a)	* NA
* <i>Diplazium molokaiense</i>	* None	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 553	* 17.96(a)	* NA
* <i>Phlegmariurus nutans</i>	* Wawae iole	* U.S.A. (HI)	* Lycopodiaceae	* E ...	* 536	* 17.96(a)	* NA
*	*	*	*	*	*	*	*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), and revise paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections

contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features, do not contain, and are not likely to develop, the constituent




elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not critical habitat.

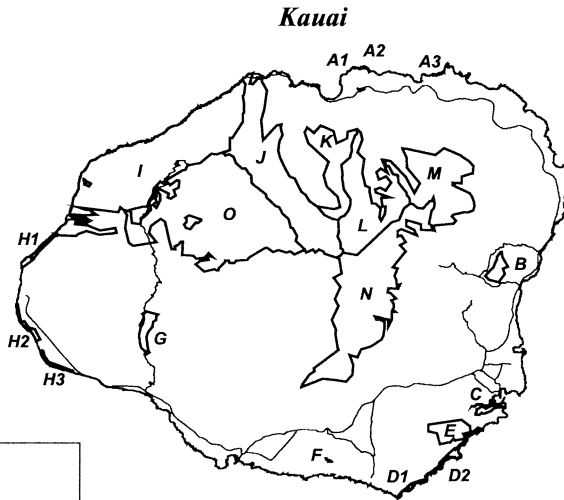
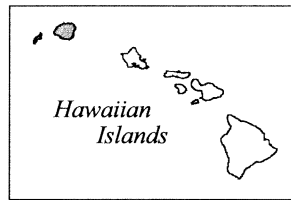
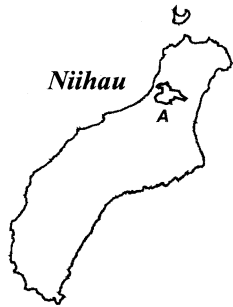
(A) *Kauai.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 15 critical habitats units designated on the island of Kauai.

(1) **Note:** Map 1—Index map follows:

Map 1
General Locations of
Units for 83 Species of Plants

Islands of Kauai and Niihau

-  Proposed Critical Habitat Area
-  Major Roads
-  Coastline



(2) Kauai A1 (2 ha; 6 ac):

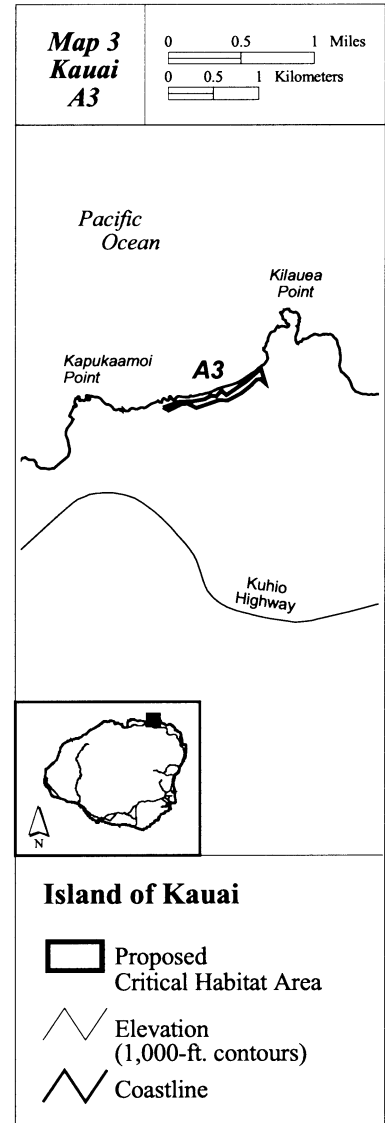
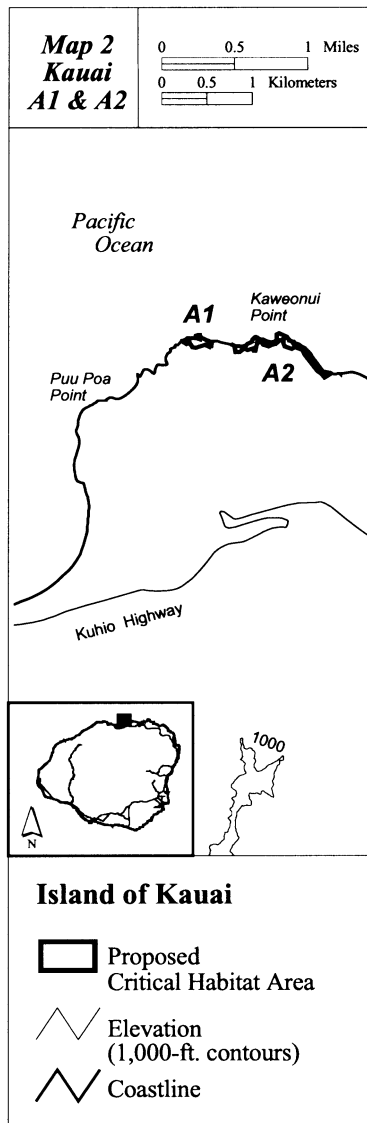
(i) Unit consists of the following 10 boundary points and the intermediate coastline: 450111, 2458178; 450040, 2458211; 449937, 2458177; 449899, 2458187; 449875, 2458235; 449837, 2458220; 449804, 2458237; 449797, 2458256; 450118, 2458243; 450111, 2458178.

(ii) Note: See Map 2.

(3) Kauai A2 (6 ha; 16 ac):

(i) Unit consists of the following 29 boundary points and the intermediate coastline: 451432, 2457896; 451355, 2457848; 451317, 2457895; 451277, 2457919; 451132, 2458101; 451110, 2458153; 451031, 2458185; 450999, 2458165; 450916, 2458191; 450900, 2458226; 450902, 2458273; 450852, 2458252; 450818, 2458217; 450778, 2458211; 450737, 2458190; 450679, 2458208; 450673, 2458233; 450650, 2458236; 450636, 2458255; 450615, 2458247; 450600, 2458145; 450574, 2458143; 450568, 2458168; 450506, 2458152; 450472, 2458173; 450420, 2458129; 450376, 2458129; 450360, 2458202; 451432, 2457896.

(ii) Note: Map 2 follows:



(4) Kauai A3 (6 ha; 16 ac):

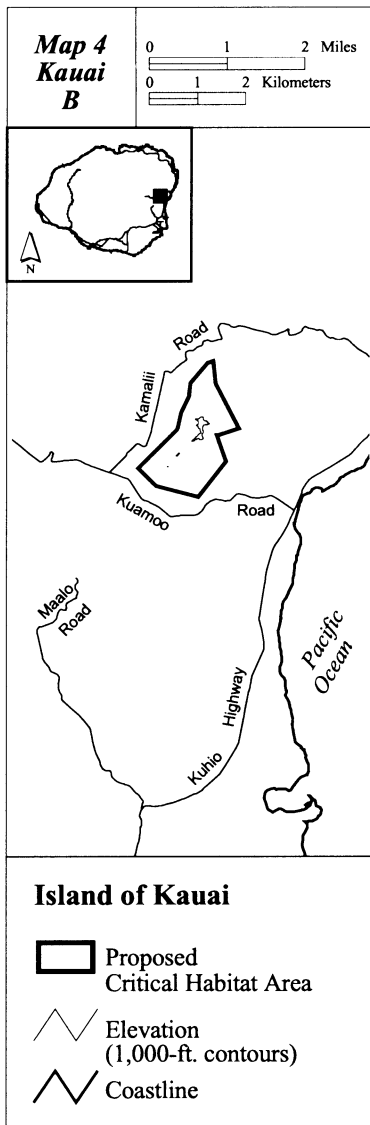
(i) Unit consists of the following 22 boundary points: 457168, 2457531; 457342, 2457591; 457498, 2457593; 457625, 2457613; 457697, 2457660; 457754, 2457649; 457811, 2457710; 457865, 2457661; 458080, 2457809; 458248, 2457952; 458296, 2457792; 458241, 2457839; 458199, 2457830; 458122, 2457761; 458032, 2457682; 457883, 2457600; 457794, 2457610; 457536, 2457524; 457441, 2457569; 457364, 2457561; 457230, 2457492; 457168, 2457531.

(ii) Note: Map 3 follows:

(5) Kauai B (271 ha; 669 ac):

(i) Unit consists of the following 16 boundary points: 462951, 2439791; 463026, 2440139; 463194, 2440476; 463197, 2440513; 463212, 2440748; 463578, 2441162; 463693, 2441201; 463739, 2440731; 464227, 2439803; 463785, 2439663; 463768, 2439658; 463960, 2439113; 463380, 2438382; 462504, 2438614; 462139, 2438979; 462951, 2439791.

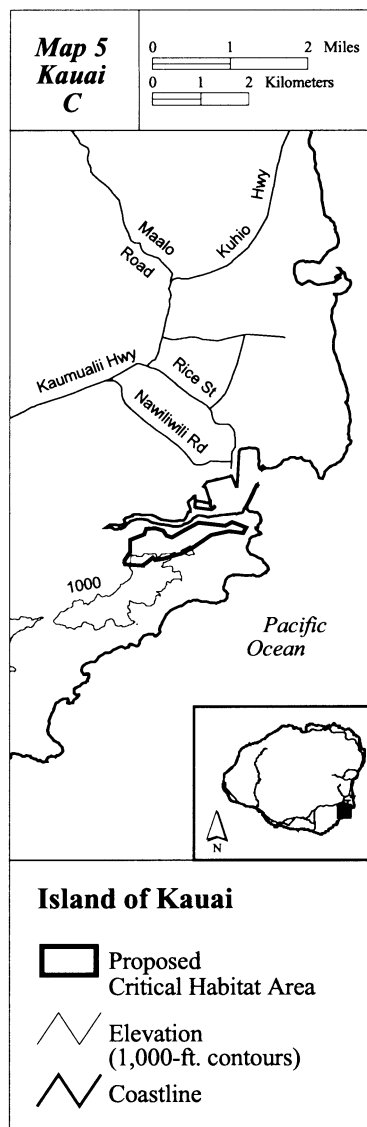
(ii) Note: Map 4 follows:



(6) Kauai C (97 ha; 239 ac):

(i) Unit consists of the following 32 boundary points: 461253, 2426125; 461390, 2426310; 461387, 2426567; 461678, 2426687; 461714, 2426795; 461907, 2426808; 462068, 2426762; 462130, 2426658; 462247, 2426612; 462487, 2426760; 462793, 2426916; 463349, 2426860; 463493, 2426936; 463781, 2426818; 463743, 2426750; 463719, 2426707; 463425, 2426746; 463363, 2426733; 463062, 2426671; 462693, 2426409; 462532, 2426329; 462422, 2426274; 462417, 2426272; 462234, 2426225; 462055, 2426178; 461911, 2426141; 461862, 2426197; 461719, 2426089; 461655, 2426041; 461649, 2426036; 461289, 2426053; 461253, 2426125.

(ii) Note: Map 5 follows:



(7) Kauai D1 (14 ha; 35 ac):

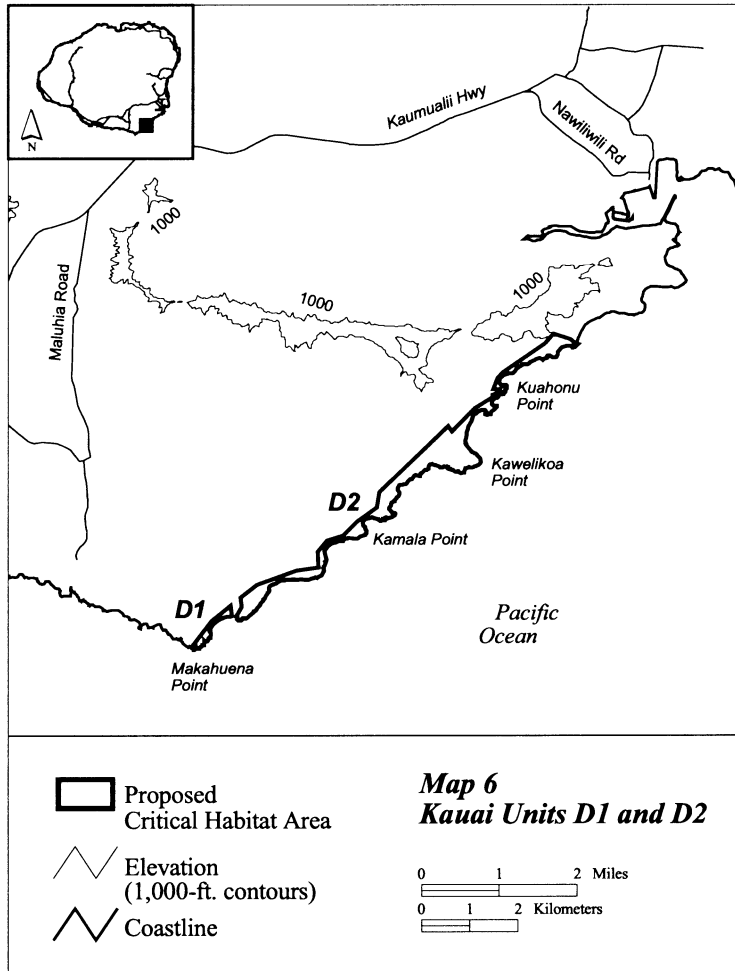
(i) Unit consists of the following 5 boundary points and the intermediate coastline: 454015, 2418349; 454018, 2418363; 454442, 2418909; 454833, 2419220; 454863, 2419007.

(ii) Note: See Map 6.

(8) Kauai D2 (240 ha; 594 ac):

(i) Unit consists of the following 30 boundary points and the intermediate coastline: 455383, 2419661; 456197, 2419949; 456652, 2420011; 456632, 2420344; 456832, 2420571; 457154, 2420676; 457451, 2420968; 457851, 2421259; 457907, 2421577; 458908, 2422538; 459329, 2422943; 459406, 2422835; 459880, 2423311; 460246, 2423542; 460249, 2423591; 460406, 2423648; 460400, 2423702; 460256, 2423702; 460348, 2423941; 460461, 2424061; 461318, 2424658; 461502, 2424866; 461855, 2424745; 461990, 2424632; 454952, 2418994; 455018, 2419106; 455066, 2419201; 455056, 2419302; 455037, 2419384; 455383, 2419661.

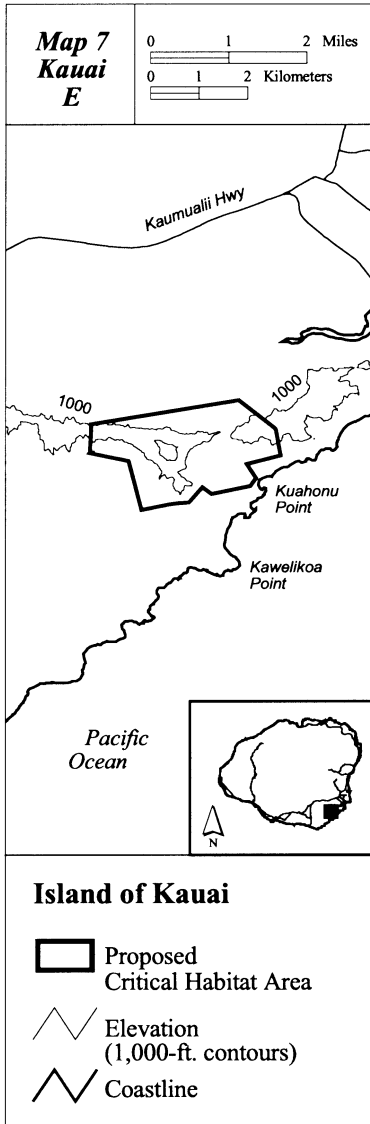
(ii) Note: Map 6 follows:



(9) Kauai E (563 ha; 1,390 ac):

(i) Unit consists of the following 21 boundary points: 456926, 2424980; 456931, 2425122; 459982, 2425617; 460718, 2425043; 460747, 2425021; 460838, 2424471; 460139, 2424297; 460339, 2424005; 460222, 2423839; 459424, 2423673; 459236, 2423816; 458949, 2423502; 458737, 2423478; 458542, 2423456; 458541, 2423457; 457976, 2423340; 457712, 2424357; 456908, 2424519; 456913, 2424541; 456911, 2424542; 456926, 2424980.

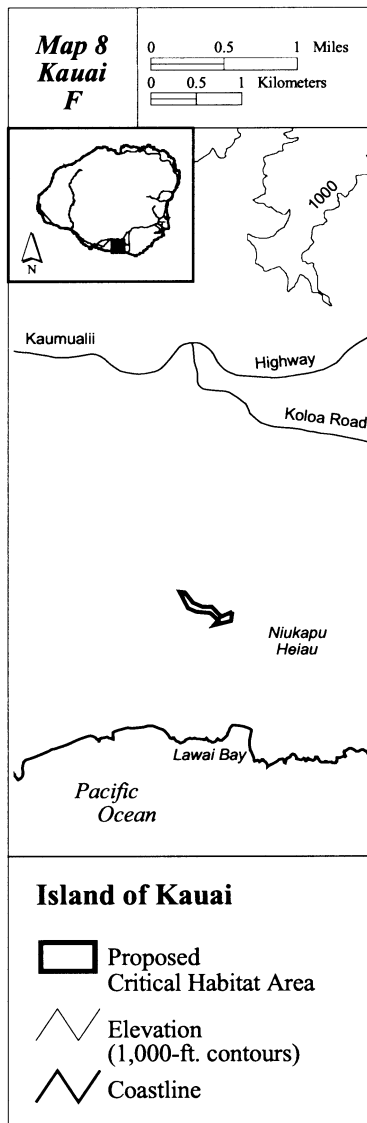
(ii) Note: Map 7 follows:



(10) Kauai F (5 ha; 12 ac):

(i) Unit consists of the following 14 boundary points: 447961, 2421793; 447951, 2421694; 447757, 2421647; 447804, 2421699; 447721, 2421781; 447569, 2421791; 447473, 2421836; 447380, 2422014; 447443, 2422008; 447527, 2421894; 447636, 2421848; 447736, 2421847; 447843, 2421739; 447961, 2421793.

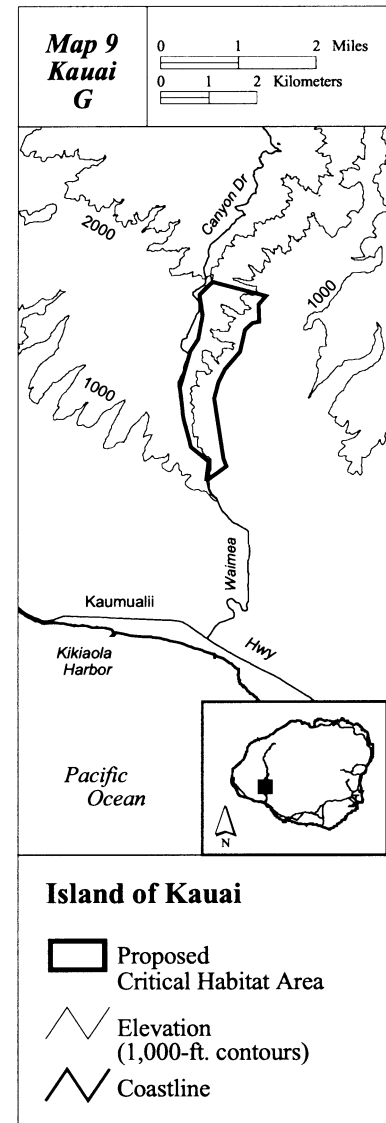
(ii) Note: Map 8 follows:



(11) Kauai G (317 ha; 784 ac):

(i) Unit consists of the following 28 boundary points: 430576, 2431555; 430622, 2431957; 430275, 2432253; 430256, 2432269; 430228, 2432381; 430120, 2432802; 430088, 2432926; 430087, 2432937; 430073, 2433073; 430051, 2433291; 430032, 2433480; 430239, 2434243; 430413, 2434499; 430495, 2434992; 430433, 2435411; 430703, 2435680; 431807, 2435389; 431657, 2435218; 431661, 2434861; 431524, 2434832; 431378, 2434688; 431271, 2434232; 430955, 2433867; 430825, 2433606; 430743, 2433270; 430926, 2432023; 430997, 2431853; 430576, 2431555.

(ii) Note: Map 9 follows:



(12) Kauai H1 (138 ha; 341 ac):

(i) Unit consists of the following 21 boundary points and the intermediate coastline: 422157, 2442895; 422253, 2442799; 422313, 2442829; 422340, 2442802; 422267, 2442675; 420764, 2441227; 420336, 2440626; 420237, 2440644; 420191, 2440681; 420140, 2440696; 420065, 2440682; 420011, 2440623; 420030, 2440550; 420059, 2440472; 420121, 2440503; 420131, 2440566; 420224, 2440562; 420256, 2440546; 420246, 2440519; 419159, 2439682; 422157, 2442895.

(ii) Note: See Map 10.

(13) Kauai H2 (107 ha; 265 ac):

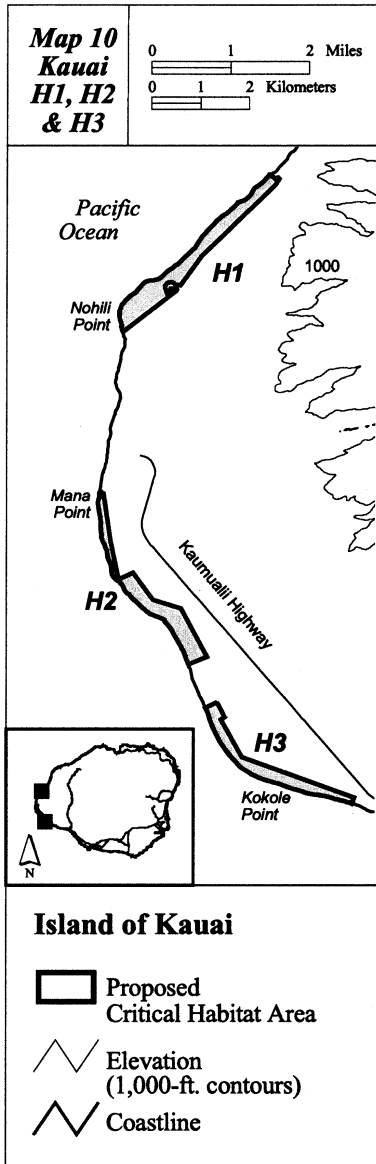
(i) Unit consists of the following 10 boundary points and the intermediate coastline: 418768, 2436406; 418924, 2435411; 419092, 2434621; 419386, 2434766; 419792, 2434204; 420366, 2434018; 420895, 2433034; 420508, 2432883; 418693, 2436403; 418768, 2436406.

(ii) Note: See Map 10.

(14) Kauai H3 (84 ha; 206 ac):

(i) Unit consists of the following 9 boundary points and the intermediate coastline: 421100, 2432099; 421251, 2431804; 421178, 2431753; 421599, 2430981; 423896, 2430158; 423847, 2430037; 423847, 2430037; 420858, 2431995; 421100, 2432099.

(ii) Note: Map 10 follows:



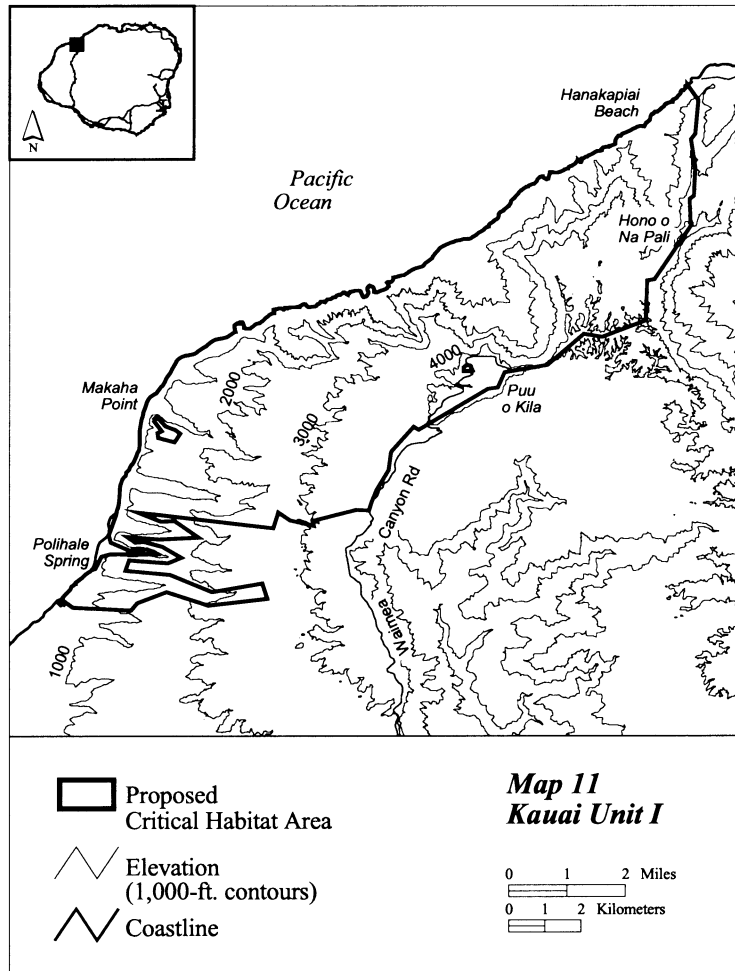
(15) Kauai I (8,237 ha; 20,355 ac):
 (i) Unit consists of the following 69 boundary points: 431369, 2447027; 431298, 2446522; 430955, 2445963; 430827, 2445619; 430759, 2445406; 430405, 2445422; 429208, 2445113; 429227, 2444972; 428580, 2445127; 428254, 2445343; 428120, 2444908; 424377, 2445349; 425013, 2445087; 425384, 2445106; 426057, 2444655; 424969, 2444599; 424087, 2444665; 424298, 2444527; 424541, 2444533; 425048, 2444395; 425576, 2444097; 425196, 2443945; 424131, 2444021; 424042, 2443733; 425270, 2443619; 426430, 2443155; 427818, 2443383; 427950, 2442970; 426322, 2442783; 425169, 2443141; 424357, 2442849; 424194, 2442643; 422571, 2442723; 422383, 2442876; 422340, 2442802; 422313, 2442829; 422253, 2442799; 422157, 2442895; 423103, 2443764; 423201, 2443796; 423371, 2444122; 423625, 2444198; 424851, 2444198; 424627, 2444336; 424140, 2444296; 423626, 2444520; 423573, 2444725; 423777, 2445276; 423805, 2445404; 439536, 2457157; 439833, 2456737; 439743, 2455809; 439623, 2455659; 439743, 2454910; 439713, 2454101; 439593, 2454011; 439623, 2453262; 438633, 2451794; 438423, 2451764; 438393, 2450655; 437193, 2450205; 436683, 2450295; 435693, 2449427; 434493, 2449217; 434313, 2448797; 434043, 2448767; 432136, 2447629; 432001, 2447726; 431369, 2447027.

(ii) Excluding two areas:

(A) Bounded by the following 11 points (22 ha; 55 ac): 424797, 2447905; 424876, 2447985; 424979, 2447908; 425131, 2447737; 425411, 2447634; 425540, 2447530; 425388, 2447289; 424938, 2447423; 424917, 2447544; 425029, 2447600; 424797, 2447905.

(B) Bounded by the following 11 points (3 ha, 8 ac): 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; 433368, 2449292.

(iii) Note: Map 11 follows:



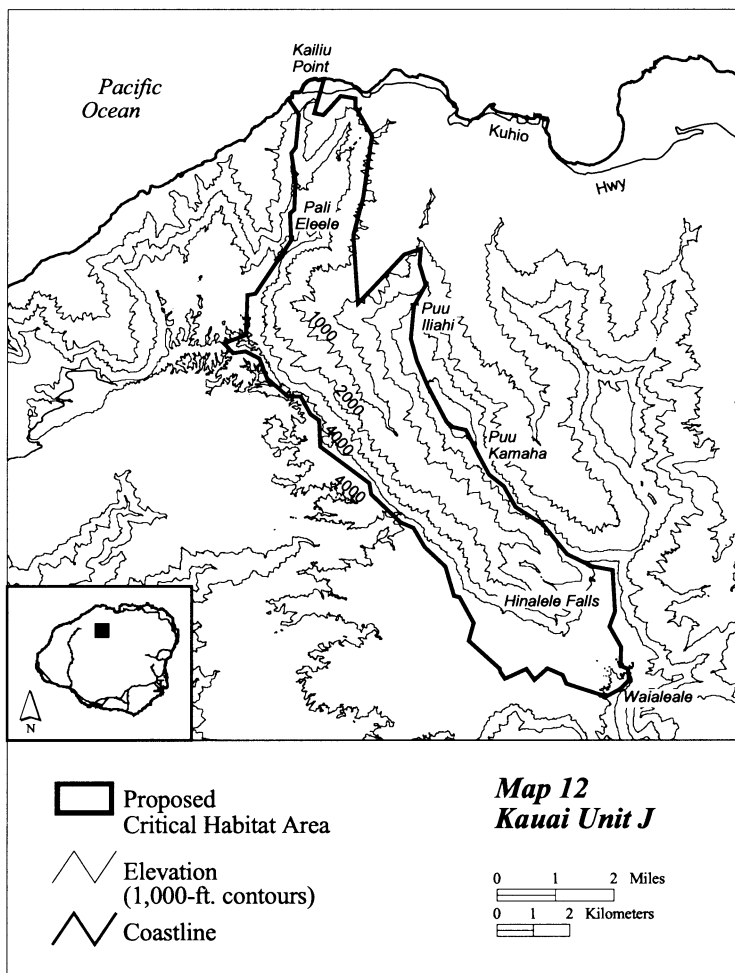
Map 11
Kauai Unit I

(16) Kauai J (5,536 ha; 13,681 ac):
 (i) Unit consists of the following 78
 boundary points: 445389, 2441352;
 445395, 2441421; 444534, 2442190;
 444669, 2442684; 444273, 2443397;
 444123, 2443427; 443883, 2444237;
 443313, 2444777; 443013, 2445316;
 442653, 2445466; 441843, 2446246;
 441783, 2446546; 440433, 2447566;
 440403, 2448286; 440163, 2448466;
 439893, 2448945; 439533, 2448945;
 438963, 2449455; 438753, 2449995;
 438363, 2450205; 438033, 2450145;
 437779, 2450425; 438393, 2450655;
 438423, 2451764; 438633, 2451794;

439623, 2453262; 439593, 2454011;
 439713, 2454101; 439743, 2454910;
 439623, 2455659; 439743, 2455809;
 439833, 2456737; 439536, 2457157;
 440525, 2457717; 440256, 2456761;
 440510, 2456709; 440974, 2457238;
 441381, 2457162; 441384, 2456934;
 441835, 2456137; 441845, 2456118;
 441608, 2454449; 441325, 2453390;
 441466, 2451514; 442740, 2452877;
 443187, 2453024; 443153, 2452602;
 443329, 2452030; 443002, 2451449;
 442929, 2450549; 443097, 2449921;
 443398, 2449211; 443914, 2448260;
 444078, 2448101; 444452, 2448023;

444805, 2447309; 445085, 2446779;
 445494, 2446452; 445812, 2445884;
 446570, 2445402; 447238, 2444584;
 447943, 2444240; 448503, 2444146;
 448563, 2443006; 448413, 2442586;
 448725, 2442030; 448713, 2441507;
 448923, 2441417; 448953, 2441117;
 448694, 2440858; 448333, 2440649;
 447224, 2441008; 447126, 2441246;
 446698, 2441431; 446351, 2441108;
 446122, 2441415; 445539, 2441150;
 445389, 2441352.

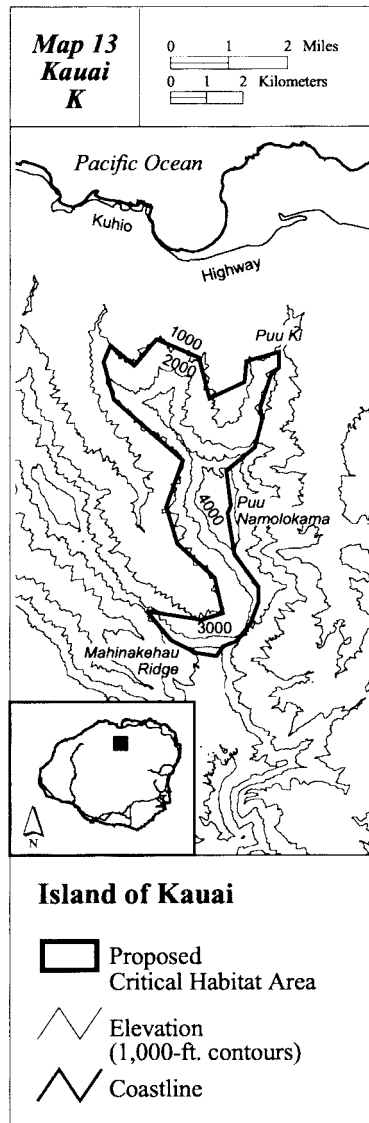
(ii) **Note:** Map 12 follows:



(17) Kauai K (1,752 ha; 4,330 ac):

(i) Unit consists of the following 36 boundary points: 446572, 2445400; 446733, 2445375; 448070, 2445147; 448658, 2445334; 448450, 2446319; 447413, 2447271; 447101, 2448274; 447568, 2449571; 445666, 2451248; 445376, 2452300; 445558, 2452748; 446226, 2452194; 446834, 2452923; 448013, 2452416; 448295, 2451280; 449257, 2451734; 449308, 2452305; 450213, 2452567; 450213, 2452118; 450003, 2451969; 449703, 2451040; 449733, 2450650; 449553, 2449931; 448773, 2449272; 448893, 2448312; 448803, 2448103; 448983, 2446963; 449643, 2446064; 449643, 2445644; 449433, 2445045; 449043, 2444565; 448683, 2444415; 448503, 2444146; 447943, 2444240; 447238, 2444584; 446572, 2445400.

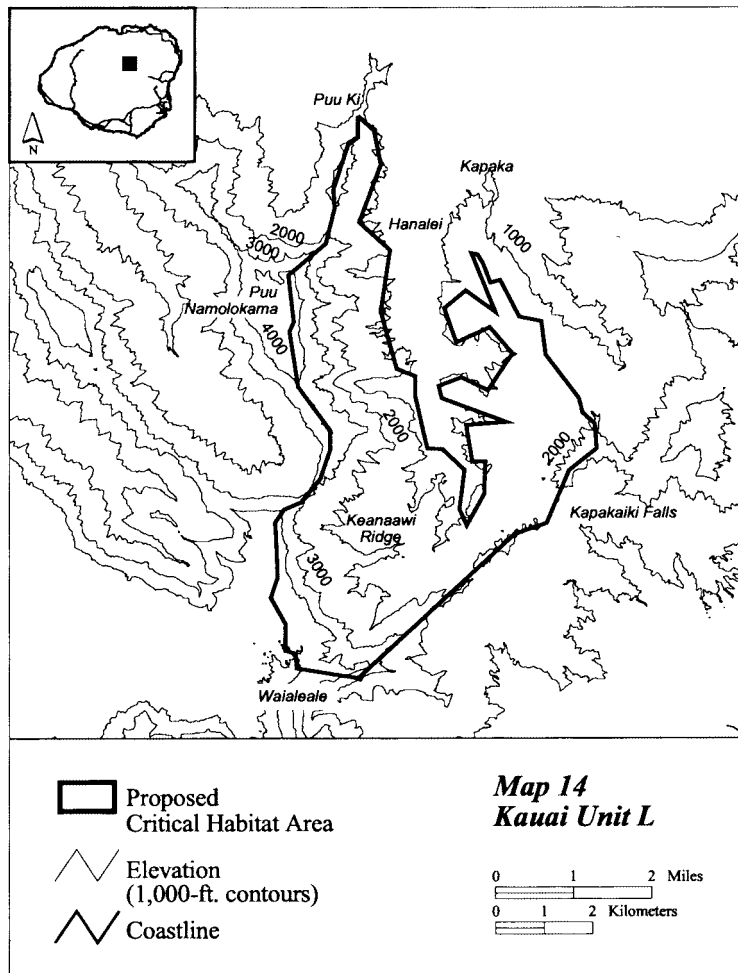
(ii) Note: Map 13 follows:



(18) Kauai L (3,407 ha; 8,418 ac):

(i) Unit consists of the following 67 boundary points: 450213, 2452567; 450542, 2452265; 450684, 2451568; 450241, 2450373; 450869, 2449790; 450678, 2448523; 451007, 2447330; 451389, 2447179; 451389, 2446751; 451639, 2445679; 451955, 2445659; 452403, 2445232; 452304, 2444416; 452455, 2444074; 452811, 2444732; 452837, 2445409; 452567, 2445396; 452446, 2446166; 453271, 2446225; 451942, 2446718; 451876, 2446968; 452347, 2447150; 452890, 2446882; 453396, 2447638; 452923, 2448184; 452240, 2447869; 451990, 2448589; 452433, 2448946; 453048, 2448507; 452547, 2449722; 452673, 2449704; 452793, 2449510; 452943, 2449120; 453147, 2449166; 453543, 2448400; 453993, 2448310; 454083, 2447621; 454773, 2446721; 454844, 2446408; 455103, 2446182; 455133, 2445672; 454563, 2445223; 454106, 2444132; 453446, 2443901; 450222, 2440919; 448953, 2441117; 448923, 2441417; 448713, 2441507; 448725, 2442030; 448413, 2442586; 448563, 2443006; 448503, 2444146; 448683, 2444415; 449043, 2444565; 449433, 2445045; 449643, 2445644; 449643, 2446064; 448983, 2446963; 448803, 2448103; 448893, 2448312; 448773, 2449272; 449553, 2449931; 449733, 2450650; 449703, 2451040; 450003, 2451969; 450213, 2452118; 450213, 2452567.

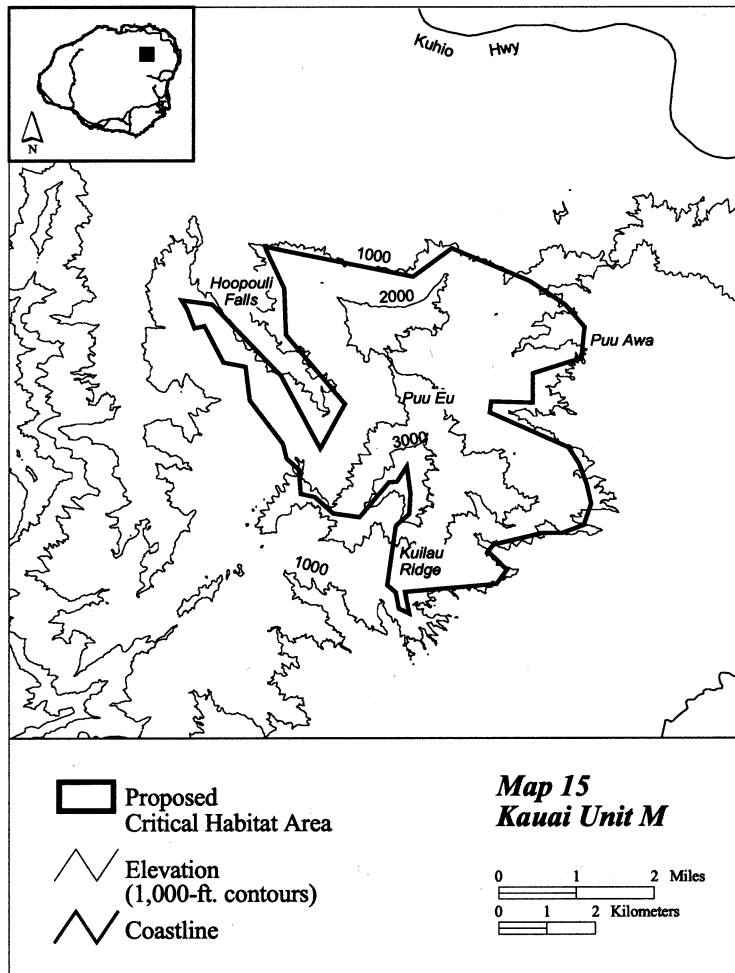
(ii) Note: Map 14 follows:



(19) Kauai M (3,302 ha; 8,160 ac):
 (i) Unit consists of the following 59
 boundary points: 457113, 2445012;
 457383, 2445252; 457413, 2445671;
 457330, 2446252; 457139, 2445925;
 456963, 2445911; 456358, 2445200;
 455806, 2445269; 455433, 2445612;
 455133, 2445672; 455103, 2446182;
 454844, 2446408; 454773, 2446721;
 454083, 2447621; 453993, 2448310;
 453543, 2448400; 453147, 2449166;

452943, 2449120; 452793, 2449510;
 452673, 2449704; 453308, 2449613;
 454728, 2448128; 455547, 2446621;
 456055, 2447542; 454829, 2448978;
 454794, 2449939; 454414, 2450755;
 454419, 2450755; 454397, 2450801;
 454803, 2450718; 457459, 2450181;
 458261, 2450765; 459840, 2450099;
 459883, 2450071; 460618, 2449594;
 461011, 2449133; 460939, 2448483;
 460823, 2448447; 459945, 2448170;

459945, 2447565; 459070, 2447590;
 459050, 2447366; 460682, 2446642;
 460893, 2446313; 461052, 2445865;
 461142, 2445474; 460992, 2445024;
 460551, 2444860; 460143, 2444860;
 459129, 2444624; 459015, 2444484;
 459403, 2444098; 459186, 2443804;
 457304, 2443646; 457391, 2443201;
 457173, 2443303; 457113, 2443633;
 456930, 2443789; 457113, 2445012.
 (ii) Note: Map 15 follows:

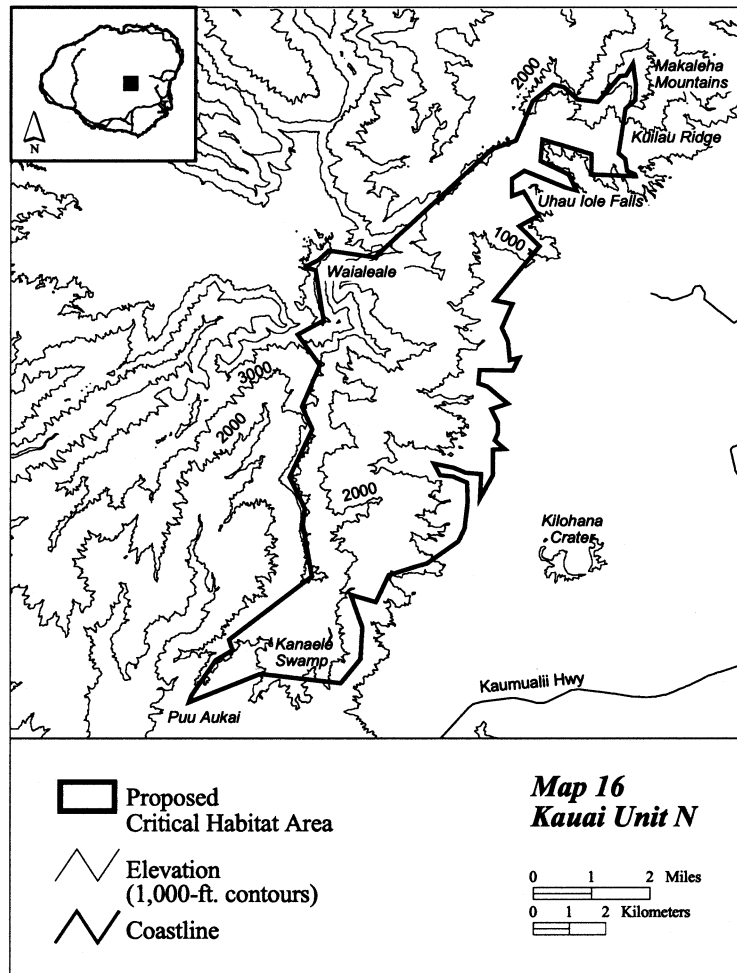


(20) Kauai N (6,599 ha; 16,307 ac):
 (i) Unit consists of the following 93 boundary points: 448304, 2440658; 448694, 2440858; 448953, 2441117; 450222, 2440919; 453446, 2443901; 454106, 2444132; 454563, 2445223; 455133, 2445672; 455433, 2445612; 455806, 2445269; 456358, 2445200; 456963, 2445911; 457139, 2445925; 457330, 2446252; 457413, 2445671; 457383, 2445252; 457113, 2445012; 456930, 2443789; 457113, 2443633; 457173, 2443303; 457391, 2443201; 457391, 2443203; 457413, 2443151; 456187, 2443214; 456187, 2443771; 454827, 2444169; 454776, 2443575; 455563, 2443214; 455793, 2442722;

454346, 2443301; 454007, 2443091; 454007, 2442616; 454324, 2442737; 454726, 2442067; 454213, 2441785; 454761, 2441232; 453538, 2439738; 454020, 2439628; 453739, 2438982; 453910, 2438601; 453949, 2438081; 454213, 2438153; 454040, 2437796; 453121, 2437802; 453094, 2437443; 453351, 2437357; 453904, 2436874; 453443, 2436719; 453634, 2436351; 453634, 2436068; 453541, 2435864; 453817, 2435628; 453495, 2435607; 453498, 2434903; 453140, 2434258; 453166, 2434936; 452758, 2434969; 452436, 2435107; 451870, 2435213; 452047, 2434897; 452403, 2434857; 452791, 2434686; 452804, 2434147;

452722, 2433415; 452542, 2433070; 451682, 2432466; 451433, 2432389; 450631, 2432141; 450283, 2431389; 449586, 2431600; 449899, 2430693; 449848, 2429818; 449308, 2429151; 448109, 2429291; 447532, 2429359; 447101, 2429410; 445132, 2428625; 445203, 2428817; 445869, 2429806; 446327, 2430072; 446237, 2430356; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448319, 2433974; 447886, 2434845; 448515, 2436159; 448226, 2436801; 448728, 2437943; 448103, 2438785; 448819, 2439175; 448608, 2440560; 448304, 2440658.

(ii) Note: Map 16 follows:



Map 16
Kauai Unit N

(21) Kauai O (9,462 ha; 23,382 ac):
 (i) Unit consists of the following 112 boundary points: 431732, 2447115; 432759, 2446609; 432659, 2446240; 432948, 2446150; 433397, 2446440; 433257, 2446958; 433706, 2447138; 433746, 2447766; 433527, 2447856; 432918, 2447407; 432609, 2447647; 432320, 2447497; 432136, 2447629; 434043, 2448767; 434313, 2448797; 434493, 2449217; 435693, 2449427; 436683, 2450295; 437193, 2450205; 437779, 2450425; 438033, 2450145; 438363, 2450205; 438753, 2449995; 438963, 2449455; 439533, 2448945; 439893, 2448945; 440163, 2448466; 440403, 2448286; 440433, 2447566; 441783, 2446546; 441843, 2446246; 442653, 2445466; 443013, 2445316; 443313, 2444777; 443883, 2444237; 444123, 2443427; 444273, 2443397; 444669, 2442684; 444534, 2442190; 445395, 2441421; 445394, 2441346;

445365, 2441385; 444417, 2440969; 444062, 2441230; 443700, 2441108; 442976, 2441356; 442451, 2441191; 441892, 2441565; 441645, 2441557; 440236, 2440690; 440053, 2440443; 439019, 2440382; 438851, 2440177; 438403, 2440161; 438371, 2440418; 438028, 2440409; 437996, 2440301; 437460, 2439694; 437359, 2439476; 437201, 2439467; 437026, 2439616; 436101, 2439350; 435269, 2440031; 435665, 2440354; 436455, 2440433; 436408, 2440716; 436547, 2440821; 436843, 2440742; 436494, 2441058; 436158, 2440696; 435346, 2440541; 435078, 2440832; 434002, 2440921; 434077, 2442149; 433931, 2442137; 433683, 2441844; 433347, 2441698; 433378, 2441400; 433086, 2441406; 432762, 2442447; 432421, 2443974; 432044, 2444251; 431123, 2443581; 430966, 2442944; 431612, 2442073; 429503, 2441778; 429077, 2442068;

428753, 2443380; 428890, 2444606; 428578, 2445127; 429227, 2444972; 429378, 2443867; 430155, 2443777; 430205, 2444275; 430564, 2444465; 431153, 2445133; 431083, 2445402; 430991, 2445457; 430977, 2445767; 431060, 2445963; 431278, 2446215; 431483, 2446536; 431491, 2446759; 431622, 2446390; 431522, 2446121; 431622, 2445871; 431312, 2445542; 431632, 2445303; 432001, 2445941; 431961, 2446460; 431624, 2446959; 431732, 2447115.

(ii) Excluding the area bounded by the following 12 points (109 ha; 270 ac): 434647, 2444577; 435769, 2444203; 435794, 2444068; 435447, 2443848; 435263, 2443927; 434786, 2443298; 434344, 2443435; 434216, 2443741; 434411, 2443957; 434416, 2444196; 434314, 2444351; 434647, 2444577.

(iii) Note: Map 17 follows:

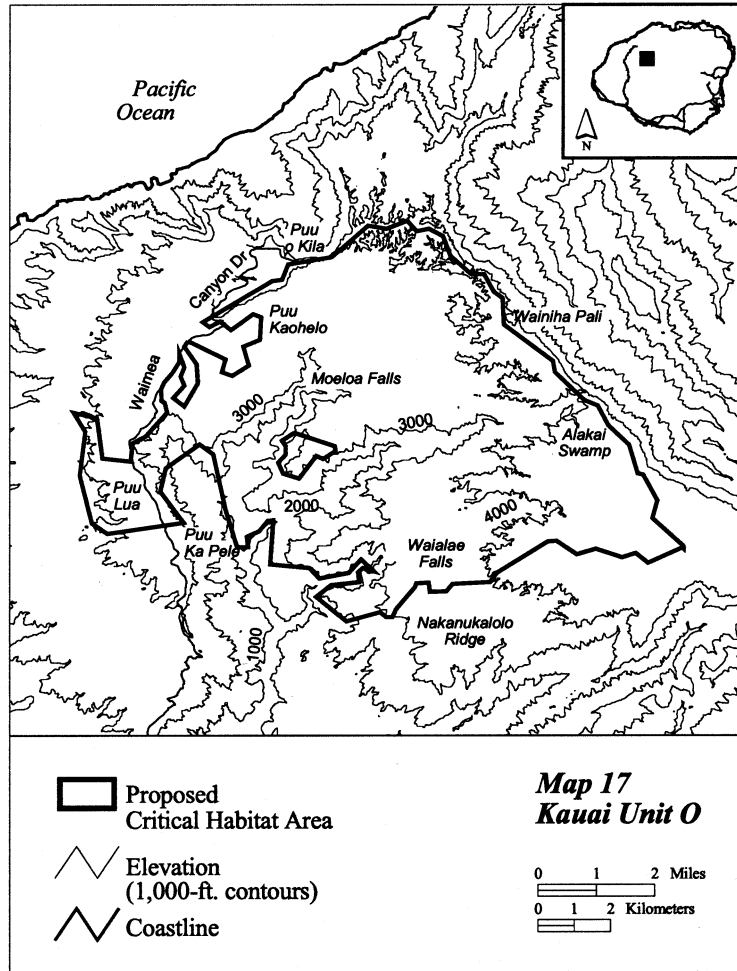


TABLE (A)(1)(I)(A).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI

Unit name	Species occupied	Species unoccupied
Kauai A	<i>Ischaemum byrone</i>	<i>Centaurium sebaeoides</i>
Kauai B	<i>Hibiscus clayi</i> , <i>Munroidendron racemosum</i>	
Kauai C	<i>Brighamia insignis</i> , <i>Lobelia niihauensis</i>	
Kauai D		<i>Sesbania tomentosa</i>
Kauai E	<i>Brighamia insignis</i> , <i>Delissea rhytidosperra</i> , <i>Isodendron longifolium</i> , <i>Lipochaeta micrantha</i> , <i>Munroidendron racemosum</i> , <i>Peucedanum sandwicense</i> , <i>Pteralyxia kauaiensis</i> , <i>Schiedea nuttallii</i> .	<i>Melicope haupeensis</i> , <i>Myrsine linearifolia</i>
Kauai F	<i>Schiedea spergulina</i> var. <i>leiopoda</i>	
Kauai G	<i>Lipochaeta waimeaensis</i> , <i>Spermolepis hawaiiensis</i>	<i>Schiedea spergulina</i> var. <i>spergulina</i>
Kauai H	<i>Panicum niihauense</i> , <i>Sesbania tomentosa</i>	
Kauai I	<i>Adenophorus periens</i> , <i>Alectryon macrococcus</i> , <i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Brighamia insignis</i> , <i>Centaurium sebaeoides</i> , <i>Chamaesyce halemanui</i> , <i>Cyperus trachysanthos</i> , <i>Delissea rhytidosperra</i> , <i>Delissea rivularis</i> , <i>Delissea undulata</i> , <i>Diellia pallida</i> , <i>Dubautia latifolia</i> , <i>Euphorbia haeleeleana</i> , <i>Exocarpos luteolus</i> , <i>Flueggea neowawraea</i> , <i>Gouania meyenii</i> , <i>Hedyotis cookiana</i> , <i>Hedyotis st.-johnii</i> , <i>Hibiscadelphus woodii</i> , <i>Hibiscus waimeae</i> ssp. <i>hannerae</i> , <i>Isodendron laurifolium</i> , <i>Isodendron longifolium</i> , <i>Kokia kauaiensis</i> , <i>Lipochaeta fauriei</i> , <i>Lobelia niihauensis</i> , <i>Melicope haupeensis</i> , <i>Melicope knudsenii</i> , <i>Melicope pallida</i> , <i>Munroidendron racemosum</i> , <i>Myrsine linearifolia</i> ,.	<i>Ctenitis squamigera</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra limahuliensis</i> , <i>Diplazium molokaiense</i> , <i>Hesperomannia lydgatei</i> , <i>Ischaemum byrone</i> , <i>Labordia lydgatei</i> , <i>Panicum niihauense</i> , <i>Platanthera holochila</i> , <i>Sesbania tomentosa</i>

TABLE (A)(1)(I)(A).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai J	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Hibiscus waimeae</i> ssp. <i>hannerae</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Lobelia niihauensis</i> , <i>Myrsine linearifolia</i> , <i>Peucedanum sandwicense</i> , <i>Plantago princeps</i> , <i>Schiedea membranacea</i> .	<i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Brighamia insignis</i> , <i>Delissea rivularis</i> , <i>Delissea undulata</i> , <i>Euphorbia haeleleana</i> , <i>Exocarpos luteolus</i> , <i>Munroidendron racemosum</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i> , <i>Remya montgomeryi</i> , <i>Schiedea kauaiensis</i>
Kauai K	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Myrsine linearifolia</i> , <i>Plantago princeps</i> .	<i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Schiedea membranacea</i>
Kauai L	<i>Plantago princeps</i>	<i>Adenophorus periens</i> , <i>Bonamia menziesii</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Lysimachia filifolia</i> , <i>Myrsine linearifolia</i> , <i>Platanthera holochila</i>
Kauai M	<i>Adenophorus periens</i> , <i>Cyanea asarifolia</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Labordia lydgatei</i> , <i>Phyllostegia wawrana</i> .	<i>Bonamia menziesii</i>
Kauai N	<i>Adenophorus periens</i> , <i>Bonamia menziesii</i> , <i>Cyanea asarifolia</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra limahuliensis</i> , <i>Dubautia pauciflora</i> , <i>Exocarpos luteolus</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Labordia tinifolia</i> var. <i>wahiawaensis</i> , <i>Lysimachia filifolia</i> , <i>Myrsine linearifolia</i> , <i>Plantago princeps</i> , <i>Viola helenae</i> , <i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	<i>Cyanea undulata</i> , <i>Cyrtandra cyaneoides</i> , <i>Delissea rivularis</i> , <i>Hesperomannia lydgatei</i> , <i>Phelgmariurus nutans</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i>
Kauai O	<i>Alectryon macrococcus</i> , <i>Alsinidendron lychnoides</i> , <i>Alsinidendron viscosum</i> , <i>Bonamia menziesii</i> , <i>Chamaesyce halemanui</i> , <i>Diellia erecta</i> , <i>Diellia pallida</i> , <i>Dubautia latifolia</i> , <i>Euphorbia haeleleana</i> , <i>Exocarpos luteolus</i> , <i>Flueggea neowawraea</i> , <i>Gouania meyenii</i> , <i>Isodendron laurifolium</i> , <i>Kokia kauaiensis</i> , <i>Lipochaeta fauriei</i> , <i>Lipochaeta micrantha</i> , <i>Lobelia niihauensis</i> , <i>Melicope haupuensis</i> , <i>Melicope knudsenii</i> , <i>Melicope pallida</i> , <i>Munroidendron racemosum</i> , <i>Myrsine linearifolia</i> , <i>Nothoctrum peltatum</i> , <i>Peucedanum sandwicense</i> , <i>Phyllostegia knudsenii</i> , <i>Phyllostegia waimeae</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i> , <i>Poa sandwicensis</i> , <i>Poa siphonoglossa</i> , <i>Pteralyxia</i> .	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Delissea rivularis</i> , <i>Diplazium molokaiensis</i> , <i>Isodendron longifolium</i> , <i>Mariscus pennatiformis</i> , <i>Plantago princeps</i> , <i>Poa mannii</i> , <i>Schiedea kauense</i> , <i>Stenogyne campanulata</i>

(B) *Niihau*. Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(1) Niihau A (282 ha; 697 ac):

(i) Unit consists of the following 35 boundary points: 384729, 2427553; 384573, 2427962; 384698, 2428162; 384929, 2428330; 385085, 2428326; 385229, 2428448; 385276, 2428623; 385229, 2428846; 385014, 2428881; 384889, 2428830; 384737, 2428958; 384796, 2429103; 384952, 2429173; 385026, 2429146; 385136, 2429275; 385284, 2429244; 385335, 2429178; 385710, 2429377; 385795, 2429261; 385710, 2429120; 386002, 2428917; 386022, 2428707; 386780, 2428559; 386959, 2428247; 387475, 2427909; 387322, 2427686; 386416, 2427981; 386362, 2427840; 386256, 2427750; 386010, 2427731; 386042, 2427438; 385897, 2427457; 385678, 2427367; 385116, 2427542; 384729, 2427553.

(ii) **Note:** Map 18 follows:

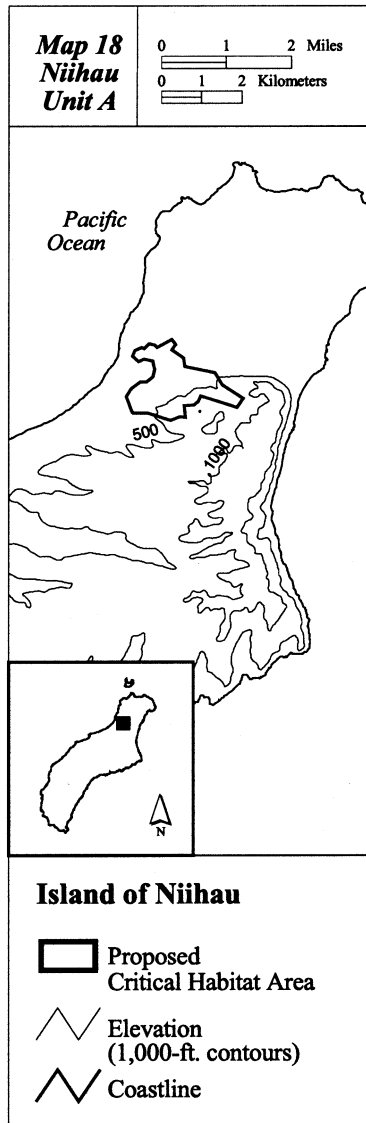


TABLE (A)(1)(i)(B). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR NIIHAU

Unit name	Species occupied	Species unoccupied
Niihau A	<i>Brighamia insignis</i> , <i>Cyperus trachysanthos</i> .	

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kauai E, I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest and containing one or more of the following associated native plant

species: *Acacia koa*, *Artemisia australis*, *Brighamia insignis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio*, *Lobelia niihauensis*, *Metrosideros polymorpha*, *Panicum lineale*, *Psychotria odoratum*, *Psychotria* spp., or *Wilkesia* spp.; and

(2) Elevations between 0 and 1,232 m (0 and 4,041 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Kauai G and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these

units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Bidens sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax*; and

(2) Elevations of about 56 and 725 m (184 and 2,377 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai E, I and O, identified in the legal descriptions in (a)(1)(i)(A),

constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. containing one or more of the following associated plant species: *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Carex* spp., *Charpentiera elliptica*, *Claoxylon sandwicense*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Diplazium sandwichianum*, *Euphorbia haeleleana*, *Freycinetia arborea*, *Gahnia* spp., *Gardenia remyi*, *Hedyotis terminalis*, *Hibiscus kokio*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Neraudia* spp., *Nesoluma polynesticum*, *Nestegis sandwicensis*, *Peperomia* spp., *Pleomele aurea*, *Pipturus* spp., *Pisonia sandwicensis*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pritchardia* spp., *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Schiedea* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 915 and 1,007 m (3,002 and 3,305 ft).

Family Araliaceae: *Munroidendron racemosum* (NCN)

Kauai B, E, I, and O identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep exposed cliffs or ridge slopes in coastal or lowland mesic forest and containing one or more of the following associated plant species: *Bobea brevipes*, *Brighamia insignis*, *Canavalia napaliensis*, *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Pisonia sandwicensis*, *Pisonia umbellifera*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Schiedea* spp., *Sida fallax*, or *Tetraplasandra* spp.; and

(2) Elevations between 6 and 979 m (19 and 3,213 ft).

Family Asteraceae: *Dubautia latifolia* (naenae)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently

known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Bobea* spp., *Claoxylon sandwicense*, *Coprosma waimeae*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *Nestegis sandwicensis*, *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Scaevola* spp., or *Xylosma* spp.; and

(2) Elevations between 544 and 1,277 m (1,786 and 4,189 ft).

Family Asteraceae: *Dubautia pauciflora* (naenae)

Kauai N, identified in the legal description in (a)(1)(i)(A), description above, constitutes critical habitat for *Dubautia pauciflora* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components that provide:

(1) *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest within stream drainages containing one or more of the following associated native plant species:

Antidesma platyphyllum, *Broussaisia arguta*, *Cheirodendron* spp., *Dubautia laxa*, *Embelia pacifica*, *Hesperomannia lydgatei*, *Labordia waialealae*, *Melicope* spp., *Nothoperanema rubiginosa*, *Pritchardia* spp., *Psychotria* spp., *Sadleria* spp., *Scaevola mollis*, *Syzygium sandwicensis*, or *Tetraplasandra* spp.; and

(2) Elevations between 564 and 1,093 m (1,849 and 3,587 ft).

Family Asteraceae: *Hesperomannia lydgatei* (NCN)

Kauai I, J, K, L, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream banks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest and containing one or more of the following associated native plant species: *Adenophorus periens*, *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii*,

Dubautia laxa, *Dubautia pauciflora*, *Dubautia raillardioidea*, *Elaphoglossum* spp., *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra*, or *Syzygium sandwicensis*; and

(2) Elevations between 405 and 1,570 m (1,329 and 5,151 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate shade to full sun on the sides of steep gulches in diverse lowland mesic forests and containing one or more of the following native species: *Acacia koa*, *Carex meyenii*, *Carex wahuensis*, *Dicranopteris linearis*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pleomele aurea*, *Psychotria greenwelliae*, *Psychotria mariniana*, or *Sapindus oahuensis*; and

(2) Elevations between 437 and 947 m (1,432 and 3,108 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

Kauai E and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* are the habitat components provided by:

(1) Cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities and containing one or more of the following associated native plant species: *Acacia koa*, *Artemisia australis*, *Antidesma* spp., *Bidens sandwicensis*, *Bobea* spp., *Chamaesyce celastroides* var. *hanapepensis*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis grandis*, *Eragrostis variabilis*, *Hibiscus kokio*, *Lepidium bidentatum*, *Lobelia niihauensis*, *Melicope* spp., *Metrosideros polymorpha*, *Neraudia kauaiensis*, *Nototrichium* spp., *Plectranthus parviflorus*, *Pleomele aurea*, *Psydrax odoratum*, *Pipturus* spp., *Rumex* spp., *Sida fallax*, or *Xylosma hawaiiense*; and

(2) Elevations between 35 and 1,362 m (115 and 4,468 ft).

Family Asteraceae: *Lipochaeta waimeensis* (nehe)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lipochaeta waimeensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Precipitous, shrub-covered gulches in diverse lowland forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Lipochaeta connata*, *Santalum ellipticum*, *Schiedea spergulina*, or *Panicum* spp.; and

(2) Elevations between 44 and 460 m (145 and 1,509 ft).

Family Asteraceae: *Remya kauaiensis* (NCN)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, north or northeast facing slopes in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest and containing one or more of the following associated native plant species: *Chamaesyce* spp., *Claoxylon sandwicense*, *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Hedyotis terminalis*, *Melicope* spp., *Nestegis sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Schiedea* spp., *Tetraplasandra* spp.; and

(2) Elevations between 560 and 1,247 m (1,836 and 4,090 ft).

Family Asteraceae: *Remya montgomeryi* (NCN)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha* dominated mixed mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bohea* spp., *Boehmeria grandis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Cyrtandra* spp., *Dubautia* spp., *Ilex anomala*, *Lepidium serra*, *Lysimachia* spp., *Myrsine linearifolia*, *Nototrichium* spp., *Pleomele aurea*, *Poa mannii*, *Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata*, *Tetraplasandra* spp., or *Zanthoxylum dipetalum*; and

(2) Elevations between 336 and 1,345 m (1,102 and 4,411 ft).

Family Asteraceae: *Wilkesia hobbdi* (dwarf iliau)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitute critical habitat for *Wilkesia hobbdi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species:

Artemisia australis, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint johnianus*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia blanda*, *Peperomia leptostachya*, *Peperomia tetraphylla*, *Peucedanum sandwicense*, *Psydrax odoratum*, *Sida fallax*, *Waltheria indica*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 12 and 685 m (40 and 2,246 ft).

Family Campanulaceae: *Brighamia insignis* (o'lulu)

Kauai C, E, I, and J, identified in the legal descriptions in (a)(1)(i)(A), and Niihau A, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and containing one or more of the following native plant species: *Artemisia australis*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus kokio* ssp. *saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta*, *Munroidendron racemosum*, or *Sida fallax*; and

(2) Elevations between 0 and 748 m (0 and 2,453 ft).

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai M and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests and containing one or more of the following native plant species: ferns, *Bidens* spp., *Dubautia plantaginea*,

Hedyotis centranthoides, *Hedyotis elatior*, *Lysimachia filifolia*, *Machaerina angustifolia*, *Metrosideros polymorpha*, or *Panicum lineale*; and

(2) Elevations between 182 and 1212 m (597 and 3,976 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai I, J, K, L, M, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and containing one or more of the following native plant species: *Dicranopteris linearis*, *Psychotria* spp., *Antidesma* spp., *Cheirodendron platyphyllum*, *Cibotium* spp., or *Diplazium* spp.; and

(2) Elevations between 234 and 1,406 m (768 and 4,613 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tight drainages and seepy stream banks in lowland wet forest or shrubland and containing one or more of the following native plant species: various grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum*, *Eragrostis grandis*, *Bidens* spp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea*, *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, *Thelypteris* spp., *Touchardia* spp., or *Urera glabra*; and

(2) Elevations between 215 and 1,167 m (704 and 3,829 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Cyanea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tight drainages and seepy stream banks in *Metrosideros polymorpha* dry to montane wet forest or shrubland and containing one or more of the following associated native species: various

grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Diplazium sandwichianum*, *Dryopteris glabra*, *Eragrostis grandis*, *Bidens* spp., *Freycinetia arborea*, *Machaerina angustifolia*, *Mariscus* spp., *Melicope feddei*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria mariniana*, *Psychotria hexandra*, *Sadleria pallida*, *Sadleria squarrosa*, *Smilax melastomifolia*, *Sphenomeris chinensis*, *Syzygium sandwicensis*, or *Thelypteris* spp.; and

(2) Elevations between 145 and 1,066 m (476 and 3,497 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai E, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha*-*Acacia koa* forests and containing one or more of the following native species: grammitid ferns, *Adenophorus oligadenus*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Euphorbia haeleleana*, *Hedyotis* spp., *Microlepia strigosa*, *Nestegis sandwicensis*, *Psychotria hobbyi*, *Pisonia* spp., *Pteralyxia* spp., or *Styphelia tameiameia*; and

(2) Elevations between 167 and 895 m (547 and 2,935 ft).

Family Campanulaceae: *Delissea rivularis* (oha)

Kauai I, J, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Delissea rivularis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes near streams in *Metrosideros polymorpha*-*Cheirodendron trigynum* montane wet or mesic forest and containing one or more of the following native plant species: *Boehmeria grandis*, *Broussaisia arguta*, *Carex* spp., *Coprosma* spp., *Dubautia knudsenii*, *Diplazium sandwichianum*, *Hedyotis foggiana*, *Ilex anomala*, *Machaerina angustifolia*, *Melicope clusiifolia*, *Melicope anisata*, *Pipturus* spp., *Psychotria hexandra*, or *Sadleria* spp.; and

(2) Elevations between 722 and 1,306 m (2,370 and 4,286 ft).

Family Campanulaceae: *Delissea undulata* (NCN)

Kauai I and J, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Delissea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry or open *Acacia koa*-*Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest containing one or more of the following native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Eragrostis variabilis*, *Euphorbia haeleleana*, *Kokia kauaiensis*, *Microlepia strigosa*, *Panicum* spp., *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum*; and

(2) Elevations between 139 and 1,006m (456 and 3,299 ft).

Family Campanulaceae: *Lobelia niihauensis* (NCN)

Kauai C, I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis*, *Chamaesyce celastroides*, *Charpentiera* spp., *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint-johnianus*, *Lipochaeta connata* var. *acris*, *Lythrum* spp., *Nototrichium* spp., *Plectranthus parviflorus*, *Schiedea apokremnos*, or *Wilkesia hobbyi*; and

(2) Elevations between 11 and 887 m (37 and 2,911 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenuhu)

Kauai I, J, K and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* and *Cheirodendron* spp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and containing one or more of the following native plant species: *Asplenium* spp., *Astelia* spp., *Broussaisia arguta*, *Carex* spp., *Cyrtandra* spp., *Diplazium*

sandwichianum, *Elaphoglossum* spp., *Hedyotis terminalis*, *Machaerina* spp., *Peperomia* spp., or *Vaccinium* spp.; and
(2) Elevations between 878 and 1,344 m (2,715 and 4,408 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep slopes in *Acacia koa*-*Metrosideros polymorpha* lowland, montane mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis*, *Asplenium polydon*, *Bidens cosmoides*, *Bobea* spp., *Carex meyenii*, *Carex wahuensis*, *Coprosma* spp., *Dryopteris unidentata*, *Dryopteris glabra*, *Dodonaea viscosa*, *Dubautia laevigata*, *Dianella sandwicensis*, *Dryopteris wallichiana*, *Doodia kunthiana*, *Gahnia* spp., *Ilex anomala*, *Melicope* spp., *Panicum nephelophilum*, *Pteridium aquilinum* var. *decompositum*, *Pleomele* spp., *Psychotria* spp., *Schiedea stellarioides*, or *Vaccinium dentatum*; and

(2) Elevations between 754 and 1,224 m (2,474 and 4,016 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (maolioli)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitute critical habitat for *Schiedea apokremnos* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Lepidium serra*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia* spp., *Pleomele aurea*, *Psydrax odoratum*, or *Wilkesia* spp.; and

(2) Elevations between 12 and 391 m (40 and 1,283 ft).

Family Caryophyllaceae: *Schiedea helleri* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Broussaisia arguta*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis*, *Dubautia* spp., *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope* spp., *Myrsine* spp., *Poa sandwicensis*, *Scaevola procera*, *Syzygium sandwicensis*, or *Viola wailenaleanae*; and

(2) Elevations between 941 and 1,223 m (3,088 and 4,011 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (NCN)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated plant species: *Alphitonia ponderosa*, *Cryptocarya mannii*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Pisonia* spp., *Peucedanum sandwicense*, *Psychotria* spp., *Psydrax odoratum*, or *Styphelia tameiameiae*; and

(2) Elevations between 192 and 4,232 m (631 and 4,232 ft).

Family Caryophyllaceae: *Schiedea membranacea* (NCN)

Kauai I, J, K, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs or cliff bases of mesic or wet habitats, in lowland, or montane shrubland, or forest communities dominated by *Acacia koa*, *Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Alyxia oliviformis*, *Asplenium* spp., *Athyrium sandwicensis*, *Bohea brevipes*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia*

helleri, *Lepidium serra*, *Lysimachia kalalauensis*, *Machaerina angustifolia*, *Mariscus pennatifolius*, *Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis*, *Pisonia* spp., *Pleomele aurea*, *Poa mannii*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Remya kauaiensis*, *Sadleria cyatheoides*, *Scaevola procera*, *Thelypteris cyatheoides*, *Thelypteris sandwicensis*, or *Touchardia latifolia*; and

(2) Elevations between 423 and 1,205 m (1,386 and 3,953 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Kauai E, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens valida*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Hedyotis acuminata*, *Hedyotis fluviatilis*, *Heteropogon contortus*, *Lepidium* spp., *Lobelia niihauensis*, *Psychotria* spp., *Perrottetia sandwicensis*, or *Pisonia* spp.; and

(2) Elevations between 33 and 702 m (120 and 2,303 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (NCN)

Kauai F, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following native plant species: *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Gahnia* spp., *Heliotropium* spp., *Lepidium serra*, *Lipochaeta connata*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Panicum violascens*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 21 and 87 m (69 and 284 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (NCN)

Kauai G, I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following associated plant species: *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Gahnia* spp., *Heliotropium* spp., *Lepidium serra*, *Lipochaeta connata*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Panicum violascens*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 145 and 829 m (474 and 2,718 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (lauhilihi (=maolioli))

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and containing one or more of the following native plant species: *Alsinidendron viscosum*, *Artemisia australis*, *Bidens cosmoides*, *Chenopodium* spp., *Dianella sandwicensis*, *Dodonaea viscosa*, *Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense*, *Pipturus* spp., *Styphelia tameiameiae*, *Syzygium sandwicensis*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 476 and 1,216 m (1,561 and 3,990 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Kauai I, J, K, L, M, N and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest and containing one

or more of the following native plant species: *Antidesma platyphyllum*, *Alphitonia ponderosa*, *Acacia koa*, *Cyanea* spp., *Cyrtandra pickeringii*, *Cyrtandra limahuliensis*, *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Dubautia knudsenii*, *Hedyotis terminalis*, *Isodendron longifolium*, *Labordia hirta*, *Melicope anisata*, *Melicope barbiger*, *Myoporum sandwicense*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Psychotria hexandra*, *Psydrax odoratum*, *Sapindus oahuensis*, *Scaevola procera*, or *Syzygium sandwicensis*; and

(2) Elevations between 351 and 1,416 m (1,151 and 4,644 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Kauai I, identified in the legal description in (a)(1)(i)(A), and Niihau A, identified in the legal description in (a)(1)(i)(B), constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes and containing the native plant species *Hibiscus tiliaceus*; and

(2) Elevations between 0 and 234 m (0 and 767 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Mariscus pennatiformis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open sites in *Metrosideros polymorpha*—*Acacia koa* mixed mesic forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Alsinidendron viscosum*, *Carex alligata*, *Cyperus laevigatus*, *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Myrsine linearifolia*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Poa sandwicensis*, *Psydrax odoratum*, *Schiedea stellarioides*, *Styphelia tameiameia*, or endemic ferns; and

(2) Elevations between 544 and 1,104 m (1,785 and 3,621 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute

critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes of gulches in mesic *Acacia koa* forests and containing one or more of the following native plant species: *Asplenium* spp., *Alphitonia ponderosa*, *Antidesma platyphyllum*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Cheirodendron trigynum*, *Coprosma* spp., *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Melicope haupeensis*, *Microlepia strigosa*, *Panicum nephelophilum*, *Pisonia* spp., *Pittosporum* spp., *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Pouteria sandwicensis*, *Santalum freycinetianum*, or *Styphelia tameiameia*; and

(2) Elevations between 556 and 1,202 m (1,825 and 3,944 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* (akoko)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa* and containing one or more of the following native plant species: *Acacia koa*, *Antidesma platyphyllum*, *Claoxylon sandwicense*, *Carex meyenii*, *Carex wahuensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis*, *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, *Pouteria sandwicensis*, *Pisonia sandwicensis*, or *Xylosma* spp.; and

(2) Elevations between 284 and 1,178 m (931 and 3,866 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mēhamehame)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus*, *Antidesma pulvinatum*, *A.*

platyphyllum, *Bidens sandwicensis*, *Bobea timonioides*, *Caesalpinia kavaiensis*, *Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Hibiscus* spp., *Isodendron laurifolium*, *Kokia kauaiensis*, *Melicope* spp., *Metrosideros polymorpha*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoloma polynesicum*, *Nestegis sandwicensis*, *Tetraplasandra* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Xylosma crenatum*; and

(2) Elevations between 210 and 1,178 m (689 and 3,865 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Kauai D, H, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs, and containing one or more of the following associated native plant species: *Chamaesyce celastroides*, *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, or *Vitex rotundifolia*; and

(2) Elevations between 0 and 212 m (0 and 694 ft).

Family Flacourtiaceae: *Xylosma crenatum* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse *Acacia koa*-*Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest, or *Acacia koa*-*Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Athyrium sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Cyanea hirta*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Hedyotis* spp., *Ilex anomala*, *Lobelia yuccoides*, *Myrsine* spp., *Nestegis sandwicensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Poa sandwicensis*, *Pouteria sandwicensis*,

Psychotria spp., *Scaevola procera*, *Streblus pendulinus*, *Tetraplasandra* spp., *Touchardia latifolia*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 936 and 1,284 m (3,070 and 4,212 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Kauai A and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Centaurium sebaeoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Volcanic or clay soils or on cliffs in arid coastal areas and containing one or more of the following native plant species: *Artemisia* spp., *Bidens* spp., *Chamaesyce celastroides*, *Dodonaea viscosa*, *Fimbristylis cymosa*, *Heteropogon contortus*, *Jacquemontia ovalifolia*, *Lipochaeta succulenta*, *Lipochaeta heterophylla*, *Lipochaeta integrifolia*, *Lycium sandwicense*, *Lysimachia mauritiana*, *Mariscus phleoides*, *Panicum fauriei*, *P. torridum*, *Scaevola sericea*, *Sida fallax*, or *Wikstroemia uva-ursi*; and

(2) Elevations between 0 and 147 m (0 and 483 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai J, K, L, M and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*, *Cheirodendron* spp., and *Dicranopteris linearis* and containing one or more of the following native species: *Bidens* spp., *Boehmeria grandis*, *Cyanea* spp., *Cyrtandra longifolia*, *Cyrtandra kauaiensis*, *Cyrtandra limahuliensis*, *Coprosma* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis terminalis*, *Hedyotis tryblum*, *Machaerina* spp., *Melicope clusiifolia*, *Melicope puberula*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria* spp., *Pritchardia* spp., or *Stenogyne purpurea*; and

(2) Elevations between 157 and 1,406 m (514 and 4,614 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (haiwale)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream banks in lowland wet forests containing one or more of the following native plant species: *Antidesma* spp., *Boehmeria grandis*, *Bidens* spp., *Charpentiera* spp., *Cibotium glaucum*, *Cyanea* spp., *Cyrtandra kealiae*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Eugenia* spp., *Gunnera kauaiensis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Metrosideros polymorpha*, *Perrottetia sandwicensis*, *Pisonia* spp., *Pipturus* spp., *Pritchardia* spp., *Psychotria* spp., *Touchardia latifolia*, or *Urera glabra*; and

(2) Elevations between 208 and 1,594 m (681 and 5,228 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Bohea timonioides*, *Claoxylon sandwicense*, *Cryptocarya mannii*, *Cyrtandra kauaiensis*, *Cyrtandra paludosa*, *Diospyros sandwicensis*, *Elaeocarpus bifidus*, *Ilex anomala*, *Myrsine linearifolia*, *Perrottetia sandwicensis*, *Pittosporum kauaiense*, *Pouteria sandwicensis*, *Pritchardia minor*, *Selaginella arbuscula*, *Tetraplasandra oahuensis*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 399 and 1,059 m (1,309 and 3,475 ft).

Family Lamiaceae: *Phyllostegia waimeae* (no common name)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia waimeae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa*-*Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants and containing one or more of the following associated native plant

species: *Broussaisia arguta*, *Claoxylon sandwicense*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Elaphoglossum* spp., *Gunnera* spp., *Hedyotis* spp., *Myrsine lanaiensis*, *Pleomele aurea*, *Psychotria* spp., *Sadleria* spp., *Scaevola procera*, *Syzygium sandwicensis*, or *Vaccinium* spp.; and

(2) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai I, J, M, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa*-*Metrosideros polymorpha*-*Cheirodendron* mixed mesic forest containing one or more of the following associated native plant species: *Alectryon* spp., *Asplenium polypodon*, *Athyrium microphyllum*, *Carex* spp., *Claoxylon sandwicense*, *Cyanea fissa*, *Delissea rivularis*, *Dianella sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Doodia kunthiana*, *Dryopteris wallichiana*, *Dubautia knudsenii*, *Dubautia laevigata*, *Hedyotis tryblum*, *Machaerina angustifolia*, *Panicum nephelophilum*, *Peperomia macraeana*, *Perrottetia sandwicensis*, *Poa sandwicensis*, *Pleomele aurea*, *Pteridium decompositum*, *Sadleria pallida*, *Schiedea stellarioides*, *Scaevola procera*, *Syzygium sandwicensis*, *Touchardia latifolia*, or *Vaccinium dentatum*; and

(2) Elevations between 398 and 1,284 m (1,306 and 4,212 ft).

Family Lamiaceae: *Stenogyne campanulata* (NCN)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Stenogyne campanulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rock faces of nearly vertical, north-facing cliffs in diverse lowland or montane mesic forest and containing one or more of the following associated native plant species: *Lepidium serra*, *Lobelia niihauensis*, *Lysimachia* spp., *Metrosideros polymorpha*, *Melicope pallida*, *Neraudia kauaiensis*, *Nototrichium divaricatum*, *Poa mannii*, *Remya montgomeryi*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 335 and 1,290 m (1,100 and 4,232 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii*, *Hedyotis terminalis*, *Ilex anomala*, *Labordia hirtella*, *Psychotria* spp., or *Syzygium sandwicensis*; and

(2) Elevations between 182 and 1,140 m (597 and 3,740 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Streambanks in lowland wet forests dominated by *Metrosideros polymorpha* and containing one or more of the following associated species: *Antidesma platyphyllum*, *Athyrium microphyllum*, *Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Hedyotis terminalis*, or *Psychotria* spp.; and

(2) Elevations between 458 and 1,006 m (1,502 and 3,301 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides* var. *hanapeensis*, *Dubautia* spp., *Hedyotis* spp., *Lepidium serra*, *Lipochaeta* spp., *Lobelia niihauensis*, *Lysimachia glutinosa*, *Melicope pallida*, *Myrsine* spp., *Nototrichium* spp., *Panicum lineale*, *Poa mannii*, or *Stenogyne campanulata*; and

(2) Elevations between 219 and 1,197 m (717 and 3,926 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai B, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens* spp., *Cyanea hardyi*, *Hedyotis acuminata*, *Gahnia* spp., *Munroidendron racemosum*, *Pandanus tectorius*, *Panicum tenuifolium*, *Pleomele aurea*, *Pipturus* spp., *Psychotria* spp., or *Psydrax odoratum*; and

(2) elevations between nine and 380 m (29 and 1,245 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (kokio keokeo)

Kauai I and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* spp., *Psychotria* spp., *Pipturus* spp., *Bidens* spp., *Bobea* spp., *Sadleria* spp., *Cyrtandra* spp., *Cyanea* spp., *Cibotium* spp., *Perrottetia sandwicensis*, or *Syzygium sandwicensis*; and

(2) Elevations between 174 and 1,154 m (570 and 3,787 ft).

Family Malvaceae: *Kokia kauaiensis* (kokio)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides*, *Claoxylon sandwicense*, *Dicranopteris linearis*, *Diellia pallida*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Flueggea neowawraea*, *Hibiscus* spp., *Hedyotis* spp., *Isodendron laurifolium*, *Lipochaeta fauriei*,

Melicope spp., *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Nototrichium* spp., *Pisonia* spp., *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauwolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Streblus pendulinus*, *Syzygium sandwicensis*, *Tetraplasandra* spp., or *Xylosma* spp.; and

(2) Elevations between 216 and 1,037 m (707 and 3,402 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kōlea)

Kauai E, I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* spp., or *Dicranopteris linearis* as co-dominant species, and containing one or more of the following associated native plant species: *Bobea brevipes*, *Cryptocarya manni*, *Dubautia* spp., *Eurya sandwicensis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Lysimachia glutinosa*, *Machaerina angustifolia*, *Melicope* spp., *Myrsine* spp., *Nothoecetrum* spp., *Psychotria* spp., *Sadleria pallida*, *Syzygium sandwicensis*, or native ferns; and

(2) Elevations between 106 and 1,380 m (346 and 4,526 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Kauai I, J, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Platanthera holochila* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Montane *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog and containing one or more of the following associated native plant species: mosses, grammitid ferns, *Carex montis-eeka*, *Cibotium* spp., *Clermontia fauriei*, *Coprosma elliptica*, *Dichantheium* spp., *Lobelia kauaensis*, *Machaerina angustifolia*, *Myrsine denticulata*, *Oreobolus furcatus*, *Rhynchospora laxa*, *Styphelia tameiameia*, or *Vaccinium* spp., or *Viola kauaensis*; and

(2) Elevations between 803 and 1,563 m (2,635 and 5,128 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron montane* wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Bobea elatior*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis elatior*, *Huperzia* spp., *Hedyotis centranthoides*, *Isachne pallens*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pilea peplodes*, *Pipturus* spp., *Sadleria cyatheoides*, or *Tetraplasandra* spp. or *Bidens sandwicensis*, *Carex meyenii*, *Carex wahuensis*, *Charpentiera elliptica*, *Hedyotis* spp., *Lipochaeta connata*, *Lysimachia glutinosa*, *Lysimachia kalalauensis*, *Melicope* spp., *Myrsine linearifolia*, *Poa mannii*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 347 and 1,598 m (1,139 and 5,244 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Kauai A and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Ischaemum byrone* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Coastal shrubland, occurring near the ocean among rocks and seepy cliffs and containing one or more of the following associated native plant species: *Bidens* spp., *Chamaesyce celastroides*, *Fimbristylis cymosa*, *Lipochaeta succulenta*, *Lysimachia mauritiana*, or *Scaevola sericea*, and

(2) Elevations between 0 and 297 m (0 and 975 ft).

Family Poaceae: *Panicum niihauense* (lau ehū)

Kauai H and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Panicum niihauense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sand dunes in coastal shrubland and containing one or more of the following associated native plant species: *Cassytha filiformis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Nama sandwicensis*, *Ophioglossum pendulum* ssp. *falcatum*, *Scaevola sericea*, *Sida fallax*, *Vitex rotundifolia*, or *Sporobolus virginicus*; and

(2) Elevations between 0 and 103 m (0 and 337 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa mannii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by: (1) Cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum*, *Artemisia australis*, *Bidens cosmoides*, *Bidens sandwicensis*, *Carex meyenii*, *C. wahuensis*, *Chamaesyce celastroides* var. *hanapepensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Lobelia niihauensis*, *Lobelia yuccoides*, *Luzula hawaiiensis*, *Mariscus phloides*, *Melicope anisata*, *M. barbiger*, *M. pallida*, *Nototrichium* spp., *Panicum lineale*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Schiedea lydgatei* var. *attenuata*, *Schiedea membranacea*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 327 and 1,222 m (1,072 and 4,009 ft).

Family Poaceae: *Poa sandwicensis* (Hawaiian bluegrass)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa sandwicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest and containing one or more of the following associated native species: *Alyxia oliviformis*, *Bidens sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicensis*, *Coprosma* spp., *Dianella sandwicensis*, *Dicranopteris linearis*, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp.,

Scaevola procera, *Schiedea stellarioides*, or *Syzygium sandwicensis*; and

(2) Elevations between 498 and 1,290 m (1,635 and 4,232 ft).

Family Poaceae: *Poa siphonoglossa* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant species: *Acacia koa*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Coprosma waimeae*, *Dianella sandwicensis*, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Lobelia yuccoides*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Panicum nephelophilum*, *Poa sandwicensis*, *Psychotria* spp., *Scaevola procera*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Vaccinium* spp., *Wilkesia gymnoxiphium*, *Xylosma* spp., or *Zanthoxylum dipetalum*; and

(2) Elevations between 498 and 1,290 m (1,635 and 4,232 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai L and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lysimachia filifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Antidesma platyphyllum*, *Bidens valida*, *Bobea elatior*, *Cyanea asarifolia*, *Chamaesyce remyi* var. *kauaiensis*, *Dubautia plantaginea* ssp. *magnifolia*, *Eragrostis variabilis*, *Metrosideros polymorpha*, *Machaerina angustifolia*, *Melicope* spp., or *Panicum lineale*; and

(2) Elevations between 177 and 1,088 m (581 and 3,568 ft).

Family Rhamnaceae: *Gouania meyenii* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of

critical habitat are the habitat components provided by:

(1) Rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest and containing one or more of the following native plant species: *Bidens* spp., *Carex meyenii*, *Chamaesyce* spp., *Dodonaea viscosa*, *Diospyros sandwicensis*, *Diospyros* spp., *Eragrostis variabilis*, *Euphorbia haeleleana*, *Festuca* spp., *Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida*, *Neraudia kauaiensis*, *Nestegis sandwicensis*, *Nototrichium divaricatum*, *Panicum lineale*, *Poa mannii*, *Psychotria* spp., *Senna gaudichaudii*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 375 and 3,867 m (1,231 and 3,867 ft).

Family Rubiaceae: *Hedyotis cookiana* (awiiwi)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) streambeds or steep cliffs close to water sources in relict *Metrosideros polymorpha* low mesic and low wet forest communities containing one or more of the following associated native plant species: *Boehmeria grandis*, *Chamaesyce celastroides* var. *hanapepensis*, *Hibiscus kokio* ssp. *saintjohnianus*, *Machaerina angustifolia*, *Nototrichium sandwicense*, *Pleomele aurea*, *Pipturus kauaiensis*, *Pouteria sandwicensis*, *Psydrax odoratum*, or *Rauvolfia sandwicensis*; and

(2) Elevations between 120 and 553 m (392 and 1,814 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach hedyotis)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis st.-johnii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone in sparse dry coastal shrubland and containing one or more of the following native plant species: *Artemisia australis*, *Bidens* spp., *Capparis sandwichiana*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Lipochaeta connata*, *Lycium sandwicense*, *Myoporum sandwicense*, *Nototrichium*

sandwicense, or *Schiedea apokremnos*; and

(2) Elevations between 0 and 187 m (0 and 613 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai E, I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha*-*Acacia koa* montane mesic forest and containing one or more of the following associated native plant species:

Antidesma platyphyllum var. *hillebrandii*, *Bobea brevipes*, *Cheirodendron trigynum*, *Claoxylon sandwicense*, *Cryptocarya mannii*, *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope anisata*, *M. barbiger*, *M. ovata*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra waimeae*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 111 and 1,142 m (364 and 3,745 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Forested flats with brown granular soil in lowland dry to montane mesic forests and containing one or more of the following associated native plant species: *Alectryon macrococcus*, *Antidesma platyphylla*, *Bobea brevipes*, *Carex meyenii*, *Cryptocarya mannii*, *Diospyros sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Euphorbia haeleleana*, *Gahnia becheyi*, *Hedyotis* spp., *Hibiscus waimeae*, *Isodendron laurifolium*, *Metrosideros polymorpha*, *Melicope* spp., *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Peucedanum sandwicense*, *Pisonia sandwicensis*, *Pittosporum kauaiensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria hobbyi*, *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Remya kauaiensis*, *Scaevola procera*, *Styphelia tameiameia*, or *Xylosma hawaiiense*; and

(2) Elevations between 344 and 1,064 m (1,128 and 3,492 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep rock faces in lowland to montane mesic to wet forests or shrubland and containing one or more of the following associated native plant species: *Abutilon sandwicense*, *Alyxia oliviformis*, *Artemisia australis*, *Boehmeria grandis*, *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis*, *Coprosma waimeae*, *Coprosma kauaiensis*, *Dodonaea viscosa*, *Dryopteris* spp., *Hedyotis terminalis*, *Lepidium serra*, *Melicope* spp., *Metrosideros polymorpha*, *Nototrichium* spp., *Pipturus albidus*, *Pleomele aurea*, *Poa mannii*, *Psychotria mariniana*, *Pritchardia minor*, *Sapindus oahuensis*, *Schiedea membranacea*, *Tetraplasandra waialealae*, or *Xylosma hawaiiense*; and

(2) Elevations between 359 and 1,081 m (1,179 and 3,546 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry or mesic forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and containing one or more of the following associated plant species: *Antidesma platyphyllum*, *Alectryon macrococcus*, *Charpentiera elliptica*, *Dodonaea viscosa*, *Melicope* spp., *Myrsine lanaiensis*, *Pisonia* spp., *Pleomele aurea*, *Streblus pendulinus*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 464 and 887 m (1,522 and 2,911 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai I, J, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet places bordering swamps or bogs; open, or dry ridges in lowland or montane mesic *Acacia koa*-*Metrosideros polymorpha* dominated forest

communities with *Dicranopteris* and containing one or more of the following native plant species: *Acacia koa*, *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Bobea brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata*, *Dianella sandwicensis*, *Poa sandwicensis*, *Schiedea stellarioides*, *Peperomia macraeana*, *Claoxylon sandwicense*, *Santalum freycinetianum*, *Styphelia tameiameia*, or *Dicranopteris linearis*; and

(2) Elevations between 361 and 1,466 m (1,183 and 4,808 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) dry slopes or gulches in *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest, containing one or more of the following native plant species: *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea timonioides*, *Caesalpinia kavaensis*, *Canavalia* spp., *Carex meyenii*, *Carex wahuensis*, *Doodia kunthiana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Melicope knudsenii*, *Microlepia strigosa*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Pisonia* spp., *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia* spp., *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum* spp.; and

(2) Elevations between 341 and 954 m (1,120 and 3,129 ft).

Family Solanaceae: *Nothocestrum peltatum* (aiea)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Bobea brevipes*, *Broussaisia arguta*,

Cheirodendron trigynum, *Claoxylon sandwicense*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *M. barbiger*, *M. haupuensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra kauaiensis*, or *Xylosma* spp.; and

(2) elevations between 725 and 1,290 m (2,378 and 4,232 ft).

Family Solanaceae: *Solanum sandwicense* (aiakeaakua, ʻōpōlo)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Forest canopies in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic forests or occasionally in wet forests and containing one or more of the following associated plant species: *Alphitonia ponderosa*, *Athyrium sandwicensis*, *Bidens* spp., *Carex meyenii*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Poa* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Syzygium sandwicensis*, or *Xylosma hawaiiense*; and

(2) Elevations between 445 and 1,290 m (1,460 and 4,232 ft).

Family Violaceae: *Isodendron laurifolium* (aupaka)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendron laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Claoxylon sandwicense*, *Dodonaea viscosa*, *Dubautia* spp., *Elaeocarpus bifidus*, *Euphorbia haeleleana*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Melicope anisata*, *Melicope barbiger*, *Melicope ovata*, *Melicope peduncularis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum glabrum*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Streblus pendulinus*, or *Xylosma hawaiiense*; and

(2) Elevations between 376 and 1,163 m (1,233 and 3,817 ft).

Family Violaceae: *Isodendron longifolium* (aupaka)

Kauai E, I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendron longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes and some flats in certain undisturbed areas, gulches, or stream banks in mesic or wet *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following native species: *Antidesma* spp., *Bidens* spp., *Bobea brevipes*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diospyros* spp., *Eugenia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Nestegis sandwicensis*, *Peperomia* spp., *Perrottetia sandwicensis*, *Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odoratum*, or *Syzygium* spp.; and

(2) Elevations between 38 and 1,541 m (125 and 5,057 ft).

Family Violaceae: *Viola helenae* (NCN)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream drainage banks or adjacent valley bottoms in light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha-Cheirodendron* wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Broussaisia arguta*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Freycinetia arborea*, *Hesperomannia lydgatei*, *Melicope* spp., or *Pritchardia* spp.; and

(2) Elevations between 522 and 1,006 m (1,712 and 3,301 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani waialeale)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Machaerina angustifolia*-*Rhynchospora rugosa* lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Chamaesyce renyi*, *Chamaesyce sparsiflora*, *Coprosma grayana*, *Cyanea fissa*, *Dicranopteris linearis*, *Diplopterygium pinnatum*, *Dubautia imbricata*, *Dubautia raillardoides*, *Gahnia vitiensis*, *Lobelia kauaensis*, *Machaerina angustifolia*, *Machaerina mariscoides*, *Melicope* spp., *Psychotria wawrae*, *Sadleria pallida*, *Scaevola gaudichaudii*, *Sphenomeris chinensis*, *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra oahuensis*, or *Vaccinium dentatum*; and

(2) Elevations between 394 and 1,006 (1,291 and 3,301 ft).

(B) *Ferns and allies.*

Family Aspleniaceae: *Diellia erecta* (no common name)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Diellia erecta* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade, or on steep slopes or gulch bottoms in *Metrosideros polymorpha*-*Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic forest with *Acacia koa* and *Acacia koaia* as codominants and containing one or more of the following native plant species: *Asplenium aethiopicum*, *Asplenium contiguum*, *Asplenium macraei*, *Coprosma* spp., *Dodonaea viscosa*, *Dryopteris fusco-atra*, *Dryopteris unidentata*, *Hedyotis terminalis*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, and *Wikstroemia* spp.; and

(2) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare granular soil with dry to mesophytic leaf litter with pH of 6.9 to 7.9. on steep, talus slopes in lowland mesic forests and containing one or more of the following native plant species: *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Antidesma platyphyllum*, *Asplenium* spp., *Carex meyenii*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Doodia kunthiana*, *Hedyotis knudsenii*, *Metrosideros polymorpha*, *Microlepia strigosa*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Psychotria mariniana*, *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Wilkesia gymnoxiphium*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 445 and 1,028 m (1,460 and 3,371 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diplazium molokaiense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Brown soil with basalt outcrops near water falls in lowland or montane mesic *Metrosideros polymorpha*-*Acacia koa* forest; and

(2) Elevations between 476 and 1,284 m (1,562 and 4,212 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Ctenitis squamigera* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rock faces in gulches in the understory of *Metrosideros polymorpha*-*Diospyros* spp. mesic forest and diverse mesic forest and containing one or more of the following native plant species: *Myrsine* spp., *Psychotria* spp., or *Xylosma* spp.; and

(2) Elevations between 568 and 1,069 m (1,863 and 3,507 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kiki fern)

Kauai I, J, K, L, M, N and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Adenophorus periens* on Kauai. Within

these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha*-*Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum*, *Athyrium sandwicensis*, *Broussaisia* spp., *Cheirodendron trigynum*, *Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, or *Tetraplasandra oahuensis*; and

(2) Elevations between 107 and 1,594 m (351 and 5,228 ft).

Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phlegmariurus nutans* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha*-*Dicranopteris linearis* wet forests and occasionally mesic forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum*, *Broussaisia arguta*, *Cibotium chamissoi*, *Cheirodendron fauriei*, *Diploterygium pinnatum*, *Hedyotis terminalis*, *Hibiscus kokio* ssp. *kokio*, *Melicope waialealae*, *Scaevola gaudichaudii*, *Syzygium sandwicensis*, *Perrottetia sandwicensis*, *Psychotria hexandra*, *P. mariniana*, or *P. wawrae*; and

(2) Elevations between 601 and 1,594 m (1,971 and 5,228 ft).

Dated: January 7, 2002.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

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**Monday,
January 28, 2002**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Revised Determinations of
Prudency and Proposed Designations of
Critical Habitat for Plant Species From
the Islands of Kauai and Niihau, Hawaii;
Proposed Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG71

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Kauai and Niihau, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), originally determined that designation of critical habitat was prudent, and proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. We incorporate those 76 prudency determinations here. In this proposal we have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palms, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau, and no change is made to that determination here. We also did not propose critical habitat for two species, *Melicope quadrangularis* and *Phyllostegia waimeae*, which had not been seen in the wild and for which no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis*.

In the November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of

critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). In this proposal we incorporate the prudency determinations for these nine species and propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, *Mariscus pennatiformis*. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands. We determined that critical habitat was not prudent for *Acaena exigua*, a species known only from Kauai and Maui, in the proposal published on December 18, 2000 (Maui and Kahoolawe). This species had not been seen recently in the wild and no viable genetic material was known to exist. No change is made here to the earlier prudency determination for this species.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyrifolium*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyrifolium*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

We are now proposing critical habitat for 83 of the 95 species from the islands of Kauai and Niihau. Critical habitat is not proposed for seven of the 95 species (*Achyranthes mutica*, *Hibiscus brackenridgei*, *Isodendron pyrifolium*, *Phlegmariurus mannii*, *Silene lanceolata*, *Solanum incompletum*, and *Vigna o-wahuensis*) which no longer occur on the islands of Kauai or Niihau, and for which we are unable to determine any habitat that is essential to their conservation on the islands of Kauai or Niihau. Critical habitat is not

proposed for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* for which we determined, on November 7, 2000, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau, and no change is made to that determination here. Critical habitat is not proposed for two species, *Melicope quadrangularis* and *Acaena exigua*, for which we determined, on November 7, 2000, and December 18, 2000, respectively, that critical habitat was not prudent because they had not been seen recently in the wild, and no viable genetic material of these species was known. No change is made to that determination here.

We propose critical habitat designations for 83 species within 15 critical habitat units totaling approximately 40,147 hectares (ha) (99,206 acres (ac)) on the island of Kauai, and within one critical habitat unit totaling approximately 282 ha (697 ac) on the island of Niihau.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until March 29, 2002. We will hold one public hearing on this proposed rule. The public hearing will be held from 6:00 p.m. to 8:00 p.m., Wednesday, February 13, 2002, on the island of Kauai, Hawaii. Prior to the public hearing, we will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m.

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

You may submit written comments and information to the Field Supervisor,

U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3-122, P.O. Box 50088, Honolulu, HI 96850-0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment,

during normal business hours at the above address. The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai. Additional information on this hearing can be found under "Public Hearing" found in the Background section of this rule.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section)

(telephone 808/541-3441; facsimile 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 95 plant species that, at the time of listing, were reported from the islands of Kauai and Niihau (Table 1).

TABLE 1.— SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
<i>Acaena exigua</i> (liliwai)	H				H		
<i>Achyranthes mutica</i> (No Common Name (NCN)).	H					C	
<i>Adenophorus periens</i> (pendent kiihi fern).	C	H	C	R	H	C	
<i>Alectryon macrococcus</i> (mahoe)	C	C	C		C		
<i>Alsiniidendron lychnoides</i> (kuawawaenohu).	C						
<i>Alsiniidendron viscosum</i> (NCN)	C						
<i>Bonamia menziesii</i> (NCN)	C	C	H	C	C	C	
<i>Brighamia insignis</i> (olulu)	C						Ni (C)
<i>Centaurium sebaeoides</i> (awiwi)	C	C	C	C	C		
<i>Chamaesyce halemanui</i> (NCN)	C						
<i>Ctenitis squamigera</i> (pauoa)	H	C	C	C	C	H	
<i>Cyanea asarifolia</i> (haha)	C						
<i>Cyanea recta</i> (haha)	C						
<i>Cyanea remyi</i> (haha)	C						
<i>Cyanea undulata</i> (NCN)	C						
<i>Cyperus trachysanthos</i> (puukaa)	C	C	H	H			Ni (C)
<i>Cyrtandra cyaneoides</i> (mapele)	C						
<i>Cyrtandra limahuliensis</i> (haiwale)	C						
<i>Delissea rhytidosperma</i> (NCN)	C						
<i>Delissea rivularis</i> (oha)	C						
<i>Delissea undulata</i> (NCN)	C				H	C	Ni (H)
<i>Diellia erecta</i> (asplenium-leaved diellia).	C	H	C	H	C	C	
<i>Diellia pallida</i> (NCN)	C						
<i>Diplazium molokaiense</i> (NCN)	H	H	H	H	C		
<i>Dubautia latifolia</i> (naenae)	C						
<i>Dubautia pauciflorula</i> (naenae)	C						
<i>Euphorbia haeleeeleana</i> (akoko)	C	C					
<i>Exocarpos luteolus</i> (heau)	C						
<i>Flueggea neowawraea</i> (mehamehame).	C	C	H		C	C	
<i>Gouania meyenii</i> (NCN)	C	C					
<i>Hedyotis cookiana</i> (awiwi)	C	H	H			H	
<i>Hedyotis st.-johnii</i> (Na Pali beach hedyotis).	C						
<i>Hesperomannia lydgatei</i> (NCN)	C						
<i>Hibiscadelphus woodii</i> (hau kuahiwi)	C						
<i>Hibiscus brackenridgeri</i> (mao hau hele)	H	C	H	C	C	C	Ka (R)
<i>Hibiscus clayi</i> (Clay's hibiscus)	C						
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i> (kokio keokeo).	C						
<i>Ischaemum byrone</i> (Hilo ischaemum)	C	H	C		C	C	
<i>Isodendron laurifolium</i> (aupaka)	C	C					
<i>Isodendron longifolium</i> (aupaka)	C	C					
<i>Isodendron pyrifolium</i> (wahine noho kula).		H	H	H	H	C	Ni (H)
<i>Kokia kauaiensis</i> (kokio)	C						
<i>Labordia lydgatei</i> (kamakahala)	C						
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> (kamakahala).	C						
<i>Lipochaeta fauriei</i> (nehe)	C						
<i>Lipochaeta micrantha</i> (nehe)	C						

TABLE 1.— SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
<i>Lipochaeta waimeaensis</i> (nehe)	C						
<i>Lobelia niihauensis</i> (NCN)	C	C					Ni (H)
<i>Lysimachia filifolia</i> (NCN)	C	C					
<i>Mariscus pennatifolius</i> (NCN)	H	H			C	H	NW (C)
<i>Melicope haupuensis</i> (alani)	C						
<i>Melicope knudsenii</i> (alani)	C				C		
<i>Melicope pallida</i> (alani)	C	C					
<i>Melicope quadrangularis</i> (alani)	H						
<i>Munroidendron racemosum</i> (NCN)	C						
<i>Myrsine linearifolia</i> (kolea)	C						
<i>Nothoestrum peltatum</i> (aiea)	C						
<i>Panicum niihauense</i> (lau ehū)	C						Ni (H)
<i>Peucedanum sandwicense</i> (makou) ...	C	C	C		C		
<i>Phlegmariurus mannii</i> (wawaeiole)	H				C	C	
<i>Phlegmariurus nutans</i> (wawaeiole)	H	C					
<i>Phyllostegia knudsenii</i> (NCN)	C						
<i>Phyllostegia waimeae</i> (NCN)	C						
<i>Phyllostegia wawrana</i> (NCN)	C						
<i>Plantago princeps</i> (laukahi kuahiwi) ...	C	C	C		C	H	
<i>Platanthera holochila</i> (NCN)	C	H	C		C		
<i>Poa mannii</i> (Mann's bluegrass)	C						
<i>Poa sandwicensis</i> (Hawaiian bluegrass).	C						
<i>Poa siphonoglossa</i> (NCN)	C						
<i>Pritchardia aylmer-robinsonii</i> (wahane)							Ni (C)
<i>Pritchardia napaliensis</i> (loulu)	C						
<i>Pritchardia viscosa</i> (loulu)	C						
<i>Pteralyxia kauaiensis</i> (kaulu)	C						
<i>Remya kauaiensis</i> (NCN)	C						
<i>Remya montgomeryi</i> (NCN)	C						
<i>Schiedea apokremnos</i> (maolioli)	C						
<i>Schiedea helleri</i> (NCN)	C						
<i>Schiedea kauaiensis</i> (NCN)	C						
<i>Schiedea membranacea</i> (NCN)	C						
<i>Schiedea nuttallii</i> (NCN)	C	C	C		R		
<i>Schiedea spergulina</i> var. <i>leiopoda</i> (NCN).	C						
<i>Schiedea spergulina</i> var. <i>spergulina</i> (NCN).	C						
<i>Schiedea stellarioides</i> (NCN)	C						
<i>Sesbania tomentosa</i> (ohai)	C	C	C	H	C	C	NW (C), Ka
<i>Silene lanceolata</i> (NCN)	H	C	C	H		C	
<i>Solanum incompletum</i> (popolo ku mai)	H		H	H	H	C	
<i>Solanum sandwicense</i> (aiakeakua, popolo).	C	H					
<i>Spermolepis hawaiiensis</i> (NCN)	C	C	C	C	C	C	
<i>Stenogyne campanulata</i> (NCN)	C						
<i>Vigna o-wahuensis</i> (NCN)		H	C	C	C	C	Ni (H), Ka
<i>Viola helenae</i> (NCN)	C						
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> (nani waialeale).	C						
<i>Wilkesia hobydi</i> (dwarf iliau)	C						
<i>Xylosma crenatum</i> (NCN)	C						
<i>Zanthoxylum hawaiiense</i> (ae)	C		C	H	C	C	

KEY:

C (Current)—population last observed within the past 30 years.

H (Historical)—population not seen for more than 30 years.

R (Reported)—reported from undocumented observations.

Fifty-seven of these species are endemic to the islands of Kauai and/or Niihau, while 38 species are reported from one or more other islands, as well as Kauai and/or Niihau.

We originally determined that designation of critical habitat was

prudent, and proposed designation of critical habitat, for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*,

Bonamia menziesii, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea*

rivularis, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808). In this proposal we have revised the proposed designations for the 76 plants based on new information received during the comment periods. In addition, we incorporate new information, and/or address comments and new information received during the comment periods on the November 7, 2000, proposal.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these determinations here and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we also determined that critical habitat was not prudent for *Melicope quadrangularis* and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species because we believe that such designation would be beneficial to this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis* and it is hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). No change is made to these prudency determinations for these nine species in this proposal and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatiformis* on the island of Kauai, based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

No change is made here to the prudency determination for *Acaena*

exigua, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000, and it is hereby incorporated by reference (65 FR 79192). In that proposal, we determined that critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material was known to exist.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. These four plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We determine that critical habitat is prudent for these four species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

Critical habitat for 83 of the 95 species from the islands of Kauai and Niihau is proposed at this time. Critical habitat is not proposed for seven of the 95 species (*Achyranthes mutica*, *Hibiscus brackenridgei*, *Isodendron pyriformis*, *Phlegmariurus mannii*, *Silene lanceolata*, *Solanum incompletum*, and *Vigna o-wahuensis*) which no longer occur on the islands of Kauai or Niihau, and for which we are unable to determine any habitat that is essential to their conservation on the islands of Kauai or Niihau. However, proposed critical habitat designations, or non-designations, for these species will be included in other future Hawaiian plants proposed critical habitat proposed rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS OR NON-DESIGNATIONS WILL BE MADE FOR SEVEN SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT ESSENTIAL FOR THEIR CONSERVATION ON THE ISLANDS OF KAUAI AND NIIHAU

Species	Proposed rules in which critical habitat designations will be made
<i>Achyranthes mutica</i>	Hawaii Island.
<i>Hibiscus brackenridgei</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.
<i>Isodendron pyriform</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.
<i>Phlegmariurus mannii</i>	Maui and Kahoolawe reproposal; Hawaii Island.
<i>Silene lanceolata</i>	Molokai reproposal; Lanai reproposal; Hawaii Island; Oahu.
<i>Solanum incompletum</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island.
<i>Vigna o-wahuensis</i>	Maui and Kahoolawe reproposal; Lanai reproposal; Molokai reproposal; Hawaii Island; Oahu.

Critical habitat is not proposed for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* for which we determined, on November 7, 2000, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these prudency determinations in this proposal and they are hereby incorporated by reference (65 FR 66808). Critical habitat is not proposed for two species, *Melicope quadrangularis* and *Acaena exigua*, for which we determined, on November 7, 2000, and December 18, 2000, respectively, that critical habitat was not prudent because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. No change is made to these prudency determinations here and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192).

The Islands of Kauai and Niihau

Because of its age and relative isolation, Kauai has levels of floristic diversity and endemism that are higher than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians, and more recently, converted to agricultural use or pasture (Gagne and Cuddihy 1999). Intentional or inadvertent introduction of non-native plant and animal species has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic (moist) and wet regions within Kauai's conservation district. The land that supports the habitat essential to the conservation of the 83 plant taxa is owned by various private parties, the State of Hawaii (including State parks,

forest reserves, natural area reserves, and a wilderness area), and the Federal Government. Most of the taxa included in this proposed rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development, or where inaccessibility has limited encroachment by non-native plant and animal species.

Niihau's relative isolation and severe environmental conditions have produced a few endemic species. Unfortunately, human disturbance, primarily ungulate ranching, has drastically changed the vegetation and hydrologic parameters of the island, leaving few of the native vegetation communities. Niihau has been privately owned since 1864 and access has been, and continues to be, restricted (Department of Geography 1998). Therefore, current information on plant locations and population status is extremely limited.

Discussion of Plant Taxa

Species Endemic to Kauai and Niihau

Alsinidendron lychnoides (kuawawaenohu)

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub, woody at the base, with a dense covering of fine glandular hairs throughout. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals (modified leaves), number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron viscosum*, which differs primarily in having narrower leaves, fewer capsule valves, and fewer flowers per cluster (Wagner *et al.* 1999).

This species was observed with fruits during February. No additional life

history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron lychnoides* was found on the east rim of Kalalau Valley near Keanapuka, the western and southeastern margins of the Alakai Swamp, and southwest of the Swamp near Kaholuamano on the island of Kauai. Currently, there are two populations with a total of 10 individual plants. This species is extant on State-owned land in the Alakai Swamp, the Mohihi Waialae Trail, Keanapuka and Pihea in the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (Hawaii Natural Heritage Program (HINHP) Database 2000; Geographic Decision Systems International (GDSI) 2000).

Alsinidendron lychnoides typically grows on steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* (ohia) and *Cheirodendron* spp. (olapa), or by *Metrosideros polymorpha* and *Dicranopteris linearis* (uluhe), and at elevations between 828 and 1,344 meters (m) (2,715 and 4,408 feet (ft)). Associated native plant species include *Asplenium* spp. (No Common Name (NCN)), *Astelia* spp. (painiu), *Broussaisia arguta* (kanawao), *Carex* spp. (NCN), *Cyrtandra* spp. (haiwale), *Diplazium sandwichianum* (hoio), *Elaphoglossum* spp. (ekaha), *Hedyotis terminalis* (manono), *Machaerina* spp. (uki), *Peperomia* spp. (ala ala wai nui), or *Vaccinium* spp. (ohelo) (61 FR 53070; Ken Wood, National Tropical Botanical Garden (NTBG), pers. comm., 2001).

The major threats to this species are competition from the aggressive non-native plant species *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs (*Sus scrofa*); trampling by humans; risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small

number of extant individuals (61 FR 53070).

Alsinidendron viscosum (NCN)

Alsinidendron viscosum, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub densely covered with fine glandular hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1999).

Alsinidendron viscosum was observed in flower during January, February, and April 1995. No additional life history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron viscosum* was found at Kahoulamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai. Currently, there are a total of five populations containing about 263 individuals on the island of Kauai. These populations are on State-owned land at the Halemanu Kokee Trail, Mohihi Waialae Trail, Kawaiiki Valley, Waialae Falls, and Nawaimaka Valley in the Alakai Wilderness Preserve, Kokee State Park, and the Na Pali-Kona Forest Reserve (61 FR 53070; HINHP Database 2000; GDSI 2000).

Alsinidendron viscosum is typically found at elevations between 754 and 1,224 m (2,474 and 4,016 ft), on steep slopes in *Acacia koa* (koa)—*Metrosideros polymorpha* lowland, montane mesic forest. Associated native plant species include *Alyxia oliviformis* (maile), *Asplenium polydon* (NCN), *Bidens cosmoides* (poola nui), *Bobea* spp. (ahakea), *Carex meyerii* (NCN), *Carex wahuensis* (NCN), *Coprosma* spp. (pilo), *Dryopteris unidentata* (NCN), *Dryopteris glabra* (hohiu), *Dodonaea viscosa* (aalii), *Dubautia laevigata* (naeanae), *Dianella sandwicensis* (ukiuki), *Dryopteris wallichiana* (ionui), *Doodia kunthiana* (ohupukupulauii), *Gahnia* spp. (NCN), *Ilex anomala* (aiea), *Melicope* spp. (alani), *Panicum nephelophilum* (konakona), *Pteridium aquilinum* var. *decompositum* (bracken fern), *Pleomele* spp. (hala pepe), *Psychotria* spp. (kopiko), *Schiedea stellarioides* (lauhilihi), or *Vaccinium dentatum* (ohelo) (K. Wood, pers. comm., 2001).

The major threats to this species are destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the non-native plant species *Rubus argutus*, *Lantana camara* (lantana), and

Melinis minutiflora (molasses grass); and a risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small number of extant populations and individuals (61 FR 53070).

Brighamia insignis (olulu)

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This short-lived perennial species is a member of a unique endemic Hawaiian genus with only one other species, *B. rockii*, presently known only from Molokai, from which it differs by the color of its petals, its shorter calyx lobes, and its longer flower stalks (59 FR 9304; Lammers 1999).

Current reproduction is not thought to be sufficient to sustain populations, with poor seedling establishment due to competition with non-native grasses as the limiting factor. Pollination by native sphingid moths (Sphingidae family) is likely; however, pollination failure is common, due to either a lack of pollinators or a reduction in genetic variability. The flower structure appears to favor out crossing (pollination between different parent plants). Some vegetative cloning has been observed and flower and leaf size appear to be dependent on moisture availability. Seeds of this species are undoubtedly dispersed by gravity. Although they may be blown for short distances, they are not obviously adapted for wind dispersal, being ovoid to ellipsoid, smooth, and lacking any sort of wing or outgrowth (59 FR 9304; Service 1995).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau. Currently, there are a total of four populations containing a total of about 65 individuals on the islands of Kauai and Niihau. It is reported on State land (Hono O Na Pali Natural Area Reserve) and privately owned lands at Hoolulua and Waiahuakua Valleys, Haupu, and Keopaweo, and on the privately owned island of Niihau (Service 1995; GDSI 2000; HINHP Database 2000; Steve Perlman, NTBG, pers. comm., 2000).

Brighamia insignis is found at elevations between 0 and 748 m (0 and 2,453 ft) on rocky ledges with little soil or on steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 165 cm (65 in.). Associated native plant species

include *Artemisia australis*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus kokio* ssp. *saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta* (nehe), *Munroidendron racemosum*, or *Sida fallax* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this plant are browsing and habitat degradation by feral goats; human disturbance; fire; the introduced Carmine spider mite (*Tetranychus cinnabarinus*); a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of individuals; restricted distribution; reduced reproductive vigor; and competition from non-native plant species such as *Melinis minutiflora*, *Setaria gracilis*, *Sporobolus africanus* (smutgrass), *Lantana camara*, *Psidium cattleianum*, *Psidium guajava*, *Kalanchoe pinnata*, *Ageratum conyzoides* (maile hohono), or *Stachytarpheta dichotoma* (59 FR 9304).

Chamaesyce halemanui (NCN)

Chamaesyce halemanui, a short-lived perennial member of the spurge family (Euphorbiaceae), is a scandent (climbing) shrub. It is distinguished from closely related species by its decussate leaves (arranged in pairs at right angles to the next pair above or below), persistent stipules (bract- or leaf-like structures), more compact flower clusters, shorter stems on cyathia, and smaller capsules (57 FR 20580; Koutnik 1987; Koutnik and Huft 1999).

Little is known about the life history of *Chamaesyce halemanui*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Chamaesyce halemanui* was found in Kauhao and Makaha Valleys in the Na Pali-Kona Forest Reserve, Mahanaloa Valley in Kuia NAR, the Halemanu drainage in Kokee State Park, and Olokele Canyon on the island of Kauai. Currently, there are a total of six populations, containing about 143 individuals, in Kuia Valley, Poopooiki Valley, Kauhao Valley, Kaha Ridge, Awaawapuhi Valley, Waipio Falls, Halemanu, and Kaluahaulu in the Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve on State-owned land (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000; K. Wood, pers. comm., 2001).

Chamaesyce halemanui is typically found on the steep slopes of gulches in mesic *Acacia koa* forests at elevations

between 556 and 1,202 m (1,825 and 3,944 ft). Associated native plant species include *Asplenium* spp., *Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Bobea brevipes* (ahakea lau lii), *Carex meyenii*, *Carex wahuensis*, *Cheirodendron trigynum* (olapa), *Coprosma* spp., *Diospyros sandwicensis* (lama), *Dodonaea viscosa*, *Elaeocarpus bifidus* (kalia), *Hedyotis terminalis*, *Kokia kauaiensis* (kokio), *Metrosideros polymorpha*, *Melicope haupuensis* (alani), *Microlepia strigosa* (NCN), *Panicum nephelophilum*, *Pisonia* spp. (papala kepau), *Pittosporum* spp. (hoawa), *Pleomele aurea* (hala pepe), *Psychotria mariniana* (kopiko), *Psychotria greenwelliae* (kopiko), *Pouteria sandwicensis* (alaa), *Santalum freycinetianum* (iliahi), or *Styphelia tameiameia* (pukiawe) (57 FR 20580; K. Wood, pers. comm., 2001).

The major threats to this species are competition from non-native plants, such as *Lantana camara*, *Psidium cattleianum* (strawberry guava), and *Stenotaphrum secundatum* (St. Augustine grass); habitat degradation by feral pigs; restricted distribution; small population size; increased potential for extinction resulting from naturally occurring events, such as landslides or hurricanes; and depressed reproductive vigor (57 FR 20580).

Cyanea asarifolia (haha)

Cyanea asarifolia, a member of the bellflower family (Campanulaceae), is a sparingly branched shrub. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (59 FR 9304; Lammers 1999).

Little is known about the life history of *Cyanea asarifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyanea asarifolia* was known only from along the bank of Anahola Stream on Kauai. Currently, one population with approximately five individuals is reported from the headwaters of the Wailua River in central Kauai on State-owned land in the Lihue-Koloa Forest Reserve (HINHP Database 2000; GDSI 2000).

This species typically grows in pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests at elevations between 182 and 1,212 m (597 and 3,976 ft). Associated native plant species include ferns, *Bidens* spp. (kookoolau), *Dubautia plantaginea*

(naenae), *Hedyotis centranthoides* (NCN), *Hedyotis elatior* (awiiwi), *Lysimachia filifolia* (kolokolo kuahiwi), *Machaerina angustifolia* (uki), *Metrosideros polymorpha*, or *Panicum lineale* (NCN) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are a risk of extinction from naturally occurring events, such as hurricanes and rock slides, and/or reduced reproductive vigor due to the small number of existing individuals; predation by introduced slugs and rodents (rats (*Rattus rattus*) and mice (*Mus musculus*)); and habitat degradation by feral pigs (59 FR 9304).

Cyanea recta (haha)

Cyanea recta, a member of the bellflower family (Campanulaceae), is an unbranched shrub with densely hairy flowers. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by the following collective characteristics: horizontal or ascending inflorescence; narrowly elliptic leaves 12 to 28 centimeters (cm) (4.7 to 11 inches (in.)) long, flat leaf margins; and purple berries (Lammers 1990).

Little is known about the life history of *Cyanea recta*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyanea recta* was found in upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Power line Trail, and the Lehua Makano- Alakai area on the island of Kauai. Currently, there is a total of seven populations, with approximately 609 individuals, on State and private lands in the following areas: Waioli Valley, the left and right branches of Wainiha Valley, Makaleha Mountains, and Puu Eu, including areas in Halelea Forest Reserve, Kealia Forest Reserve, and the Lihue-Koloa Forest Reserve (GDSI 2000; HINHP Database 2000).

Cyanea recta grows in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, usually in gulches or on slopes, and typically at elevations between 234 and 1,406 m (768 and 4,613 ft). Associated native plant species include *Dicranopteris linearis*, *Psychotria* spp., *Antidesma* spp. (hame), *Cheirodendron platyphyllum* (lapalapa), *Cibotium* spp. (hapuu), or *Diplazium* spp. (NCN) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are bark removal and other damage by rats;

habitat degradation by feral pigs; browsing by goats; unidentified slugs that feed on the stems; and competition with the non-native plant species *Blechnum occidentale* (blechnum fern), *Lantana camara*, *Rubus rosifolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides* (NCN), *Deparia petersenii* (NCN), *Erechtites valerianifolia* (fireweed), *Melastoma candidum* (NCN), *Paspalum conjugatum* (Hilo grass), *Sacciolepis indica* (Glenwood grass), or *Youngia japonica* (Oriental hawkbeard) (61 FR 53070).

Cyanea remyi (haha)

Cyanea remyi, a member of the bellflower family (Campanulaceae), is a shrub with generally unbranched, unarmed (lacking prickles) stems which are hairy toward the base. This short-lived perennial species is distinguished from others in the genus that grow on Kauai by its shrubby habit, relatively slender, unarmed stems, smooth or minutely toothed leaves, densely hairy flowers, the shape of the calyx (outer whorl of flower consisting sepals) lobes, length of the calyx and corolla (part of flower consisting of separate or fused petals), and length of the corolla lobe relative to the floral tube (Lammers 1999).

Little is known about the life history of *Cyanea remyi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Currently, there are seven known populations with approximately 374 plants among them on the island of Kauai. *Cyanea remyi* is reported from Pali Eleele, Waioli Valley, Makaleha, Blue Hole, Kawaikini, and Kapalaoa on privately and State-owned lands, including the Halelea and Lihue-Koloa Forest Reserves (Lammers and Lorence 1993; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Cyanea remyi is usually found in tight drainages and wet stream banks in lowland wet forest or shrubland at elevations between 215 and 1,167 m (704 and 3,829 ft). Associated native plant species include various "finger" (ferns in the Grammitaceae family) and "filmy" (ferns in the Hymenophyllaceae family) fern species, *Adenophorus* spp. (pendant fern), *Antidesma* spp., *Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum*, *Eragrostis grandis* (kawelu), *Bidens* spp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea* (ieie), *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis* (olomea), *Pipturus* spp. (mamaki),

Psychotria hexandra (kopiko), *Syzygium sandwicensis* (ohia ha), *Thelypteris* spp. (palapalaia), *Touchardia* spp. (olona), or *Ureia glabra* (opuue) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the non-native plant species *Erechtites valerianifolia*, *Paspalum conjugatum*, *Psidium cattleianum*, *Rubus rosifolius*, or *Melastoma candidum*; habitat degradation by feral pigs; browsing by feral goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining populations (61 FR 53070).

Cyanea undulata (NCN)

Cyanea undulata is an unbranched (or the stem is occasionally forked) shrub or undershrub with fine rust-colored hairs covering the lower surface of the leaves (Lammers 1999).

Native members of the Campanulaceae (bellflower) family, including the genus *Cyanea*, are generally believed to have adapted to pollination by native nectar-eating passerine birds, such as the Hawaiian "honeycreepers." The long, tubular, slightly curved flowers of *C. undulata* fit this model, but field observations are lacking. The fleshy orange fruits of this species are adapted for bird dispersal like other species of *Cyanea*. Although recognized as a short-lived perennial species, specific details of the life history of this species, such as growth rates, age plants begin to flower, and longevity of plants, are unknown (Lorence and Flynn 1991; Service 1994).

Historically, *Cyanea undulata* was known only from the Wahiawa Bog area on Kauai. Currently, one population with a total of 28 plants is reported on privately owned land along the bank of a tributary of the Wahiawa Stream in the Wahiawa Drainage (HINHP Database 2000; GDSI 2000).

Cyanea undulata typically grows in tight drainages and wet stream banks in *Metrosideros polymorpha* dry to montane wet forest or shrubland at elevations between 145 and 1,066 m (476 and 3,497 ft). Associated native species include various grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Diplazium sandwichianum*, *Dryopteris glabra*, *Eragrostis grandis*, *Bidens* spp., *Freyinetia arborea*, *Machaerina angustifolia*, *Mariscus* spp. (NCN), *Melicope feddei* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria mariniana*, *Psychotria hexandra*,

Sadleria pallida (amau), *Sadleria squarrosa* (amau), *Smilax melastomifolia* (pioi), *Sphenomeris chinensis* (palaa), *Syzygium sandwicensis*, or *Thelypteris* spp. (Service 1994; K. Wood, pers. comm., 2001).

The primary threats to this species include competition with the non-native plant species *Psidium cattleianum*, *Melastoma candidum*, *Rhodomyrtus tomentosa* (rose myrtle), *Clidemia hirta*, *Melaleuca quinquenervia* (paperbark tree), *Stachytarpheta dichotoma* (owi), *Rubus rosifolius*, *Elephantopus mollis* (NCN), *Erechtites valerianifolia*, *Youngia japonica*, *Pluchea carolinensis* (sourbush), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum*, *Paspalum urvillei* (Vasey grass), *Sacciolepis indica*, *Setaria gracilis* (yellow foxtail), *Deparia petersenii*, or *Cyathea cooperi* (Australian tree fern); trampling by feral pigs; landslides; seed predation by rats; herbivory by introduced slugs; loss of pollinators; hurricanes; and decreased reproductive vigor, restricted distribution, and extinction due to unforseen circumstances because of small population size (56 FR 47695; Service 1994).

Cyrtandra cyaneoides (mapele)

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, usually unbranched shrub with opposite toothed leaves which have impressed veins on the lower surface that are sparsely covered with long hairs. This short-lived perennial species differs from others of the genus that grow on Kauai by being a succulent, erect or ascending shrub and having a bilaterally symmetrical calyx that is spindle-shaped in bud and falls off after flowering, leaves that are 41 to 56 cm (16 to 22 in.) long and 23 to 35 cm (9 to 14 in.) wide and have a wrinkled surface, and berries with shaggy hairs (Wagner *et al.* 1999).

Little is known about the life history of *Cyrtandra cyaneoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyrtandra cyaneoides* was known to occur only along the trail to Waiialea Valley on Kauai until recently discovered in other areas. It is currently known from five populations, containing about 404 individuals, on private and State lands (including Halelea Forest Reserve and Alakai Wilderness Preserve) at Pihea, Waioli Valley, Lumahai, the left branch of

Wainiha Valley, and Makaleha (61 FR 53070; GDSI 2000; HINHP Database 2000).

Cyrtandra cyaneoides typically grows on talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*, *Cheirodendron* spp., and *Dicranopteris linearis* at elevations between 157 and 1,406 m (514 and 4,614 ft). Associated native species include *Bidens* spp., *Boehmeria grandis* (akolea), *Cyanea* spp. (haha), *Cyrtandra longifolia* (haiwale), *Cyrtandra kauaiensis* (haiwale), *Cyrtandra limahuliensis* (haiwale), *Coprosma* spp., *Diplazium sandwichianum*, *Freyinetia arborea*, *Gunnera* spp. (ape ape), *Hedyotis terminalis*, *Hedyotis tryblium* (NCN), *Machaerina* spp., *Melicope clusiifolia* (kolokolo mokihana), *Melicope puberula* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria* spp., *Pritchardia* spp. (loulou), or *Stenogyne purpurea*. (NCN) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with non-native plant species such as *Paspalum conjugatum*, *Rubus rosifolius*, *Deparia petersenii*, and *Drymaria cordata* (pipili); predation of seeds by rats; reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides and hurricanes, due to the small number of populations; and habitat degradation by feral pigs (61 FR 53070).

Cyrtandra limahuliensis (haiwale)

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub with moderately or densely hairy leaves. The following combination of characteristics distinguishes this short-lived perennial species from others of the genus: the leaves are usually hairy (especially on lower surfaces), the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity, and the flowers are borne singly (Wagner *et al.* 1990).

Little is known about the life history of *Cyrtandra limahuliensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyrtandra limahuliensis* was known from three locations on Kauai: Wainiha Valley, Lumahai Valley, and near Kilauea River until recently discovered in additional areas. Currently, a total of 11 populations,

containing approximately 822 plants, are reported on private and State lands (including the Halelea Forest Reserve, Kealia Forest Reserve, and the Lihue-Koloa Forest Reserve) at Limahuli Falls, Lumahai Valley, Waipa Valley, Waioli Valley, Kekoiiki, Makaleha, the right fork of Wainiha Valley, Kualapa and Blue Hole, Kepalaoa, and Puu Kolo. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 2000; GDSI 2000).

This species typically grows along stream banks in lowland wet forests at elevations between 208 and 1,594 m (681 and 5,228 ft). Associated native plant species include *Antidesma* spp., *Boehmeria grandis*, *Bidens* spp., *Charpentiera* spp. (papala), *Cibotium glaucum* (hapuu), *Cyanea* spp., *Cyrtandra kealiae* (haiwale), *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp. (naeanae), *Eugenia* spp. (nioi), *Gunnera kauaiensis* (ape ape), *Hedyotis terminalis*, *Hibiscus waimeae* (kokio keokeo), *Metrosideros polymorpha*, *Perrottetia sandwicensis*, *Pisonia* spp., *Pipturus* spp., *Pritchardia* spp., *Psychotria* spp., *Touchardia latifolia* (olona), or *Urera glabra* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are competition from non-native plant species (*Psidium cattleianum*, *Paspalum conjugatum*, *Melastoma candidum*, *Psidium guajava* (common guava), *Hedychium flavescens* (yellow ginger), *Rubus rosifolius*, *Youngia japonica*, *Erechtites valerianifolia*, *Blechnum occidentale*, or *Clidemia hirta*); habitat degradation by feral pigs; natural landslides; and hurricanes (59 FR 9304).

Delissea rhytidosperma (NCN)

Delissea rhytidosperma, a member of the bellflower family (Campanulaceae), is a branched shrub with lance-shaped or elliptic toothed leaves. This short-lived perennial species differs from other species of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (part of stamen that produces pollen and usually is borne on a stalk) (Lammers 1999).

Little is known about the life history of *Delissea rhytidosperma*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Delissea rhytidosperma* was known from as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as Haupu Range, between the elevations of

122 and 915 m (400 and 3,000 ft) on the island of Kauai. Currently, three populations, on private and State lands (including Kuia Natural Area Reserve), with a total of 19 individuals, are reported from Kuia Valley, Puhakukane, and the Haupu range (HINHP Database 2000; GDSI 2000).

This species generally grows in well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha*-*Acacia koa* forests at elevations between 167 and 895 m (547 and 2,935 ft). Associated native plant species include grammitid ferns, *Adenophorus oligadenus* (pendant fern), *Cyanea* spp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Euphorbia haeleleana* (akoko), *Hedyotis* spp. (NCN), *Microlepia strigosa*, *Nestegis sandwicensis* (olopua), *Psychotria hobbyi* (kopiko), *Pisonia* spp., *Pteralyxia* spp. (kaulu), or *Styphelia tameiameia* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are predation and/or habitat degradation by mule or black-tailed deer (*Odocoileus hemionus columbianus*), feral pigs, and goats; herbivory by rats and introduced slugs; fire; and competition with the non-native plants *Lantana camara*, *Passiflora ligularis* (sweet granadilla), *Cordyline fruticosa* (ti), and *Passiflora mollissima* (banana poka); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Service 1995).

Delissea rivularis (oha)

Delissea rivularis, a member of the bellflower family (Campanulaceae), is a shrub, unbranched or branched near the base, with hairy stems and leaves arranged in a rosette at the tips of the stems. This short-lived perennial species is distinguished from others of the genus by the color, length, and curvature of the corolla, shape of the leaves, and presence of hairs on the stems, leaves, flower clusters, and corolla (Lammers 1999).

Little is known about the life history of *Delissea rivularis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Delissea rivularis* was found at Waiakealoha Waterfall, Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (61 FR 53070). Currently, this species is known from two populations with a

total of 40 individuals. The populations are reported from Moaalele and Hanakapiai on State land within the Hono o Na Pali Natural Area Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Delissea rivularis is found on steep slopes near streams in *Metrosideros polymorpha*-*Cheirodendron trigynum* montane wet or mesic forest at elevations between 722 and 1,306 m (2,370 and 4,286 ft). Associated native plant species include *Boehmeria grandis*, *Broussaisia arguta*, *Carex* spp., *Coprosma* spp., *Dubautia knudsenii* (naeanae), *Diplazium sandwichianum*, *Hedyotis foggiana* (NCN), *Ilex anomala*, *Machaerina angustifolia*, *Melicope clusiifolia*, *Melicope anisata* (mokihana), *Pipturus* spp., *Psychotria hexandra*, or *Sadleria* spp. (amau) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the encroaching non-native plant *Rubus argutus*; habitat destruction by feral pigs; predation by rats; and reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining individuals (61 FR 53070; Service 1998a).

Diellia pallida (NCN)

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a plant that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones, and reproduces by spores, the minute, reproductive dispersal unit of ferns and fern allies. This short-lived perennial species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (a group or cluster of spore cases) (Wagner 1952, 1987).

Little is known about the life history of *Diellia pallida*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Diellia pallida was known historically from Halemanu on the island of Kauai. More recently additional populations have been found and currently, there is a total of four populations with 20 to 25 individuals in Mahanaloa and Kuia Valleys, Makaha Valley, Waimea Canyon, and Koaie Canyon, all on State-owned land including Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (59 FR 9304; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species grows on bare granular soil with dry to mesophytic leaf litter with pH of 6.9 to 7.9. on steep, talus slopes in lowland mesic forests at elevations between 445 and 1,027 m (1,460 and 3,371 ft). Associated native plant species include *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Antidesma platyphyllum*, *Asplenium spp.*, *Carex meyenii*, *Diospyros hillebrandii* (lama), *Diospyros sandwicensis*, *Doodia kunthiana*, *Hedyotis knudsenii* (NCN), *Metrosideros polymorpha*, *Microlepia strigosa*, *Myrsine lanaiensis* (kolea), *Nestegis sandwicensis*, *Psychotria mariniana*, *Psydrax odoratum* (alahee), *Pteralyxia kauaiensis* (kauulu), *Rauvolfia sandwicensis* (hao), *Styphelia tameiameia*, *Tetraplasandra kauaiensis* (ohe ohe), *Wilkesia gymnoxiphium* (iliau), or *Zanthoxylum dipetalum* (ae) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species include competition with the non-native plants *Lantana camara*, *Melia azedarach* (Chinaberry), *Stenotaphrum secundatum*, *Oplismenus hirtellus*, *Aleurites moluccana* (kukui) or *Cordyline fruticosa*; predation and habitat degradation by feral goats, pigs, and deer; fire; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Dubautia latifolia (naenae)

Dubautia latifolia, a member of the aster family (Asteraceae), is a diffusely branched, woody perennial vine with leaves which are conspicuously net-veined, with the smaller veins outlining nearly square areas. A vining habit, distinct petioles (stalks), and broad leaves with conspicuous net veins outlining squarish areas separate this from closely related species (Carr 1982b, 1985, 1999a).

Individual plants of this species do not appear to be able to fertilize themselves. Since at least some individuals of *Dubautia latifolia* require cross-pollination, the wide spacing of individual plants (e.g., each 0.5 kilometer (km) (0.3 mile (mi)) apart) may pose a threat to the reproductive potential of the species. The very low seed set noted in plants in the wild indicates a reproductive problem, possibly asynchronous flowering or lack of pollinators. Seedling establishment and survival to juvenile stage is also rare. *Dubautia latifolia* experiences seasonal vegetative decline during the spring and summer, often losing most of

its leaves. New growth and flowering occur in the fall, with fruits developing in November. Pollinators and seed dispersal agents are unknown (Carr 1982b; Service 1995).

Historically, *Dubautia latifolia* was found in the Makaha, Awaawapuhi, Waialae, Kawaiula, and Kauhao Valleys of the Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia Natural Area Reserve; Halemanu in Kokee State Park; along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua Ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve; and at Kaholuamanu on the island of Kauai. Currently, there are a total of nine populations containing approximately 80 individuals on State-owned land in Kauhao Valley, Makaha Valley headwaters, Kuia Valley, Kawaiula Valley, Kumuwela Ridge, Awaawapuhi Valley, Waiakoali picnic area, Alakai picnic area, Honopu Trail, Nualolo Trail, Waieke Swamp, Noe Stream, Kumuwela Ridge, Mohihi Ditch, Mohihi Waialae Trail, and Kaluahaulu Ridge in the Alakai Wilderness Preserve, Kokee State Park, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and the Waimea Canyon State Park (Carr 1982b; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species typically grows on gentle to steep slopes in well drained soil and in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations between 544 and 1,277 m (1,786 and 4,189 ft). Commonly associated native plant species are *Alphitonia ponderosa*, *Antidesma spp.*, *Bobea spp.*, *Claoxylon sandwicense* (poola), *Coprosma waimeae* (olena), *Cyrtandra spp.*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *Nestegis sandwicensis*, *Pleomele spp.*, *Pouteria sandwicensis*, *Psychotria mariniana*, *Scaevola spp.* (naupaka), or *Xylosma spp.* (maua) (59 FR 9304; K. Wood, pers. comm., 2001).

The threats to this species include competition from the non-native plants *Passiflora mollissima*, *Rubus argutus*, *Lonicera japonica* (Japanese honeysuckle), *Acacia mearnsii* (black wattle), *Hedychium spp.* (ginger), *Erigeron karvinskianus* (daisy fleabane), or *Psidium cattleianum*; damage from trampling and grazing by feral pigs and deer; vehicle traffic and road maintenance; seasonal dieback; small number of extant individuals; and restricted distribution (59 FR 9304).

Dubautia pauciflora (naenae)

Dubautia pauciflora, a member of the aster family (Asteraceae), is a somewhat sprawling shrub or erect small tree with narrowly lance-shaped or elliptic leaves clustered toward the ends of the stems. The tiny, two- to four-flowered heads distinguish this short-lived perennial species from its relatives (Carr 1985, 1999a).

Few details are known about the life history of any *Dubautia* species under natural conditions. Certain species produce viable seed when self-pollinated (self-fertile), although others fail to do so (self-infertile). Low pollinator numbers resulting in reduced cross-pollination and consequently low numbers of viable seeds could explain the small population sizes. Because of their structure and small size, flowers of *D. pauciflora* are presumably pollinated by small generalist insects, although field observations are lacking. The bristle-like pappus (tuft of appendages that crowns the ovary or fruit) probably represents an adaptation for wind dispersal. Very little is known about the life cycle of this species, including growth rates, longevity of the plants, and number of years the plants remain reproductive (56 FR 47695; Carr 1985; Service 1994).

Historically and currently, this species is found only on State (including the Lihue-Koloa Forest Reserve) and privately owned lands in the Wahiawa Drainage on Kauai. There are two populations containing 42 individual plants (HINHP Database 2000; GDSI 2000).

These populations are found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest within stream drainages at elevations between 564 and 1,093 m (1,849 and 3,587 ft). Associated native plant species include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cheirodendron spp.*, *Dubautia laxa* (naenae pua melemele), *Embelia pacifica* (kilioe), *Hesperomannia lydgatei*, *Labordia waialealae* (kamakahala lau lii), *Melicope spp.*, *Nothoperanema rubiginosa* (NCN), *Pritchardia spp.*, *Psychotria spp.*, *Sadleria spp.*, *Scaevola mollis* (naupaka kuahiwi), *Syzygium sandwicensis*, or *Tetraplasandra spp.* (ohe ohe) (K. Wood, pers. comm., 2001).

The threats to this plant include direct competition with the non-native plant species such as *Psidium cattleianum* or *Melastoma candidum*, and potential threats from *Rhodomyrtus tomentosa*, *Clidemia hirta*, *Melaleuca quinquenervia*, *Stachytarpheta dichotoma*, *Rubus rosifolius*, *Elephantopus mollis*, *Erechtites*

valerianifolia, *Youngia japonica*, *Pluchea carolinensis*, *Oplismenus hirtellus*, *Paspalum conjugatum*, *Paspalum urvillei*, *Sacciolepis indica*, *Setaria gracilis*, *Deparia petersenii*, or *Cyathea cooperi*; trampling by feral pigs; landslides and erosion; restricted distribution; and hurricanes (56 FR 47695; Service 1994).

Exocarpos luteolus (heau)

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub with knobby branches and leaves which are either minute scales or typical leaves. This short-lived perennial species is distinguished from others of the genus by its generally larger fruit with four indentations and by the color of the receptacle and fruit (Wagner *et al.* 1999).

Little is known about the life history of *Exocarpos luteolus*. This species tends to grow at habitat edges where there is adequate light and is likely to be semi-parasitic. Flowering cycles, pollination vectors, seed dispersal agents, longevity, other specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Exocarpos luteolus* was known from three general locations on Kauai: Wahiawa Bog, Kaholuamanu, and Kumuwela Ridge. Currently, there is a total of eight populations containing approximately 75 individual plants. This species has a scattered distribution on State (Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands and is reported from Pohakua, the right fork of Kalalau Valley, the left fork of Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haelele Valley (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species is found at elevations between 361 and 1,465 m (1,183 and 4,808 ft) in wet places bordering swamps or open bogs; open, dry ridges in lowland or montane mesic *Acacia koa*-*Metrosideros polymorpha* dominated forest communities with *Dicranopteris linearis*. Associated native plant species include *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Boba brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata*, *Dianella sandwicensis*, *Poa sandwicensis* (Hawaiian bluegrass), *Schiedea stellarioides*, *Peperomia*

macraeana (ala ala wai nui), *Claoxylon sandwicense*, *Santalum freycinetianum*, or *Styphelia tameiameia* (59 FR 9304; Service 1995; K. Wood, pers. comm., 2001).

The major threats to this species are feral goats and pigs; competition with the non-native plants *Erigeron karvinskianus*, *Acacia mearnsii*, *Corynocarpus laevigata* (karakanut), *Myrica faya* (firetree), or *Rubus argutus*; seed predation by rats; fire; and erosion (59 FR 9304; Service 1995).

Hedyotis st.-johnii (Na Pali beach hedyotis)

Hedyotis st.-johnii, a member of the coffee family (Rubiaceae), is a succulent perennial herb with slightly woody, trailing, quadrangular stems and fleshy leaves clustered towards the base of the stem. This species is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis st.-johnii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Currently, there are a total of four populations, containing approximately 296 individuals, on State-owned land in Nualolo Valley, Nualolo Kai, Kaahole Valley, Keawanui, Kawaiula Valley, Milolii Spring, Makaha Point, Polihale Spring, Kalepa Valley, and Nakeikionaiwi Caves within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (HINHP Database 2000; GDSI 2000).

This plant grows in the crevices of north-facing, near-vertical coastal cliff faces in sparse dry coastal shrubland at elevations between 0 and 187 m (0 and 613 ft). Associated native plant species include *Artemisia australis* (ahinahina), *Bidens* spp., *Capparis sandwichiana* (maia pilo), *Chamaesyce celastroides* (akoko), *Eragrostis variabilis* (kawelu), *Heteropogon contortus* (pili grass), *Lipochaeta connata* (nehe), *Lycium sandwicense* (ohelo kai), *Myoporum sandwicense* (naio), *Nototrichium sandwicense* (kulu), or *Schiedea apokremnos* (maolioli) (56 FR 49639, K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral goats; competition from non-native plant species, especially *Pluchea carolinensis*; landslides; fire; trampling and grazing by cattle (*Bos taurus*); and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased

reproductive vigor because of the small population sizes and restricted distribution (56 FR 49639; Service 1995).

Hesperomannia lydgatei (NCN)

Hesperomannia lydgatei, a member of the aster family (Asteraceae) is a sparsely branched, small, long-lived perennial tree 2 to 4 m (6.5 to 13 ft) tall with alternately arranged, lance-shaped, or elliptic leaves that are 10 to 30 cm (4 to 12 in.) long and 3.5 to 9 cm (1.4 to 3.5 in.) wide, broader above the middle and paler beneath. The flower heads are in groups of four or five on slender stems and are clustered at the ends of branches and pendant when mature. The flower heads consist of four to eight circles of overlapping bracts, the outer are purplish or brownish and the inner are silver, that surround the slender, tubular yellow florets, which are 2.2 to 2.5 cm (0.9 to 1 in.) long (Wagner *et al.* 1999).

Almost no mature fruits develop, and it is possible that it is self-infertile and fails to set seed unless cross-pollinated with other individuals. The flower heads with long, tubular yellow florets suggest pollination by long-tongued insects such as moths or butterflies, although field observation is required to confirm this. Absence of the appropriate pollinator(s) could be responsible for the observed lack of viable seeds. The plume-like hairs crowning the fruit strongly suggests dispersal by wind, as in many members of the aster family. This species grows almost exclusively along streams, however, so dispersal by water currents is also likely. Specific details regarding growth rates, age trees begin flowering in the wild, length of time they remain reproductive, and longevity of the plants are unknown (Service 1994).

Historically, *Hesperomannia lydgatei* was found in the Wahiawa Mountains of Kauai. Currently, this species is known from State (Halelea Forest Reserve) and privately owned lands in the Pali Elele, Waiole Valley, Wahiawa and Kapalaoa areas. There are three populations containing a total of 295 individual plants (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Hesperomannia lydgatei is found at elevations between 405 and 1,570 m (1,329 and 5,151 ft) along stream banks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest. Associated native plant species include *Adenophorus periens*, *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii*, *Dubautia*

laxa, *Dubautia pauciflora*, *Dubautia raillardoides* (naenae), *Elaphoglossum* spp., *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra*, or *Syzygium sandwicensis* (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to the species include non-native plants, feral goats, rats, landslides, and erosion (Service 1994).

Hibiscadelphus woodii (hau kuahiwi)

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched, long-lived perennial tree with a rounded crown.

Hibiscadelphus woodii differs from the other Kauai species by differences in leaf surface and characteristics of the whirled leaves or bract and flower color (Lorence and Wagner 1995; Bates 1999).

Flowering material has been collected in March, April, and September, but no fruit set has been observed in spite of efforts to manually outcross and bag the flowers. A museum specimen of a liquid-preserved flower has been identified that contains three adult Nitidulidae (sap) beetles, probably an endemic species. The damage by these larvae may be responsible for the observed lack of fruit set in *Hibiscadelphus woodii* (Lorence and Wagner 1995; Service 1998a). No additional life history information for this species is currently known.

Hibiscadelphus woodii has been found only at the site of its original discovery on State-owned land in left branch of the Kalalau Valley, within the Na Pali Coast State Park on Kauai; only two trees of this species are currently known (GDSI 2000; HINHP Database 2000; K. Wood, in litt. 2001).

Hibiscadelphus woodii is found at elevations between 219 and 1,197 m (717 and 3,926 ft) on basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. These forests contain one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis* (kookoolau), *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis* (akoko), *Dubautia* spp., *Hedyotis* spp., *Lepidium serra* (anaunau), *Lipochaeta* spp. (nehe), *Lobelia niihauensis* (NCN), *Lysimachia glutinosa* (kolokolo kuahiwi), *Melicope pallida* (alani), *Myrsine* spp. (kolea), *Nototrichium* spp. (kului), *Panicum lineale*, *Poa mannii* (NCN), or *Stenogyne campanulata* (NCN) (Lorence and Wagner 1995; 61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Hibiscadelphus woodii* are habitat degradation by feral goats and pigs; competition from the non-native plant species *Erigeron karvinskianus*; nectar robbing by Japanese white-eye (*Zosterops japonicus*), an introduced bird; and a risk of extinction from naturally occurring events (e.g., rock slides), and reduced reproductive vigor due to the small number of existing individuals at the only known site (61 FR 53070; Lorence and Wagner 1995).

Hibiscus clayi (Clay's hibiscus)

Hibiscus clayi, a member of the mallow family (Malvaceae), is a long-lived perennial shrub or small tree. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule and by the margins of the leaves (Bates 1999).

Little is known about the life history of *Hibiscus clayi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hibiscus clayi* was known from scattered locations on Kauai: the Kokee region on the western side of the island, Moloaa Valley to the north, Nounou Mountain in Wailua to the east, and as far south as Haiku near Halii Stream. At this time, only the population on State land in the Nounou Mountains, with a total of six trees, is known to be extant (HINHP Database 2000; GDSI 2000).

Hibiscus clayi generally grows on slopes at elevations between 9 and 380 m (29 and 1,245 ft) in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest with *Artemisia australis*, *Bidens* spp., *Cyanea hardyi* (haha), *Hedyotis acuminata* (au), *Gahnia* spp., *Munroidendron racemosum* (NCN), *Pandanus tectorius* (hala), *Panicum tenuifolium* (mountain pili), *Pleomele aurea*, *Pipturus* spp., *Psychotria* spp., or *Psydrax odoratum* (59 FR 9304; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral pigs; competition from non-native plant species, *Psidium cattleianum* and *Araucaria columnaris* (Norfolk Island pine); trampling by humans; and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population sizes and restricted distribution (59 FR 9304; HINHP Database 2000).

Hibiscus waimeae ssp. *hannerae* (kokio keokeo)

Hibiscus waimeae ssp. *hannerae*, a member of the mallow family (Malvaceae), is a gray-barked tree with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The long-lived perennial species is distinguished from others of the genus by the position of the anthers along the staminal column, length of the staminal column relative to the petals, color of the petals, and length of the calyx. Two subspecies, ssp. *hannerae* and ssp. *waimeae*, both endemic to Kauai, are recognized. Subspecies *hannerae* is distinguishable from ssp. *waimeae* by its larger leaves and smaller flowers (Bates 1999).

Little is known about the life history of *Hibiscus waimeae* ssp. *hannerae*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Hibiscus waimeae* ssp. *hannerae* was known from Kalihiwai and adjacent Valleys, Limahuli Valley, and Hanakapiai Valley. This subspecies is no longer extant at Kalihiwai. Currently, there are three populations containing 27 individuals on State (Na Pali Coast State Park) and privately owned lands in Hanakapiai Valley, Limahuli Valley, and Pohakuao (Bates 1999; HINHP Database 2000; GDSI 2000).

Hibiscus waimeae ssp. *hannerae* grows at elevations between 174 and 1,154 m (570 and 3,787 ft). It is found in *Metrosideros polymorpha*-*Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* (papala) lowland wet or mesic forest with *Antidesma* spp., *Psychotria* spp., *Pipturus* spp., *Bidens* spp., *Bobea* spp., *Sadleria* spp., *Cyrtandra* spp., *Cyanea* spp., *Cibotium* spp., *Perrottetia sandwicensis*, or *Syzygium sandwicensis* (Service 1998a; Bates 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs, competition with non-native plant species, and a risk of extinction from naturally occurring events (e.g., landscapes and hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (61 FR 53070; HINHP Database 2000).

Kokia kauaiensis (kokio)

Kokia kauaiensis, a member of the mallow family (Malvaceae), is a small tree. This long-lived perennial species is distinguished from others of this endemic Hawaiian genus by the length

of the bracts surrounding the flower head, number of lobes and the width of the leaves, the length of the petals, and the length of the hairs on the seeds (Bates 1999).

Little is known about the life history of *Kokia kauaiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Kokia kauaiensis* was found at seven scattered populations on northwestern Kauai. Currently, there are a total of five populations with 166 individuals, found in Pohakuao, the left branch of Kalalau Valley, Paaiki Valley, Kuia Valley, Koaie Canyon, Kipalau Valley, and Kawaiiki Valley, all on State-owned land within Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Kokia kauaiensis typically grows in diverse mesic forest at elevations between 215 and 1,037 m (707 and 3,402 ft). Associated native plant species include *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides*, *Claoxylon sandwicense*, *Dicranopteris linearis*, *Diellia pallida*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Flueggea neowawraea*, *Hibiscus* spp. (aloalo), *Hedyotis* spp., *Isodendron laurifolium* (aupaka), *Lipochaeta fauriei* (nehe), *Melicope* spp., *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Nototrichium* spp., *Pisonia* spp., *Pleomele aurea*, *Pouteria sandwicensis*, *Psychodora odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium* (iliahi), *Streblus pendulinus* (aiai), *Syzygium sandwicensis*, *Tetraplasandra* spp., or *Xylosma* spp. (Service 1998a; Bates 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with and habitat degradation by invasive non-native plant species, substrate loss from erosion, habitat degradation and browsing by feral goats and deer, and seed predation by rats are the major threats affecting the survival of *Kokia kauaiensis* (Wood and Perlman 1993; Service 1998a; HINHP Database 2000).

Labordia lydgatei (kamakahala)

Labordia lydgatei, a member of the logania family (Loganiaceae), is a much-branched perennial shrub or small tree with sparsely hairy, square stems. The small size of the flowers and capsules borne on sessile (attached to the base) inflorescences (a flower cluster)

distinguish it from other members of the genus growing in the same area (Wagner *et al.* 1999).

Immature fruits were seen on two plants during surveys in 1991 and 1992 by botanists from NTBG, and remnants of old fruiting bodies were seen on another, suggesting that the plants are able to self-fertilize. It is also suspected that the fruits of this species are adapted for bird dispersal. Due to a lack of bird or other native pollinators, pollination may be inhibited. Micro-habitat requirements for seed germination and growth may also be extremely specific. Virtually nothing is known about the life history or ecology of this species (Service 1994).

This species was originally known from the Wahiawa Drainage, Waioli Stream Valley, and Makaleha Mountains on Kauai. *Labordia lydgatei* is currently known from six populations, consisting of 37 individual plants, located on State (Lihue-Koloa Forest Reserve and Halelea Forest Reserve) and privately owned lands at Pali Elele, Waioli Valley, Lelewi, Lumahai Valley, and Kapalaoa (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Labordia lydgatei is found on streambanks in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest at elevations between 182 and 1,140 m (597 and 3,740 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii* (hame), *Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii*, *Hedyotis terminalis*, *Ilex anomala*, *Labordia hirtella* (NGN), *Psychotria* spp., or *Syzygium sandwicensis* (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition from non-native plants poses the greatest threat to the survival of *Labordia lydgatei* (56 FR 47695). Additional threats include habitat degradation from feral pigs; rats, a potential seed predator; landslides and erosion; and a lack of dispersal, germination or pollination agents (Service 1994).

Labordia tinifolia var. *wahiawaensis* (kamakahala)

Labordia tinifolia var. *wahiawaensis*, a member of the logania family (Loganiaceae), is a shrub or small tree with hairless, cylindrical young branches. This long-lived perennial species differs from others of the genus by having a long common flower cluster stalk, hairless young stems and leaf surfaces, transversely wrinkled capsule valves, and corolla lobes usually 1.7 to 2.3 millimeter (mm) (0.1 to 0.2 in.) long. Three varieties of *Labordia tinifolia* are

recognized: var. *Ianaiensis* on Lanai and Molokai; var. *tinifolia* on Kauai, Oahu, Molokai, Maui, and Hawaii; and var. *wahiawaensis*, endemic to Kauai. The variety *wahiawaensis* is distinguished from the other two by its larger corolla (Wagner *et al.* 1999).

Little is known about the life history of *Labordia tinifolia* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Labordia tinifolia var. *wahiawaensis* has only ever been known from one population with a current total of approximately 100 individual plants on private land in the Wahiawa Drainage in the Wahiawa Mountains (GDSI 2000; HINHP Database 2000).

Labordia tinifolia var. *wahiawaensis* grows along streambanks in lowland wet forests dominated by *Metrosideros polymorpha* at elevations between 458 and 1,006 m (1,502 and 3,301 ft), with *Antidesma platyphyllum*, *Athyrium microphyllum* (akolea), *Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Hedyotis terminalis*, or *Psychotria* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with non-native plants, habitat degradation by feral pigs, trampling by humans, and a risk of extinction from catastrophic random events or reduced reproductive vigor due to the small number of individuals in a single population (61 FR 53070).

Lipochaeta fauriei (nehe)

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems. This short-lived perennial species differs from other species on Kauai by having a greater number of disk and ray flowers per flower head, longer ray flowers, and longer leaves and leaf stalks (Gardner 1976, 1979; Service 1995; Wagner *et al.* 1985, 1990).

Little is known about the life history of *Lipochaeta fauriei*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Lipochaeta fauriei* is known from Olokele Canyon on Kauai. This species is now found on State-owned land in Poopooiki Valley, Kuia Valley, Haelele Valley, and Kawaiiki Valley with the Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest

Reserve. Currently there is a total of four populations with 183 individuals. A population in Koaie Canyon previously thought to be *L. fauriei* was later identified as *L. subcordata* (Service 1995; Gardner 1979; K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

This species grows most often in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests at elevations between 436 and 947 m (1,432 and 3,108 ft). Associated native plant species include *Acacia koa*, *Carex meyenii*, *Carex wahuensis*, *Dicranopteris linearis*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pleomele aurea*, *Psychotria greenwelliae*, *Psychotria mariniana*, or *Sapindus oahuensis* (lonomea) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Lipochaeta fauriei* are predation and habitat degradation by feral goats and pigs and competition with invasive non-native plants. Fire is also a significant threat to *L. fauriei* due to the invasion of *Melinis minutiflora*, a fire-adapted grass that creates unnaturally high fuel loads. The small total number of individuals makes the species susceptible to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (59 FR 9304; Service 1995; HINHP Database 2000).

Lipochaeta micrantha (nehe)

Lipochaeta micrantha, a member of the aster family (Asteraceae), is a somewhat woody short-lived perennial herb. The small number of disk florets (one of the small flowers forming the head of a composite plant) separates this species from the other members of the genus on the island of Kauai. The two recognized varieties of this species, var. *exigua* and var. *micrantha*, are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life histories of *Lipochaeta micrantha* var. *exigua* or *L. m.* var. *micrantha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lipochaeta micrantha* var. *exigua* was only known from the Haupu Range on Kauai. Currently, two populations of *L. micrantha* var. *exigua*, with a total of 110 individuals, are

known from privately owned land in the vicinity of Haupu Range and southwest of Hokenui summit. Historically, *L. micrantha* var. *micrantha* was known from Olokele Canyon, Hanapepe Valley, and the Koloa District on Kauai.

Currently, this variety is only known from three populations totaling 121 individuals on State land within the Na Pali-Kona Forest Reserve in Koaie Canyon and Kawaiiki Valley (HINHP Database 2000; GDSI 2000).

Lipochaeta micrantha grows on cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities at elevations between 35 and 1,362 m (115 and 4,468 ft). Associated species include *Acacia koa*, *Artemisia australis*, *Antidesma* spp., *Bidens sandwicensis*, *Bobea* spp., *Chamaesyce celastroides* var. *hanapepensis*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis grandis*, *Eragrostis variabilis*, *Hibiscus kokio* (kokio), *Lepidium bidentatum* (anaunau), *Lobelia niihauensis*, *Melicope* spp., *Metrosideros polymorpha*, *Neraudia kauaiensis*, *Nototrichium* spp. *Plectranthus parviflorus* (ala ala wai nui), *Pleomele aurea*, *Psydrax odoratum*, *Pipturus* spp., *Rumex albescens* (huahuako), *Sida fallax* (ilima), or *Xylosma hawaiiense* (maua) (Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to both varieties of *Lipochaeta micrantha* are habitat degradation by feral pigs and goats; and competition with non-native plant species, such as *Lantana camara*, *Pluchea carolinensis*, *Erigeron karvinskianus*, or *Stachytarpheta dichotoma*. The species is also threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations (Lorence and Flynn 1991; Service 1995; HINHP Database 2000).

Lipochaeta waimeaensis (nehe)

Lipochaeta waimeaensis, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb. This species is distinguished from other *Lipochaeta* on Kauai by leaf shape and the presence of shorter leaf stalks and ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life history of *Lipochaeta waimeaensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Lipochaeta waimeaensis has been known only from the original site of

discovery along the rim of Kauai's Waimea Canyon on State-owned land. There are no more than 100 individuals (HINHP Database 2000; GDSI 2000).

This species grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland forest at elevations between 44 and 460 m (145 and 1,509 ft) with *Artemisia australis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Lipochaeta connata*, *Santalum ellipticum* (iliahialoe), *Schiedea spergulina*, or *Panicum* spp. (NCN) (Wagner *et al.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Lipochaeta waimeaensis* are competition from non-native plants and habitat destruction by feral goats, whose presence exacerbates the existing soil erosion problem at the site. The single population, and thus the entire species, is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Melicope haupuensis (alani)

Melicope haupuensis, a member of the rue family (Rutaceae), is a small long-lived perennial tree. Unlike other species of this genus on Kauai, the exocarp (outermost layer of a fruit) and endocarp (innermost layer of a fruit) are hairless and the sepals are covered with dense hairs (Stone *et al.* 1999).

Little is known about the life history of *Melicope haupuensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

For 62 years, *Melicope haupuensis* was known only from the site of its original discovery on the north side of Haupu Ridge on Kauai. This population is now gone. The species is now known from four populations with a total of five individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve in Kalahu, Awaawapuhi Valley, and Koaie Canyon (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Melicope haupuensis grows on moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha*-*Acacia koa* montane mesic forest at elevations between 111 and 1,141 m (364 and 3,745 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Cheirodendron trigynum*, *Claoxylon sandwicensis*, *Cryptocarya mannii* (holio), *Dianella sandwicensis*,

Diospyros hillebrandii, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope anisata*, *M. barbiger* (alani), *M. ovata* (alani), *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor* (loulou), *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra waimeae* (oheohe), or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats and competition with invasive non-native plant species are the major threats to *Melicope haupuensis*. In addition, this species may be susceptible to the black twig borer (*Xylosandrus compactus*). The existence of only five known trees constitutes an extreme threat of extinction from naturally occurring events, such as landslides or hurricanes, or reduced reproductive vigor (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; HINHP Database 2000).

Melicope quadrangularis (alani)

Melicope quadrangularis, a member of the rue family (Rutaceae), is a shrub or small tree. Young branches are generally covered with fine yellow fuzz but become hairless with age. The thin, leathery, elliptical leaves, are oppositely arranged. The upper leaf surface is hairless, and the lower surface is sparsely hairy, especially along the veins. Flowers are solitary or in clusters of two. The specific floral details are not known. The fruits are somewhat cube-shaped, flattened capsules, with a conspicuous central depression at the top of the fruit. The capsules are four-lobed and completely fused. The exocarp is sparsely hairy, and the endocarp is hairless. This species differs from others in the genus in having the following combination of characters: oppositely arranged leaves, only one or two flowers per cluster, cube-shaped capsules with fused lobes, and a deep central depression at the top of the fruit (Stone *et al.* 1999).

Little is known about the life history of *Melicope quadrangularis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Melicope quadrangularis is known from the type locality in the Wahiawa Bog region of Kauai. One adult plant and two seedlings were discovered in 1991 by Ken Wood of NTBG on an east-facing slope of Wahiawa Ridge at 853 m (2,800 ft) on privately owned land. Subsequent exploration has resulted in the location of a total of 13 individuals

of this species. Although a survey after hurricane Iniki in 1992 did not relocate any individuals, it is hoped that there is a seed bank or that undiscovered individuals remain to be found (Stone *et al.* 1999).

Melicope quadrangularis grows in *Metrosideros polymorpha* diverse lowland wet forest that ranges from mesic to wet conditions at elevations between 608 and 1,593 m (1,995 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cheirodendron fauriei* (olapa), *Cibotium nealii* (hapuu), *Cyrtandra pickeringii* (haiwale), *Dicranopteris lineraris*, *Machaerina angustifolia*, *Machaerina mariscoides* (uki), other *Melicope* spp., *Metrosideros waialealae* (NCN), *Psychotria hexandra*, *P. mariniana*, *P. wawraea* (kipiko), *Sadleria pallida*, *Scaevola gaudichaudiana* (naupaka kuahiwi), *Syzygium sandwicensis*, or abundant ferns and mosses (K. Wood, pers. comm., 2001).

This species is threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor, non-native plants and habitat disturbance by feral pigs (Service 1994).

Munroidendron racemosum (NCN)

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a small tree with a straight gray trunk crowned with spreading branches. This long-lived perennial species is the only member of a genus endemic to Hawaii. The genus is distinguished from other closely related Hawaiian genera of the family by its distinct flower clusters and corolla (Constance and Affolter 1999).

Reproduction occurs year-round, with flowers and fruits found throughout the year. Self pollination is assumed to occur since viable seeds have been produced by isolated individuals. Pollinators have not been observed, but insect pollination is likely. Dispersal mechanisms are unknown (Service 1995).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai. Populations are now known from Waiahuakua, Pohakuao, the left branch of Kalalau Valley, the right branch of Kalalau Valley, Nakeikionaiwi Valley, Awaawapuhi Valley Spring, Honopu Valley, Nualolo Valley, Poomau Valley, Kawaiiki Valley, Koaie Canyon, Nonou, Haupu, and Keopaweo. There are currently 14 known populations with approximately 101 individuals on State (Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona

Forest Reserve, Nonou Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands (HINHP Database 2000; GDSI 2000).

Munroidendron racemosum is typically found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests at elevations between 6 and 979 m (19 and 3,213 ft). Associated plant species include *Bobea brevipes*, *Brighamia insignis* (olulu), *Canavalia napaliensis* (awikiwiki), *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Pisonia sandwicensis* (papala kepau), *Pisonia umbellifera* (papala kepau), *Pleomele aurea*, *Pouteria sandwicensis* *Psychotria* spp., *Psydrax odoratum*, *Rauwolfia sandwicensis*, *Schiedea* spp. (NCN), *Sida fallax*, or *Tetraplasandra* spp. (59 FR 9304; Gagne and Cuddihy 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The threats to *Munroidendron racemosum* are competition with non-native plant species, such as *Aleurites moluccana*, *Psidium guajava*, *Lantana camara*, or *Leucaena leucocephala* (koa haole); habitat degradation by feral goats, fire, and fruit predation by rats; introduced insect of the long-horned beetle family (Cerambycidae); extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor (59 FR 9304; Service 1995; HINHP Database 2000).

Myrsine linearifolia (kolea)

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub. This long-lived perennial species is distinguished from others of the genus by the shape, length, and width of the leaves, length of the petals, and number of flowers per cluster (Wagner *et al.* 1999).

Little is known about the life history of *Myrsine linearifolia*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Myrsine linearifolia* was found at scattered locations on Kauai: Olokele Valley, Kaluaea, Kalalau Valley, Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit Plateau, and Haupu. There are currently eight populations with approximately 522 individuals on State (Alakai Wilderness Preserve and Na Pali Coast State Park) and privately owned lands. The populations are found in Limahuli Valley, Alealau, the left branch of Kalalau Valley, Puu O Kila, Koaie Canyon, Na Molokama, and Kapalaoa

(K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Myrsine linearifolia typically grows at elevations between 105 and 1,380 m (346 and 4,526 ft), in diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* spp., or *Dicranopteris linearis* as co-dominant species. Plants growing in association with this species include *Bobea brevipes*, *Cryptocarya mannii*, *Dubautia* spp., *Eurya sandwicensis* (anini), *Freycinetia arborea*, *Hedyotis terminalis*, *Lysimachia glutinosa*, *Machaerina angustifolia*, *Melicope* spp., *Myrsine* spp., *Nothocestrum* spp. (aiea), *Psychotria* spp., *Sadleria pallida*, *Syzygium sandwicensis*, or native ferns (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with non-native plants, such as *Erigeron karvinskianus*, *Lantana camara*, *Rubus argutus*, *Psidium cattleianum*, *Rubus rosifolius*, and *Kalanchoe pinnata* (air plant), and habitat degradation by feral pigs and goats are the major threats to *Myrsine linearifolia* (61 FR 53070).

Nothocestrum peltatum (aiea)

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree with ash-brown bark and woolly stems. The usually peltate leaves and shorter leaf stalks separate this species from others in the genus (Symon 1999).

Although plants of this long-lived perennial species have been observed flowering, they rarely set fruit. This could be the result of a loss of pollinators, reduced genetic variability, or an inability to fertilize itself. Little else is known about the life history of *Nothocestrum peltatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 9304).

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo. This species is now known from a total of six populations with 19 individuals, located at Kahuamaa Flats, Awaawapuhi Trail, Awaawapuhi Valley, Kawaiula Valley, and Makaha Valley all on State-owned land within the Kokee State Park, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and the Puu Ka Pele Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species generally grows in rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros*

polymorpha, at elevations between 725 and 1,290 m (2,378 and 4,232 ft).

Associated native plants include *Alphitonia ponderosa*, *Antidesma* spp., *Bobea brevipes*, *Broussaisia arguta*, *Cheirodendron trigynum*, *Claoxylon sandwicensis*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *M. barbiger*, *M. haupuensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra kauaiensis*, or *Xylosma* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with non-native plants (such as *Passiflora mollissima*, *Lantana camara*, *Rubus argutus*, or *Erigeron karvinskianus*), and habitat degradation by feral pigs, deer, and red jungle fowl (*Gallus gallus*) constitute the major threats to *Nothocestrum peltatum*. This species is also threatened by fire, risk of extinction from naturally occurring events (e.g., landslides or hurricanes), and reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; HINHP Database 2000).

Panicum niihauense (lau ehu)

Panicum niihauense, a member of the grass family (Poaceae), is a perennial bunchgrass with unbranched culms (aerial stems). This short-lived perennial species is distinguished from others in the genus by the shape of the inflorescence branches, which are erect, and the arrangement of the spikelets, which are densely clustered (Davidse 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Panicum niihauense was known historically from Niihau and one location on Kauai. Currently, this species is only known from one population of 23 individuals at the Polihale State Park area on State-owned land (HINHP Database 2000; GDSI 2000).

Panicum niihauense is found scattered in sand dunes in coastal shrubland at elevations between 0 and 103 m (0 and 337 ft). Associated native plant species include *Cassytha filiformis* (kaunaoa pehu), *Chamaesyce celastroides*, *Dodonaea viscosa*, *Nama sandwicensis* (nama), *Ophioglossum pendulum* ssp. *falcatum* (NCN), *Scaevola sericea* (naupaka kahakai), *Sida fallax*, *Vitex rotundifolia* (kolokolo kahakai), or *Sporobolus virginicus*

(akiaki) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Primary threats to *Panicum niihauense* are destruction by off-road vehicles, competition with non-native plant species, and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of individuals in the one remaining population (61 FR 53108; HINHP Database 2000).

Phyllostegia knudsenii (NCN)

Phyllostegia knudsenii, a member of the nonaromatic mint family (Lamiaceae), is an erect herb or vine. This short-lived perennial species is distinguished from others in the genus by its specialized flower stalk; it differs from the closely related *P. floribunda* by often having four flowers per group (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia knudsenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Until 1993, *Phyllostegia knudsenii* was only known from the site of its original discovery made in the 1800s from the woods of Waimea on Kauai. There is currently one known population with a total of 17 individuals on State-owned land in Koaie Canyon within the Alakai Wilderness Preserve (K. Wood, *in litt.* 1999; Wagner *et al.* 1999; HINHP Database 2000; GDSI 2000).

Phyllostegia knudsenii is found in *Metrosideros polymorpha* lowland mesic or wet forest at elevations between 399 and 1,059 m (1,309 and 3,475 ft). Associated native plant species include *Bobea timonioides* (ahakea), *Claoxylon sandwicensis*, *Cryptocarya mannii*, *Cyrtandra kauaiensis*, *Cyrtandra paludosa* (hai wale), *Diospyros sandwicensis*, *Elaeocarpus bifidus*, *Ilex anomala*, *Myrsine linearifolia*, *Perrottetia sandwicensis*, *Pittosporum kauaiense* (hoawa), *Pouteria sandwicensis*, *Pritchardia minor*, *Selaginella arbuscula* (lepelepeamo), *Tetraplasandra oahuensis* (ohe ohe), or *Zanthoxylum dipetalum* (61 FR 53070; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia knudsenii* include habitat degradation by feral pigs and goats, competition with non-native plants, and a risk of extinction from naturally occurring events (e.g., landslides and hurricanes) and reduced reproductive vigor due to the small number of individuals in the

only known population (61 FR 53070; Service 1998a).

Phyllostegia waimeae (NCN)

Phyllostegia waimeae, a nonaromatic member of the mint family (Lamiaceae), is a climbing perennial plant with hairy four-angled stems that are woody at the base. The oval leaves are 5 to 13 cm (2 to 5 in.) long, 2.5 to 6 cm (1 to 2.4 in.) wide, and have rounded, toothed margins. They are wrinkled and sparsely dotted with oil glands. Flowers grow in groups of six along an unbranched leafy stalk usually 10 to 15 cm (3.9 to 5.9 in.) long. The bracts below each flower stalk are broad and partially overlap the flowers. The calyx resembles an inverted cone with broad lobes. The corolla, 8 to 12 mm (0.3 to 0.5 in.) long, is pinkish or may be white. The fruits, probably nutlets, have not been observed. Characteristics that distinguish this species from others in the genus are the nearly stalkless bracts that partially overlap and cover the flowers, and relatively fewer oil glands on the leaves (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia waimeae*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Phyllostegia waimeae* was known from Kaholuamanu and Kaaha on Kauai. Currently, one population with six individuals persists from State land in Kawaiiki Valley within the Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 2001).

This species typically grows in *Acacia koa*-*Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Broussaisia arguta*, *Claoxylon sandwicense*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Elaphoglossum* spp., *Gunnera* spp., *Hedyotis* spp., *Myrsine lanaiensis*, *Pleomele aurea*, *Psychotria* spp., *Sadleria* spp., *Scaevola procera* (naupaka kuahiwi), *Syzygium sandwicense*, or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

Habitat destruction by feral goats, erosion, and competition with introduced grasses are the major threats to *Phyllostegia waimeae*. The species is also threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals (Service 1995).

Phyllostegia wawrana (NCN)

Phyllostegia wawrana, a nonaromatic member of the mint family (Lamiaceae), is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. This short-lived perennial species can be distinguished from the related *P. floribunda* and *P. knudsenii*, by its less specialized flower stalk (Wagner *et al.* 1999).

Seeds were observed in the wild in August 1993. No additional life history information for this species is currently known (Service 1998a).

Phyllostegia wawrana was reported to be found at Hanalei on Kauai in the 1800s and along Kokee Stream in 1926. Currently, populations are reported from Koaie Canyon, Moaalele, Awaawapuhi Valley, and Makaleha. A total of four populations with approximately 49 individuals are found on State-owned land within the Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, and Kokee State Park (HINHP Database 2000; GDSI 2000).

This species grows at elevations between 398 and 1,284 m (1,306 and 4,212 ft) in *Acacia koa*-*Metrosideros polymorpha*-*Cheirodendron* mixed mesic forest. Associated native plant species include *Alectryon* spp., *Asplenium polypodum* (NCN), *Athyrium microphyllum*, *Cadox* spp., *Claoxylon sandwicense*, *Cyanea fissa* (haha), *Delissea rivularis*, *Dianella sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Doodia kunthiana*, *Dryopteris wallichiana*, *Dubautia knudsenii*, *Dubautia laevigata*, *Hedyotis tryblum*, *Machaerina angustifolia*, *Panicum nephelophilum*, *Peperomia macraeana*, *Perrottetia sandwicensis*, *Poa sandwicensis*, *Pleomele aurea*, *Pteridium aquilinum* var. *decompositum*, *Sadleria pallida*, *Schiedea stellarioides*, *Scaevola procera*, *Syzygium sandwicensis*, *Touchardia latifolia*, or *Vaccinium dentatum* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia wawrana* include habitat degradation by feral pigs and competition with non-native plant species, such as *Rubus rosifolius*, *Passiflora mollissima*, *Rubus argutus*, *Melastoma candidum*, *Erigeron karvinskianus*, and *Erechtites valerianefolia* (61 FR 53070; Service 1998a).

Poa mannii (Mann's bluegrass)

Poa mannii, a member of the grass family (Poaceae), is a perennial grass with short rhizomes (underground stems) and erect, tufted culms. All three

native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *P. siphonoglossa* and *P. sandwicensis* by its fringed ligule (an appendage on the sheath of a blade of grass) and from *P. sandwicensis* by its shorter panicle (a pyramidal loosely-branched flower cluster) branches (O'Connor 1999).

Little is known about the life history of *Poa mannii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was found in Olokele Gulch on Kauai. Currently, there is a total of six populations with approximately 268 individuals on State-owned land in the right and left branches of Kalalau Valley, Awaawapuhi Valley, Kuia Valley, and Kauhao Valley within the Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Waimea Canyon State Park (K. Wood, *in litt.* 1999; O'Connor 1999; HINHP Database 2000; GDSI 2000).

This species typically grows on cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa*-*Metrosideros polymorpha* forest at elevations between 327 and 1,222 m (1,072 and 4,009 ft). Associated native plant species include *Antidesma platyphyllum*, *Artemisia australis*, *Bidens cosmoides*, *Bidens sandwicensis*, *Carex meyenii*, *C. wahuensis*, *Chamaesyce celastroides* var. *hanapepensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Lobelia niihauensis*, *Lobelia yuccoides* (NCN), *Luzula hawaiiensis* (woodrush), *Mariscus phloides* (NCN), *Melicope anisata*, *M. barbiger*, *M. pallida*, *Nototrichium* spp., *Panicum lineale*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Schiedea lydgatei* var. *attenuata*, *Schiedea membranacea*, or *Wilkesia gymnoxiphium* (59 FR 56330; HINHP Database 2000; K. Wood, pers. comm., 2001).

Poa mannii survives only in very steep areas that are inaccessible to goats, suggesting that goat herbivory may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai. Threats to *P. mannii* include habitat damage, trampling, and browsing by feral goats, and competition with invasive non-native plants. *Erigeron karvinskianus* has invaded Kalalau, Koaie, and Waialae Valleys, three of the areas where *P. mannii*

occurs. *Lantana camara* threatens all known populations, and *Rubus argutus* threatens the populations in Kalalau and Waialae Valleys. *Poa mannii* is also threatened by fire and reduced reproductive vigor and/or extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of existing populations and individuals (59 FR 56330).

Poa sandvicensis (Hawaiian bluegrass)

Poa sandvicensis is a perennial grass (Poaceae) with densely tufted, mostly erect culms. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes (horizontal subterranean plant stem), shorter culms (grass stalk) which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Connor 1999).

Little is known about the life history of *Poa sandvicensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was known from six areas on the island of Kauai: the rim of Kalalau Valley in Na Pali Coast State Park, Halemanu Ridge, Kumuwela Ridges, and Kauaikanana Drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu. Hillebrand's (1888) reference to a Maui locality is most likely an error. Currently, there is a total of nine populations with 1,740 individuals occurring on State-owned land. *Poa sandvicensis* is known to be extant at Alealau, Keanapuka, Awaawapuhi Trail, Kumuwela Ridge, Maile Flat Trail, Mohihi Stream, Mohihi Waialae Trail, Kawaiiki Valley, and Waialae Valley in the Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (57 FR 20580; HINHP Database 2000; GDSI 2000; K. Wood, *in litt.* 1999).

Poa sandvicensis grows on wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa*-*Metrosideros polymorpha* montane forest, at elevations between 498 and 1,290 m (1,635 and 4,232 ft). Associated native plant species include *Alyxia oliviformis*, *Bidens sandvicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Dianella sandwicensis*, *Dicranopteris linearis*, *Dodonaea viscosa*, *Dubautia* spp.,

Hedyotis spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp., *Scaevola procera*, *Schiedea stellarioides*, or *Syzygium sandwicensis* (57 FR 20580; HINHP Database 2000; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of *Poa sandvicensis* are competition from non-native plants, such as *Erigeron karvinskianus*, *Rubus argutus*, *Passiflora mollissima*, or *Hedychium* spp.; erosion caused by feral pigs and goats; and State forest reserve trail maintenance activities and human recreation. In addition, naturally occurring events could constitute a threat of extinction or reduced reproductive vigor due to the species' small population size (57 FR 20580; Service 1995).

Poa siphonoglossa (NCN)

Poa siphonoglossa is a perennial grass (Poaceae). It differs from *P. sandvicensis* principally by its longer culms, lack of a prominent tooth on the ligule, and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses. Short rhizomes, long culms, closed and fused sheaths, and lack of a tooth on the ligule separate *P. siphonoglossa* from *P. mannii* and other closely related species (O'Connor 1999).

Little is known about the life history of *Poa siphonoglossa*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Poa siphonoglossa* was known from five sites on the island of Kauai: Kohua Ridge in Na Pali-Kona Forest Reserve; near Kaholuamanu; Kaulaula Valley in Puu Ka Pele Forest Reserve; Kuia Valley; and Kalalau. Currently, there are a total of five populations with a total of 50 individuals on State-owned land at Kahuamaa Flats, Mohihi Waialai Trail, Kuia Valley, Makaha Ridge, and Kaulaula Valley in the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Poa siphonoglossa typically grows on shady banks on steep slopes in mesic *Metrosideros polymorpha*-*Acacia koa* forests at elevations between 498 and 1,290 m (1,635 and 4,232 ft). Associated native plant species include *Acacia koa*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Coprosma waimeae*, *Dianella*

sandwicensis, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Lobelia yuccoides*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Panicum nephelophilum*, *Poa sandvicensis*, *Psychotria* spp., *Scaevola procera*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Vaccinium* spp., *Wilkesia gymnoxiphium*, *Xylosma* spp., *Zanthoxylum dipetalum* (57 FR 20580, K. Wood, pers. comm., 2001).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation and/or herbivory by feral pigs and deer. The non-native plant *Rubus argutus* invading Kohua Ridge constitutes a probable threat to that population. Small population size and potential for one disturbance event to destroy the majority of known individuals are also serious threats to this species (57 FR 20580; Service 1995; HINHP Database 2000).

Pritchardia aylmer-robinsonii (wahane)

Pritchardia aylmer-robinsonii, a member of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments, tan woolly hairs on the underside of the petiole and the leaf blade base, stout hairless flower clusters that do not extend beyond the fan-shaped leaves, and the smaller spherical fruit (Read and Hodel 1999).

Little is known about the life history of *Pritchardia aylmer-robinsonii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (61 FR 41020).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 m (230 and 885 ft) on privately owned land. The most recent observations indicate that two plants still remain on Kaali Cliff (Read and Hodel 1999; HINHP Database 2000; GDSI 2000).

Pritchardia aylmer-robinsonii typically grows on rocky talus in seepage areas within coastal dry forest at elevations between 91 to 259 m (300 to 850 ft). Associated native plant species include *Brighamia insignis*, *Cyperus trachysanthos*, *Lobelia niihauensis* or *Lipochaeta lobata* var. *lobata* (nehe). Originally a component of the coastal dry forest, this species now occurs only in a rugged and steep area where it receives some protection from

grazing ungulates (61 FR 41020; HINHP Database 2000).

The species is threatened by habitat degradation and/or herbivory by cattle, feral pigs, and feral goats and seed predation by rats. Small population size, limited distribution, and reduced reproductive vigor makes this species particularly vulnerable to extinction (61 FR 41020).

Pritchardia napaliensis (loulu)

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small tree with about 20 leaves and an open crown. This species is distinguished from others of the genus that grow on Kauai by having about 20 flat leaves with pale scales on the lower surface that fall off with age, inflorescences with hairless main axes, and globose (having or consisting of globules) fruits less than 3 cm (1.2 in.) long (Read and Hodel 1999).

Little is known about the life history of *Pritchardia napaliensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Pritchardia napaliensis has only been known from three populations with 155 individuals on State-owned land in Pohakuao, Alealau, Waiahuakua; and Hoolulu Valley within the Hono o Na Pali Natural Area Reserve and Na Pali Coast State Park (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Pritchardia napaliensis typically grows in areas between elevations of 152 and 1,158 m (500 and 3,800 ft) in a wide variety of habitats ranging from lowland dry to diverse mesic forests dominated by *Diospyros* spp. or montane wet forests dominated by *Metrosideros polymorpha* and *Dicranopteris linearis*. Several associated native plant species besides those mentioned above include *Alsinidendron lychnoides*, *Alyxia oliviformis*, *Boehmeria grandis*, *Cheirodendron trigynum*, *Cibotium* spp., *Dubautia knudsenii*, *Elaeocarpus bifidus*, *Hibiscus kokio* ssp. *saintjohnianus* (*kokio*), *Lipochaeta connata* var. *acris* (*nehe*), *Melicope peduncularis* (*alani*), *Nesoluma polynesianum* (*keahi*), *Ochrosia kauaiensis* (*holei*), *Rauwolfia sandwicensis*, *Stenogyne purpurea* (NCN), *Syzygium sandwicensis*, *Phyllostegia electra* (NCN), *Pleomele* spp., *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Santalum freycinetianum* var. *pyrularium*, *Vaccinium dentatum*, *Xylosma hawaiiense*, or *Wilkesia*

gymnoxiphium (Service 1998a; 61 FR 53070; HINHP Database 2000).

Major threats to *Pritchardia napaliensis* include habitat degradation and grazing by feral goats and pigs; seed predation by rats; and competition with the non-native plants, such as *Kalanchoe pinnata*, *Erigeron karvinskianus*, *Lantana camara*, *Psidium guajava*, or possibly *Cordyline fruticosa*. The species is also threatened by vandalism and over-collection. In 1993, near the Wailua River, the Hawaii Department of Forestry and Wildlife (DOFAW) constructed a fenced enclosure around 39 recently planted *P. napaliensis* individuals. Shortly after being planted, the fence was vandalized and the 39 plants were removed. Also, because of the small number of remaining populations and individuals, this species is susceptible to a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor (61 FR 53070; Craig Koga, DOFAW, *in litt.* 1999; A. Kyono, pers. comm., 2000).

Pritchardia viscosa (loulu)

Pritchardia viscosa, a member of the palm family (Arecaceae), is a small tree 3 to 8 m (10 to 26 ft) tall. This species differs from others of the genus that grow on Kauai by the degree of hairiness of the lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1999).

Historically, *Pritchardia viscosa* was known only from a 1920 collection from Kalihiwai Valley. It was not seen again until 1987, when Robert Read observed it in the same general area as the type locality, off the Powerline Road at 512 m (1,680 ft) elevation (HINHP Database 2000). Currently, there is one population with three individuals on State-owned land within the Halelea Forest Reserve (61 FR 53070; HINHP Database 2000; GDSI 2000).

This species is found in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest at elevations between 488 to 518 m (1,600 to 1,700 ft). Associated native species include *Antidesma* spp., *Bobea* spp., *Cibotium* spp., *Cyanea fissa*, *Cyrtandra kauaiensis*, *Cyrtandra longiflora*, *Dubautia knudsenii*, *Nothoecstrum* spp., *Perrottetia sandwicensis*, *Psychotria* spp., *Sadleria pallida*, or *Syzygium sandwicensis* (Service 1998a; 61 FR 53070).

Pritchardia viscosa is threatened by *Psidium cattleianum* and non-native grasses, such as *Paspalum conjugatum*; and seed predation by rats. At least one of the remaining mature trees has been damaged by spiked boots used either by

a botanist or seed collector to scale the tree. In mid-1996, a young plant and seeds from mature *Pritchardia viscosa* plants were removed from the only known location of this species. Because of this past activity, it is reasonable to assume that these plants are threatened by over-collection and vandalism. Also, because of the small numbers of individuals in the only known population, this species is susceptible to extinction since a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants (61 FR 53070; C. Koga, *in litt.* 1999; A. Kyono, pers. comm., 2000).

Pteralyxia kauaiensis (kaulu)

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a long-lived perennial tree 3 to 8 m (10 to 26 ft) tall. The leaves are dark green and shiny on the upper surfaces, but pale and dull on the lower surfaces. This species differs from the only other species of this endemic Hawaiian genus in having reduced lateral wings on the seed (Wagner *et al.* 1999).

Little is known about the life history of *Pteralyxia kauaiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai. This species is now known from 15 populations, with a total of 807 individuals in the following scattered locations on State land: Limahuli Valley, the left branch of Kalalau Valley, Pohakuao, the right branch of Kalalau Valley, Makaha Valley, Kuia Valley, Haelele Valley, Koaie Canyon, Kawaiiki Valley, Hipalau, Haupu, Blue Hole, Poomau Valley, and Kapalikea within the Lihue-Koloa Forest Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve. There is also an undocumented sighting of one individual at Makaleha, above the town of Kapaa (59 FR 9304; K. Wood, *in litt.* 1999; Wagner *et al.* 1999; HINHP Database 2000).

This taxon is typically found in diverse mesic or *Diospyros* *sandwicensis* mixed mesic forests with *Pisonia* spp. between elevations of 915 and 1,007 m (3,002 and 3,305 ft). Associated native plant species include *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Carex* spp., *Charpentiera elliptica*, *Claoxylon sandwicense*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros* spp. (*lama*), *Dodonaea*

viscosa, *Diplazium sandwichianum*, *Euphorbia haeleleana*, *Freycinetia arborea*, *Gahnia* spp., *Gardenia remyi* (nanu), *Hedyotis terminalis*, *Hibiscus kokio*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Neraudia* spp. (NCN), *Nesoluma polynesianum*, *Nestegis sandwichensis*, *Peperomia* spp., *Pleomele aurea*, *Pipturus* spp., *Pisonia sandwichensis*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pritchardia* spp., *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Schiedea* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum* (59 FR 9304; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats and pigs, and, possibly, rats, which may eat the fruit. Fire could threaten some populations. Introduced plants competing with this species include *Psidium guajava*, *Erigeron karvinskianus*, *Aleurites moluccana*, *Lantana camara*, *Psidium cattleianum*, or *Cordyline fruticosa* (59 FR 9304; Service 1995; HINHP Database 2000).

Remya kauaiensis (NCN)

Remya kauaiensis, one of three species of a genus endemic to the Hawaiian Islands, is in the aster family (Asteraceae). *Remya kauaiensis* is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many slender, sprawling branches which are covered with a fine tan fuzz near their tips. The leaves, coarsely toothed along the edges, are green on the upper surface while the lower surface is covered with a dense mat of fine white hairs (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya kauaiensis* may be self-incompatible (56 FR 1450; Herbst 1988; Service 1995).

Historically, this species was found in the Na Pali Kona Forest Reserve at Koaie, Mohihi, Kalalau, Makaha, Nualolo, Kawaiula, Kuia, Honopu, Awaawapuhi, Kopakaka, and Kauhao, on Kauai. There are currently 12 known populations with a total of 124 individuals on State-owned land. They occur in Hipalau Valley, Awini Valley, Koaie Canyon, Mohihi Stream, the left branch of Kalalau Valley, Awaawapuhi and Nualolo Valleys, Kuia and Kawaiula

Valleys, Makaha Valley, Kauhao Valley, and Kaulaula Valley within the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park (K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Remya kauaiensis grows chiefly on steep, north or northeast-facing slopes at elevations between 560 and 1,247 m (1,836 and 4,090 ft). It is found primarily in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest with *Chamaesyce* spp. (akoko), *Claoxylon sandwicense*, *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Hedyotis terminalis*, *Melicope* spp., *Nestegis sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Schiedea* spp., or *Tetraplasandra* spp. (56 FR 1450; Herbst 1988; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Remya kauaiensis* include herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from non-native plant species. Other threats include erosion, fire, and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of remaining populations and individuals (56 FR 1450; Service 1995).

Remya montgomeryi (NCN)

The genus *Remya*, in the aster family (Asteraceae), is endemic to the Hawaiian Islands. *Remya montgomeryi* was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai. It is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many slender, sprawling to weakly erect, smooth branches. The leaves are coarsely toothed along the edges, and are green on the upper as well as lower surfaces (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya montgomeryi* may be self-incompatible (Herbst 1988; 56 FR 1450).

Remya montgomeryi is known only from Kauai. Three populations with 113 individuals are reported on State-owned land in the left and right branches of Kalalau Valley, Koaie Canyon, and Kuia Valley within the Alakai Wilderness Preserve and Na Pali Coast State Park (Herbst 1988; K. Wood, *in litt.* 1999; GDSI 2000; HINHP Database 2000).

Remya montgomeryi grows at elevations between 336 and 1,344 m

(1,102 and 4,411 ft), primarily on steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha* dominated mixed mesic forest. Associated native plant species include *Artemisia australis*, *Bobea* spp., *Boehmeria grandis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Cyrtandra* spp., *Dubautia* spp., *Ilex anomala*, *Lepidium serra*, *Lysimachia* spp. (kolokolo kuahiwi), *Myrsine linearifolia*, *Nototrichium* spp., *Pleomele aurea*, *Poa mannii*, *Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata*, *Tetraplasandra* spp., or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Remya montgomeryi* are herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from non-native plant species. Other threats include erosion, fire, and an increased risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) because of the small size of the populations and their limited distribution (56 FR 1450; Service 1995).

Schiedea apokremnos (maolioli)

Schiedea apokremnos, a member of the pink family (Caryophyllaceae), is a low, branching short-lived perennial shrub 20 to 51 cm (8 to 20 in.) tall. The leaves are oppositely arranged, oblong, and somewhat fleshy and glabrous (having a surface without hairs). *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1999).

Some *S. apokremnos* individuals are functionally female and must be cross-pollinated to set seed. This reproductive strategy may be ineffective in populations with few individuals. Little is known about the life history of *Schiedea apokremnos*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Schiedea apokremnos has been collected from Nualolo Kai, Kaaweiki Ridge, and along a 10.5 km (6.5 mi) long section of the Na Pali coast including Milolii Valley, Kalalau Beach, Kaalahina and Manono Ridges, Haelele Ridge, and, as far north as, Pohakuao Valley, all on the island of Kauai. There is currently a total of five populations containing 751 individuals on State-owned lands. The species is extant at Nakeikionaiwi, Pohakuao, Nualolo Valley, Haelele Valley, and Kawaiiki Valley within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (56

FR 49639; HINHP Database 2000; GDSI 2000).

Schiedea apokremnos grows in the crevices of near-vertical basalt coastal cliff faces, at elevations between 12 and 391 m (40 and 1,283 ft). The species grows in sparse dry coastal cliff shrub vegetation along with *Artemisia australis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Lepidium serra*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia* spp., *Pleomele aurea*, *Psydrax odoratum*, or *Wilkesia* spp. (56 FR 49639; HINHP Database 2000; K. Wood, pers. comm., 2001).

The restriction of this species to inaccessible cliffs suggests that goat herbivory may have eliminated them from more accessible locations. The greatest current threat to the survival of *Schiedea apokremnos* is still herbivory and habitat degradation by feral goats, as well as competition from the non-native plants *Leucaena leucocephala* and *Hyptis pectinata* (comb hyptis), and trampling by humans. Given the small size of most populations and restricted distribution, depressed reproductive vigor may be a serious threats to the species. In addition, a single environmental disturbance (such as a landslide or fire) could destroy a significant percentage of the extant individuals (56 FR 49639; Service 1995).

Schiedea helleri (NCN)

Schiedea helleri, a member of the pink family (Caryophyllaceae), is a short-lived perennial vine. The stems, smooth below and minutely hairy above, are usually prostrate and at least 15 cm (6 in.) long with internodes at least 4 to 15 cm (1.6 to 6 in.) long. The opposite leaves are somewhat thick, triangular, egg-shaped to heart-shaped, conspicuously three-veined, and nearly hairless to sparsely covered with short, fine hairs, especially along the margins. This species is the only member of the genus on Kauai that grows as a vine (Wagner *et al.* 1999).

Three plants were observed flowering in February. No additional life history information for this species is currently known (Service 1998a).

Schiedea helleri was originally found only at a single location above Waimea, at Kaholuamano on the island of Kauai, over 100 years ago. There is currently a total of three populations with 63 individuals on State-owned land at Mohihi Stream, Nawaimaka Valley, and Mohihi Waialae Trail within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Schiedea helleri is found on ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest at elevations between 941 and 1,223 m (3,088 and 4,011 ft). Other native plants growing in association with this species include *Broussaisia arguta*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis*, *Dubautia* spp., *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope* spp., *Myrsine* spp., *Poa sandwicensis*, *Scaevola procera*, *Syzygium sandwicensis*, or *Viola wailenalenae* (pamakani) (K. Wood, pers. comm., 2001; HINHP Database 2000).

Competition with the non-native plant *Rubus argutus*, a risk of extinction from naturally occurring events (e.g., landslides or hurricanes), and reduced reproductive vigor due to the small number of extant individuals are serious threats to *Schiedea helleri* (61 FR 53070).

Schiedea kauaiensis (NCN)

Schiedea kauaiensis, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic. Lacking petals, the perfect flowers are borne in open branched inflorescences, and are moderately covered with fine, short, curly, white hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, larger leaves, the hairiness of the inflorescence, the number of flowers in each inflorescence, larger flowers, and larger seeds (Wagner *et al.* 1999).

Little is known about the life history of this taxon. Fruit and flowers have been observed in July and August, and flowering material has been collected in September. There is no evidence of regeneration from seed under field conditions. Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown (Service 1998a).

Historically, *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papaa to Mahanaloa. It was thought to be extinct until the two currently known populations in Mahanaloa and Kalalau Valleys, with a total of 22 individuals, were found. Both populations occur on State land within the Kuia Natural Area Reserve and Na Pali Coast State Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Schiedea kauaiensis typically grows in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest on steep slopes at elevations between 192 and 1,290 m (631 and 4,232 ft). Associated native plant species include *Alphitonia ponderosa*, *Cryptocarya mannii*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Pisonia* spp., *Peucedanum sandwicense*, *Psychotria* spp., *Psydrax odoratum*, or *Styphelia tameiameia* (61 FR 53108; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral goats, pigs, and cattle; competition from several non-native plant species; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the low number of individuals in only two known populations. *Schiedea kauaiensis* is also potentially threatened by fire (61 FR 53108; Service 1998a; HINHP Database 2000).

Schiedea membranacea (NCN)

Schiedea membranacea, a member of the pink family (Caryophyllaceae), is a perennial herb. The unbranched, fleshy stems rise upwards from near the base and are somewhat sprawling. During dry seasons, the plant dies back to a woody, short stem at or beneath the ground surface. The oppositely arranged leaves are broadly elliptic to egg-shaped, generally thin, have five to seven longitudinal veins, and are sparsely covered with short, fine hairs. The perfect flowers have no petals, are numerous, and occur in large branched clusters. This short-lived perennial species differs from others of the genus that grow on Kauai by having five-to seven-nerved leaves and a herbaceous habit (Wagner *et al.* 1999).

Research suggests that this species largely requires outcrossing for successful germination and survival to adulthood. Pollinators for *Schiedea membranacea* are unknown, since none have been seen during the daytime, and none were observed during one set of night observations. Little else is known about the life history of *Schiedea membranacea*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. (Service 1998a).

Schiedea membranacea is currently known from the western side of the island of Kauai, on State and privately

owned lands at Poopooiki Valley, Milolii Ridge, Kuia Valley, Awaawapuhi Valley, Nualolo Valley, Kahuamaa Flats, Waialae Falls, Koaie Canyon, and the right branch of Wainiha Valley. On State lands it occurs within the Alakai Wilderness Preserve, Halelea Forest Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve. There are currently seven populations containing 195 individuals (Wood and Perlman 1993; 61 FR 53070; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

This species is typically found on cliffs and cliff bases in mesic or wet habitats, in lowland, or montane shrubland, or forest communities dominated by *Acacia koa*, *Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes at elevations between 422 and 1,205 m (1,386 and 3,953 ft). Associated native plant species include *Alphitonia ponderosa*, *Alyxia oliviformis*, *Asplenium* spp., *Athyrium sandwicensis* (akolea), *Bohea brevipes*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Joinvillea ascendens* ssp. *ascendens* (ohe), *Labordia helleri* (kamakahala), *Lepidium serra*, *Lysimachia kalalauensis* (NCN), *Machaerina angustifolia*, *Mariscus pennatifolius*, *Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis*, *Pisonia* spp., *Pleomele aurea*, *Poa mannii*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Remya kauaiensis*, *Sadleria cyatheoides* (amau), *Scaevola procera*, *Thelypteris cyatheoides* (kikawaio), *Thelypteris sandwicensis* (palapalaia), or *Touchardia latifolia* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats, and pigs, and deer; competition with the non-native plant species *Erigeron karvinskianus*, *Lantana camara*, *Rubus argutus*, *R. rosifolius*, *Psidium cattleianum*, *Ageratina riparia* (Hamakua pamakani), or *Passiflora mollissima*; loss of pollinators; and landslides are the primary threats to *Schiedea membranacea*. Based on observations indicating that snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53070; Wood and Perlman 1993; Service 1998a).

Schiedea spergulina var. *leiopoda* and *Schiedea spergulina* var. *spergulina* (NCN)

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a

short-lived perennial subshrub. The opposite leaves are very narrow, one-veined, and attached directly to the stem. The flowers are unisexual, with male and female flowers on different plants. Flowers occur in compact clusters of three. The capsular fruits contain nearly smooth, kidney-shaped seeds. Of the 22 species in this endemic genus, only two other species have smooth seeds. *Schiedea spergulina* differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness of the inflorescences, with *S. s.* var. *leiopoda* being the less hairy of the two (Wagner *et al.* 1999).

Little is known about the life histories of either *Schiedea spergulina* var. *leiopoda* or *Schiedea spergulina* var. *spergulina*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai. One population with approximately 50 individuals is now known to grow in Lawai Valley on Kauai on privately owned land (HINHP Database 2000; GDSI 2000).

Schiedea spergulina var. *spergulina* was historically found in Olokele Canyon, but is now known only from the right branch of Kalalau Valley, Koaie Canyon, and Waimea Canyon. A total of three populations numbering approximately 206 individuals is reported on State-owned land within the Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and the Puu Ka Pele Forest Reserve. However, it has been estimated that this species may number in the thousands on Kauai (Service 1995; HINHP Database 2000; GDSI 2000).

Both varieties of *Schiedea spergulina* are usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests at elevations between 21 and 87 m (69 and 284 ft) for *Schiedea spergulina* var. *leiopoda* and elevations between 144 and 828 m (474 and 2,718 ft) for *Schiedea spergulina* var. *spergulina*. Associated native plant species include *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp. (kumuniu), *Eragrostis variabilis*, *Erythrina sandwicensis* (wiliwili), *Gahnia* spp., *Heliotropium* spp. (ahinahina), *Lepidium serra*, *Lipochaeta*

connata, *Microlepis strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium* (59 FR 9304; Lorence and Flynn 1991; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Schiedea spergulina* var. *leiopoda* are habitat destruction by feral goats and competition with non-native plants such as *Leucaena leucocephala*, *Lantana camara*, or *Furcraea foetida* (Mauritius hemp). Individuals have also been damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields, as well as a risk of extinction from naturally occurring events (e.g., hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Lorence and Flynn 1991; Service 1995).

Schiedea spergulina var. *spergulina* is threatened by competition with non-native plant species, including *Erigeron karvinskianus*, *Lantana camara*, *Melia azedarach*, or *Triumfetta semitriloba* (Sacramento bur). The area in which this variety grows is used heavily by feral goats, and there is evidence that plants are being browsed and trampled (59 FR 9304; Lorence and Flynn 1991; HINHP Database 2000).

Schiedea stellarioides (lauhilihi)

Schiedea stellarioides, a member of the pink family (Caryophyllaceae), is a slightly erect to prostrate subshrub with branched stems. The opposite leaves are very slender to oblong-elliptic, and one-veined. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the number of veins in the leaves, shape of the leaves, presence of a leaf stalk, length of the flower cluster, and shape of the seeds (Wagner *et al.* 1999).

Plants were observed flowering in the field in February. Little else is known about the life history of *Schiedea stellarioides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea stellarioides* was found at the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka Valleys, and Haupu Range on the island of Kauai. Currently it is found in Kawaiiki Valley and Waialae Falls within the Na Pali-Kona Forest Reserve. There is a total of two populations with 400 individuals on

State-owned land (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Chiedea stellarioides is found on steep slopes in closed *Acacia koa*-*Metrosideros polymorpha* lowland to montane mesic forest or shrubland at elevations between 476 and 1,216 m (1,561 and 3,990 ft). Associated native plant species include *Alsinidendron viscosum*, *Artemisia australis*, *Bidens cosmoides*, *Chenopodium* spp. (ahe ahea), *Dianella sandwicensis*, *Dodonaea viscosa*, *Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense*, *Pipturus* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, or *Zanthoxylum dipetalum* (61 FR 53070; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to this species include habitat degradation and herbivory by feral pigs and goats, competition with the non-native plants *Melinis minutiflora* and *Rubus argutus*, and a risk of extinction of the two remaining populations from naturally occurring events, such as landslides or hurricanes (61 FR 53070).

Stenogyne campanulata (NCN)

Stenogyne campanulata, a member of the mint family (Lamiaceae), is a vine with four-angled, hairy stems. A short-lived perennial species, *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1999).

Little is known about the life history of *Stenogyne campanulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Stenogyne campanulata is known from two populations with 66 individuals which were originally discovered in the left branch of Kalalau Valley on State-owned land in the Na Pali Coast State Park (GDSI 2000; HINHP Database 2000).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff in diverse lowland or montane mesic forest at elevations between 335 and 1,290 m (1,100 and 4,232 ft). The associated native plant species include *Lepidium serra*, *Lobelia niihauensis*, *Lysimachia* spp., *Metrosideros polymorpha*, *Melicope pallida*, *Neraudia kauaiensis*, *Nototrichium divaricatum* (kului), *Poa mannii*, *Remya montgomeryi*, or *Wilkesia gymnoxiphium* (57 FR 20580;

Weller and Sakai 1999; K. Wood, pers. comm., 2001).

The restriction of this species to virtually inaccessible cliffs suggests that herbivory by feral goats may have eliminated it from more accessible locations. Goat herbivory and habitat degradation remain the primary threat. Feral pigs have disturbed vegetation in the vicinity of these plants. Erosion caused by feral goats or pigs exacerbates the potential threat of landslides. *Erigeron karvinskianus* and *Rubus argutus* are the primary non-native plants threatening *Stenogyne campanulata*. The small number of individuals and its restricted distribution are serious potential threats to the species. The limited population size may depress reproductive vigor, or a single environmental disturbance, such as a landslide, could destroy all known extant individuals (57 FR 20580).

Viola helenae (NCN)

Viola helenae is a small, unbranched perennial subshrub with an erect stem in the violet family (Violaceae). The hairless leaves are clustered on the upper part of the plant and are lance-shaped with a pair of narrow, membranous stipules below each leaf. The small, pale lavender or white flowers are produced on stems either singly or in pairs in the leaf axils. The fruit is a capsule that splits open at maturity, releasing the pale olive brown seeds (Wagner *et al.* 1999).

Little is known about the life history and ecology of *Viola helenae*. Wagner *et al.* (1999) stated that the flowers are all chasmogamous (open at maturity for access by pollinators) and not cleistogamous (remain closed and self-fertilize in the bud) as in certain other violets. Therefore, it is likely that its flowers require pollination by insects for seed set. Mature flowering plants do produce seed; however, seed viability may be low and microhabitat requirements for germination and growth may be very specific. Seeds planted at NTBG on Kauai failed to germinate, although they may not have been sufficiently mature when collected and violet seeds are often very slow to germinate. The seeds are jettisoned when the capsule splits open, as in most species of the genus (Service 1994).

Historically, *Viola helenae* was known from four populations, two along either branch of the Wahiawa Stream on Kauai. Currently, there is one known population, with a total of 137 individual plants, on privately owned land within the Wahiawa Drainage (56 FR 47695; Service 1994; GDSI 2000; HINHP Database 2000).

This species is found in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha*-*Cheirodendron* wet forest growing on stream drainage banks or adjacent Valley bottoms in light to moderate shade at elevations between 522 and 1,006 m (1,712 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Broussaisia arguta*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Freycinetia arborea*, *Hesperomannia lydgatei*, *Melicope* spp., or *Pritchardia* spp. (Service 1994; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats include competition from non-native plant species, including *Psidium cattleianum*, *Melastoma candidum*, potentially *Melaleuca quinquenervia*, *Stachytarpheta dichotoma*, *Rubus rosifolius*, *Elephantopus mollis*, *Erechtites valerianifolia*, or various non-native grasses; trampling and browsing damage by feral pigs; landslides and erosion; and hurricanes (56 FR 47695; Service 1994).

Viola kauaiensis var. *wahiawaensis* (nani waialeale)

Viola kauaiensis, a member of the violet family (Violaceae), is a short-lived perennial herb with upward curving or weakly rising, hairless, lateral stems. The species is distinguished from others of the genus by its nonwoody habit, widely spaced kidney-shaped leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers. Two varieties of the species are recognized, both occurring on Kauai: var. *kauaiensis* and var. *wahiawaensis*. *Viola kauaiensis* var. *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases (Service 1998a; Wagner *et al.* 1999).

Five *Viola kauaiensis* var. *wahiawaensis* plants were observed in flower in December. Little else is known about the life history of *Viola kauaiensis* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. (Service 1998a).

Viola kauaiensis var. *wahiawaensis* is known only from two populations in the Wahiawa Mountains of Kauai with a total of 13 individual plants, on privately owned land. This taxon is not known to have occurred beyond its current range (HINHP Database 2000; GDSI 2000).

Viola kauaiensis var. *wahiawaensis* is found in *Machaerina angustifolia*-*Rhynchospora rugosa* (kuolohia)

lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest at elevations between 393 and 1,006 (1,291 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii* (kookoolau), *Chamaesyce remyi* (akoko), *Chamaesyce sparsiflora* (akoko), *Coprosma grayana* (pilo), *Cyanea fissa*, *Dicranopteris linearis*, *Diplopterygium pinnatum* (NCN), *Dubautia imbricata* (naenae), *Dubautia raillardoides*, *Gahnia vitiensis* (NCN), *Lobelia kauaensis* (NCN), *Machaerina angustifolia*, *Machaerina mariscoides*, *Melicope* spp., *Psychotria wawrae*, *Sadleria pallida*, *Scaevola gaudichaudii*, *Sphenomeris chinensis*, *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra oahuensis*, or *Vaccinium dentatum* (Lorence and Flynn 1991; 61 FR 53070; Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Viola kauaiensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor due to the small number of existing populations and individuals; habitat degradation through the rooting activities of feral pigs; and competition with non-native plants, such as *Juncus planifolius* (NCN) or *Pterolepis glomerata* (NCN) (61 FR 53070; Lorence and Flynn 1991; Service 1994; HINHP Database 2000).

Wilkesia hobydi (dwarf iliau)

Wilkesia hobydi, a member of the sunflower family (Asteraceae), is a short-lived perennial shrub which branches from the base. The tip of each branch bears a tuft of narrow leaves growing in whorls joined together into a short sheathing section at their bases. The cream-colored flower heads grow in clusters (Carr 1982a, 1999b).

This species is probably pollinated through outcrossing and is probably self-incompatible. Insects are the most likely pollinators. In 1982, Carr reported that reproduction and seedling establishment were occurring and appeared sufficient to sustain the populations. Flowering was observed most often in the winter months, but also during June. Fruits may be dispersed when they stick to the feathers of birds. Densities reach one plant per square meter (approximately one square yard) in localized areas, and hybridization with *Wilkesia gymnoxiphium* may be occurring (Carr 1982a).

First collected in 1968 on Polihale Ridge, Kauai, this species was not formally described until 1971 (St. John

1971). Currently, there are six populations with a total of 491 individuals. This species occurs on State-owned lands within the Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve and on land under Federal jurisdiction within the Pacific Missile Range Facility (PMRF) at Makaha Ridge. The plants occur in Milolii Valley, Makaha Ridge, Haelele Ridge, Kaaweiki Ridge, Polihale Spring, Pohakumano, and Pohakua (HINHP Database 2000; GDSI 2000).

Wilkesia hobydi grows on coastal dry cliffs or very dry ridges at elevations between 12 and 685 m (40 and 2,246 ft). The associated native plant species include *Artemisia australis*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint johnianus*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia blanda* (ala ala wai nui), *Peperomia leptostachya* (ala ala wai nui), *Peperomia tetraphylla* (ala ala wai nui), *Peucedanum sandwicense*, *Psydrax odoratum*, *Sida fallax*, *Waltheria indica* (uhaloa), or *Wilkesia gymnoxiphium* (57 FR 27859; Service 1995; Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of this species are habitat disturbance and browsing by feral goats. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival of the species, the plant appears to have vigorous reproduction and may survive indefinitely if goats were eliminated from its habitat. Fire and extinction through naturally occurring events, such as landslides or hurricanes, could also be threats to the survival of the species (57 FR 27859; Service 1995).

Xylosma crenatum (NCN)

Xylosma crenatum is a dioecious (plant bears only male or female flowers, and must cross-pollinate with another plant to produce viable seed) long-lived perennial tree in the flacourtiaceae family (Flacourtiaceae). The tree grows up to 14 m (45 ft) tall and has dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, with coarsely toothed edges and moderately hairy undersides. More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *X. crenatum* from the other Hawaiian member of this genus (Wagner *et al.* 1999).

Little is known about the life history of *Xylosma crenatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Service 1995).

Historically, *Xylosma crenatum* was known from two sites on Kauai: along upper Nualolo Trail in Kuia Natural Area Reserve and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve. Currently, this species is extant on State-owned land in Kainamano, Nualolo Trail, and Mohihi Valley within the Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve. There are three populations with a total of eight individual plants (57 FR 20580; Service 1995; HINHP Database 2000; GDSI 2000).

Xylosma crenatum is known from diverse *Acacia koa*-*Metrosideros polymorpha* montane mesic forest, *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest, or *Acacia koa*-*Metrosideros polymorpha* montane wet forest at elevations between 936 and 1,284 m (3,070 and 4,212 ft). Associated native plant species include *Athyrium sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Cyanea hirta* (haha), *Diplazium sandwichianum*, *Dubautia knudsenii*, *Hedyotis* spp., *Ilex anomala*, *Lobelia yuccoides*, *Myrsine* spp., *Nestegis sandwicensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Scaevola procera*, *Streblus pendulinus*, *Tetraplasandra* spp., *Touchardia latifolia*, or *Zanthoxylum dipetalum* (57 FR 20580; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The small number of individuals and scattered distribution makes this species vulnerable to human or natural environmental disturbance. *Xylosma crenatum* is also threatened by competition from non-native plants, particularly *Psidium guajava*. In addition, feral pigs may threaten this species (57 FR 20580; Service 1995; HINHP Database 2000).

Multi-Island Species

Acaena exigua (liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves and slender flowering stalks 5–15 cm (2–5.9 in.) long. It is easily hidden among the other low, tufted bog plants with which it grows. The narrow, oblong leaves are usually 10–25 mm (0.4–1.0 in.) long with 6–17 leaflets 1–4 mm (0.04–0.16 in.) long and 1–2 mm (0.04–0.08 in.) wide. The leaflet on the end is wider (to 3 mm (0.12 in.)). The upper surface of the leaves is glossy with conspicuous veins; the lower

surface is whitish. The flowers lack petals and are arranged in short, dense spikes 5–10 mm (0.2–0.4 in.) long held on slender, sparsely leafy stalks 5–15 cm (2–6 in.) tall. The base of the flower is urn-shaped, sometimes with very short spines or bristles, and encloses a single cone-shaped dry fruit (achene) 1 mm (0.04 in.) long (Wagner et al. 1999).

Little is known about the life history of *Acaena exigua*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Acaena exigua* was known from Puu-kukui on West Maui and from Mount Waialeale on Kauai. On Kauai, *Acaena exigua* was last collected by Wawra between 1869 and 1870, and it has not been seen in the wild since (Wagner et al. 1999).

Acaena exigua is known only from sites with extensive cloud cover and moderate to strong winds in wet montane shrub bog or bog margins characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs and elevations between 666 and 1,598 m (2,185 and 5,244 ft). Associated native plant species include *Deschampsia nubigena* (hair grass), *Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Dubautia* spp., *Melicope* spp., *Metrosideros polymorpha*, *Oreobolus furcatus* (NCN), or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

The reason for the disappearance of this species is not known. Though impact from herbivory and rooting by pigs is assumed and often cited, feral pigs have become established at Waialeale (Kauai) only within the past two decades. The main current threats to *Acaena exigua*, if it exists, are believed to include small population size; human impacts (collecting and site degradation); potentially consumption of vegetative or floral parts of this species by non-native slugs and/or rats; predation and habitat disturbance by feral pigs; and non-native plant species especially, *Juncus planifolius* (57 FR 20772).

Achyranthes mutica (NCN)

Achyranthes mutica, a member of the amaranth family (Amaranthaceae) and a short-lived perennial, is a many-branched shrub with egg-shaped leaves and stalkless flowers. This species is distinguished from others in the genus by the shape and size of the sepals and by characteristics of the spike, which is

short and congested (Wagner et al. 1999).

Historically, *Achyranthes mutica* was known from three collections from opposite ends of the main archipelago: Kauai and Hawaii. Currently, this species is known only from Hawaii island, from the Kilohana Gulch on private land. It was last observed on Kauai in the 1850s (61 FR 53108; HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Achyranthes mutica* on the island of Kauai.

Nothing is known of the threats to *Achyranthes mutica* on the island of Kauai.

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 2000). On Kauai, there is a total of seven populations on private and State-owned lands (Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, and Kealia Forest Reserve), with approximately 80 individuals, that occur at Pihea, Pali Elelee, Waioli Valley, Mount Namahana, Lumahai Valley, Wainiha Valley, and Kapalaoa (59 FR 56333; GDSI 2000; HINHP Database 2000).

This species, an epiphyte (a plant that derives moisture and nutrients from the air and rain) usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 107 and 1,593 m (351 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Athyrium sandwichianum*, *Broussaisia* spp., *Cheirodendron trigynum*, *Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, or *Tetraplasandra oahuensis* (59 FR 56333; Linney 1989; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include habitat degradation by feral pigs and goats and competition with the non-native plant *Psidium cattleianum* (59 FR 56333; HINHP Database 2000).

Alectryon macrococcus var. *macrococcus* (mahoe)

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in *A. macrococcus* var. *auwahiensis*, but only on leaves of young *A. macrococcus* var. *macrococcus* plants. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.3 cm (0.9 in.) or more in diameter (Wagner et al. 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *Alectryon macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997).

Alectryon macrococcus var. *macrococcus* historically and currently occurs on Kauai, Oahu, Molokai and Maui. On Kauai, *Alectryon macrococcus* var. *macrococcus* occurs on State-owned land in the Alakai Wilderness

Preserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve on Kauai. A total of six populations of 204 individuals is known from Kalalau Valley, Kipalau Valley, Haeleele Valley, Waimea Canyon, Hipalau Valley, and Kawaiiki Falls (K. Wood, *in litt.* 1999; GDSI 2000). This variety is also found on Oahu, Molokai, and West Maui (57 FR 20772). *Alectryon macrococcus* var. *auwahiensis* is found only on leeward east Maui and will be reviewed further in a subsequent rule (Medeiros *et al.* 1986; HINHP Database 2000).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Kauai is *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest on dry slopes or in gulches, at elevations between 341 and 954 m (1,120 and 3,129 ft). Associated native plant species include *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea timonioides*, *Caesalpinia kauaiense* (uhiuhi), *Canavalia* spp. (awikiwiki), *Carex meyenii*, *Carex wahuensis*, *Doodia kunthiana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Melicope knudsenii*, *Microlepia strigosa*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Pisonia* spp., *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia* spp., *Rauwolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum* spp. (57 FR 20772; HINHP Database 2000; K. Wood, pers. comm., 2001).

Alectryon macrococcus var. *macrococcus* on Kauai is threatened by feral goats and pigs; the non-native plant species *Melinis minutiflora*, *Schinus terebinthifolius* (Christmasberry), or *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; depressed reproductive vigor; seed predation by insects (probably the endemic microlepidopteran *Prays cf. fulvocanella*); loss of pollinators; and, due to the very small remaining number of individuals and their limited distribution, natural or human-caused environmental disturbances which could easily be catastrophic (57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and

petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, one location on West Maui, and eastern Hawaii.

Currently, it is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Kauai, there are eight total populations with 62 individuals on State (Alakai Wilderness Preserve, Hono o Na Pali Natural Area Reserve, Lihue-Koloa Forest Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands in Waiahuakua, Kalalau Valley, Awaawapuhi Valley, Paaiki Valley, Kipalau Valley, Hulua, Wahiawa Falls, and Laauhihaihai (Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Bonamia menziesii is found in dry, mesic, or wet *Metrosideros polymorpha*-*Cheirodendron-Dicranopteris* forest at elevations between 351 and 1,415 m (1,151 and 4,644 ft). Associated native plant species include *Antidesma platyphyllum*, *Alphitonia ponderosa*, *Acacia koa*, *Cyanea* spp., *Cyrtandra pickeringii*, *Cyrtandra limahuliensis*, *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Dubautia knudsenii*, *Hedyotis terminalis*, *Isodendron longifolium*, *Labordia hirta*, *Melicope anisata*, *Melicope barbiger*, *Myoporum sandwicense*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Psychotria hexandra*, *Psydrax odoratum*, *Sapindus oahuensis*, *Scaevola procera*, or *Syzygium sandwicensis* (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to this species on Kauai include habitat degradation and possible predation by feral pigs and goats, deer, and cattle; competition with a variety of non-native plants; and fire (59 FR 56333).

Centaurium sebaeoides (awiwii)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched

arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. It is possible that heavy rainfall induces flowering. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on the islands of Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Kauai, there are a total of three populations with approximately 52 individuals on State-owned land. This species is found at Punaiaiea Point, the caves at Nakeikionaiwi, and Pohakuao within the Na Pali Coast State Park (HINHP Database 2000; GDSI 2000).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas at elevations between 0 and 147 m (0 and 483 ft). Associated native plant species include *Artemisia* spp. (hinahina), *Bidens* spp., *Chamaesyce celastroides*, *Dodonaea viscosa*, *Fimbristylis cymosa* (mauu akiaki), *Heteropogon contortus*, *Jacquemontia ovalifolia* (pauohiiaka), *Lipochaeta succulenta*, *Lipochaeta heterophylla* (nehe), *Lipochaeta integrifolia* (nehe), *Lycium sandwicense*, *Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phleoides*, *Panicum fauriei* (NCN), *P. torridum* (kakonakona), *Scaevola sericea*, *Sida fallax*, or *Wikstroemia uva-ursi* (akia) (56 FR 55770; K. Wood, pers. comm., 2001).

The major threats to this species on Kauai include habitat degradation by feral goats and cattle; competition from the non-native plant species *Casuarina equisetifolia* (ironwood), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala*, *Prosopis pallida* (kiawe), *Schinus terebinthifolius*, *Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling by humans on or near trails; and fire (56 FR 55770; Medeiros *et al.* 1999; Service 1999).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial of the spleenwort family (Asplenaceae). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in.) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf

stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in.) long and 1 mm (0.04 in.) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments. The indusium (an outgrowth of a fern frond that invests the sori) is whitish before wrinkling, thin and suborbicular (less than completely, perfectly round), with a narrow sinus extending about half way, glabrous except for a circular margin which is ciliolate (fringed with minute hairs) with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. It was last seen on Kauai in 1896 (HINHP Database 2000).

This species is found on rock faces in gulches in the forest understory at elevations between 568 and 1,069 m (1,863 and 3,507 ft), in *Metrosideros polymorpha-Diospyros* spp. mesic forest and diverse mesic forest. Associated native plant species include *Myrsine* spp., *Psychotria* spp., and *Xylosma* spp. (Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs and goats, competition with non-native plant species, especially *Psidium cattleianum* or *Schinus terebinthifolius*; fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the

shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau, Kauai, scattered locations on Oahu, Molokai, and Lanai. It was last observed on Molokai in 1912 and on Lanai in 1919. Currently, this species is reported from the Nualolo Valley on Kauai on State-owned land and west of Mokouia Valley on the privately owned island of Niihau. There is one known population with about 300 individuals on the island of Kauai and an unknown number of individuals on Niihau (HINHP Database 2000; GDSI 2000).

Cyperus trachysanthos is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes at elevations between 0 and 234 m (0 and 767 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (61 FR 53108; Koyama 1999; K. Wood, pers. comm., 2001).

On Kauai, the threats to this species are the loss of wetlands and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of populations. The threats on Niihau are unknown (61 FR 53108; Service 1999).

Delissea undulata (NCN)

Delissea undulata, a member of the bell flower family (Campanulaceae), is an unbranched, palm-like, woody-stemmed perennial tree, with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. The three recognized subspecies are distinguishable on the basis of leaf shape and margin characters: *D. undulata* ssp. *kauaiensis*, leaf blades are oval and have a flat-margin with sharp teeth; *D. undulata* ssp. *niihauensis*, leaf blades are heart shaped and have a flat-margin with shallow, rounded teeth; and *D. undulata* ssp. *undulata*, leaf blades are elliptic to lance-shaped and wavy-margin with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases (Lammers 1990).

On the island of Hawaii, *Delissea undulata* ssp. *undulata* was observed in flower and fruit (immature) in August and outplanted individuals were observed in flower in July. Little else is known about the life history of *Delissea*

undulata. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996; 61 FR 53124).

Historically and currently, *Delissea undulata* ssp. *kauaiensis* is known only from Kauai. Currently, there is one known population of three individuals on State-owned land in Kuia Valley within the Kuia Natural Area Reserve. *Delissea undulata* ssp. *niihauensis* was known only from Niihau, but has not been seen since 1865. *Delissea undulata* ssp. *undulata* was known from southwestern Maui and western Hawaii. Currently, this variety occurs only on the island of Hawaii (K. Wood, *in litt.* 1999; Lammers 1999; GDSI 2000; 61 FR 53124; HINHP Database 2000).

Delissea undulata ssp. *kauaiensis* occurs in dry or open *Acacia koa-Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest at elevations between 139 and 1,006 m (456 and 3,299 ft). Associated native species include *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Eragrostis variabilis*, *Euphorbia haeleeleana*, *Kokia kauaiensis*, *Microlepis strigosa*, *Panicum* spp., *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum* (K. Wood, pers. comm., 2001).

The threats to this subspecies on Kauai are feral goats, pigs, and cattle; small population size; competition with the non-native plants *Passiflora mollissima* and *Delairea odorata* (cape ivy); fire; introduced slugs; seed predation by rats and introduced game birds; and a risk of extinction due to random naturally occurring events, such as landslides or hurricanes (Service 1996).

Diellia erecta (asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, scattered locations on Maui, and various locations on the Island of Hawaii. Currently, it is only known from Moloka'i, Maui, and Hawaii and recently rediscovered on Kauai. On Kauai there is one known population with 30 individuals in Kawaiiki Valley on State-owned land within the Na Pali-Kona Forest Reserve (Service 1999; HINHP Database 2000).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic with *Acacia koa* and *Acacia koaia* as codominants, at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Asplenium aethiopicum* (NCN), *Asplenium contiguum* (NCN), *Asplenium macraei* (NCN), *Coprosma* spp., *Dodonaea viscosa*, *Dryopteris fusco-atra* (NCN), *Dryopteris unidentata*, *Hedyotis terminalis*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, or *Wikstroemia* spp. (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Diellia erecta* on Kauai are habitat degradation by pigs and goats; competition with non-native plant species, including *Blechnum occidentale*, *Grevillea robusta* (silk oak), *Lantana camara*, *Mariscus meyenianus* (NCN), *Myrica faya*, *Passiflora mollissima*, *Rubus argutus*, or *Setaria palmifolia* (palm grass); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 56333; Service 1996).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific

environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is only known from Maui. It was last seen on Kauai in 1909 (HINHP Database 2000).

This species occurs in brown soil with basalt outcrops near water falls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 476 and 1,284 m (1,562 and 4,212 ft) (Service 1998a; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats on Kauai are habitat degradation by feral goats, and pigs and competition with non-native plant species (59 FR 49025; Service 1998a; HINHP Database 2000).

Euphorbia haeleleana (akoko)

Euphorbia haeleleana, a member of the spurge family (Euphorbiaceae), is a dioecious tree with alternate papery leaves. This short-lived perennial species is distinguished from others in the genus in that it is a tree, whereas most of the other species are herbs or shrubs, as well as by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. *Euphorbia haeleleana* sets fruit between August and October. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Wagner *et al.* 1999; Service 1999).

Euphorbia haeleleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu. On Kauai, there is a total of seven populations with 597 individuals occurring on State-owned land. It is found at Pohakuao, Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haelele Valley within the Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (61 FR 53108; Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000).

Euphorbia haeleleana is usually found in lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This plant is typically found at elevations between 284 and 1,178 m (931 and 3,866 ft).

Associated native plant species include *Acacia koaia* (koaia), *Antidesma platyphyllum*, *Claoxylon sandwicense*, *Carex meyenii*, *Carex wahuensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis* (ohe), *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, *Pouteria sandwicensis*, *Pisonia sandwicensis*, or *Xylosma* spp. (61 FR 53108; K. Wood, pers. comm., 2001).

Threats to this species on Kauai include habitat degradation and destruction by deer, feral goats, and pigs; seed predation by rats; fire; and competition with non-native plants (61 FR 53108; Service 1999).

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large dioecious tree with white oblong pores covering its scaly, pale brown bark. This long-lived perennial species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Neal 1965; Linney 1982; Hayden 1999; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999).

Historically, *Flueggea neowawraea* was known from Kauai, Oahu, Maui, Molokai, and the island of Hawaii. Currently, it is known from Kauai, Oahu, east Maui, and Hawaii. On Kauai, this species is reported from Limahuli Valley, Pohakuao, the left branch of Kalalau Valley, Kuia and Paaiki Valleys, Kipalau Valley, Koaie Falls, Kawaiiki Valley, and Waimea Canyon. There are eight populations with 85 known individuals occurring on State (Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands. However, it has been estimated that the total number of individuals may be slightly over 100 (Hayden 1999; Service 1999; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Flueggea neowawraea occurs in dry or mesic forests at elevations between 210

and 1,178 m (689 and 3,865 ft). Associated native plant species include *Alectryon macrococcus*, *Antidesma pulvinatum* (hame), *A. platyphyllum*, *Bidens sandwicensis*, *Bohea timonioides*, *Caesalpinia kavaensis*, *Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Hibiscus* spp., *Isodendron laurifolium*, *Kokia kauaiensis*, *Melicope* spp., *Metrosideros polymorpha*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Tetraplasandra* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Xylosma crenatum* (59 FR 56333; HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with non-native plant species; fire; small population size; depressed reproductive vigor; and a potential threat of predation on the fruit by rats (59 FR 56333; HINHP Database 2000; Service 1999).

Gouania meyenii (NCN)

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub with entire, papery leaves. This short-lived perennial species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild. Little else is known about the life history of *Gouania meyenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Gouania meyenii* was known only from Oahu. It was discovered on Kauai in 1993 (Lorence *et al.*) and published in the supplement to the Manual of Flowering Plants of Hawaii (Wagner *et al.* 1999). Currently, this species is found on Oahu and on Kauai on State-owned land within the Na Pali Coast State Park and the Na Pali-Kona Forest Reserve. There is a total of three populations on Kauai with nine individuals found in the Kalalau and Hipalau Valleys (56 FR 55770; Wagner

et al. 1999; GDSI 2000; HINHP Database 2000).

This species typically grows on rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest at elevations between 375 and 1,179 m (1,231 and 3,867 ft). Associated native plant species include *Bidens* spp., *Carex meyenii*, *Chamaesyce* spp., *Dodonaea viscosa*, *Diospyros* spp., *Eragrostis variabilis*, *Euphorbia haeleleana*, *Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida*, *Neraudia kauaiensis*, *Nestegis sandwicensis*, *Nototrichium divaricatum*, *Panicum lineale*, *Poa mannii*, *Psychotria* spp., *Senna gaudichaudii* (kolomona), or *Wilkesia gymnoxiphium* (56 FR 55770; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Gouania meyenii* on Kauai include competition from the non-native plants *Schinus terebinthifolius*, *Melinis minutiflora*, or *Psidium cattleianum*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and individuals (56 FR 55770; Service 1998b).

Hedyotis cookiana (awiwi)

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hedyotis cookiana* was known from the islands of Hawaii, Kauai, Molokai, and Oahu. Currently, it is only known from one population of 80 individuals on State-owned land within Hono O Na Pali Natural Area Reserve in Waiahuakua Valley on Kauai (GDSI 2000; HINHP Database 2000).

This species generally grows in streambeds or on steep cliffs close to water sources in relict *Metrosideros polymorpha* low mesic and low wet forest communities at elevations between 119 and 553 m (392 and 1,814 ft). Associated native plant species include *Boehmeria grandis*, *Chamaesyce celastroides* var. *hanapepense*, *Hibiscus kokio* ssp. *saintjohnianus*, *Machaerina angustifolia*, *Nototrichium sandwicense*,

Pleomele aurea, *Pipturus kauaiensis* (mamaki), *Pouteria sandwicensis*, *Psydrax odoratum*, or *Rauvolfia sandwicensis*. *Hedyotis cookiana* is believed to have formerly been much more widespread on several of the main Hawaiian Islands (Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The threats to this species on Kauai are risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population; flooding; competition with non-native plants; and habitat modification by feral pigs and goats (59 FR 9304; Service 1995; HINHP Database 2000).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae). The species is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii (Bates 1990; Service 1999; HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Hibiscus brackenridgei* on the island of Kauai.

Nothing is known of the threats to *Hibiscus brackenridgei* on the island of Kauai.

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived perennial member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-branching (two- or three-tiered) inflorescence (O'Connor 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1996).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, Kauai and the island of Hawaii. Currently, this species is found on Molokai, Hawaii, Maui, and recently rediscovered on the north shore of Kauai. On Kauai, there are two populations with at least two individuals at Kaweonui Point and Kauapea Beach on privately owned land (59 FR 10305; HINHP Database 2000).

The habitat of *Ischaemum byrone* is coastal shrubland, occurring near the ocean among rocks and seepy cliffs at elevations between 0 and 297 m (0 and 975 ft). Associated native plant species include *Bidens* spp., *Chamaesyce celastroides*, *Fimbristylis cymosa*, *Lipochaeta succulenta*, *Lysimachia mauritiana*, or *Scaevola sericea* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Ischaemum byrone* include the invasion of non-native plants, fire, grazing and browsing by goats and pigs. Disturbance incurred from these ungulates further promotes the introduction and establishment of non-native weeds. Some populations are also threatened from residential development (59 FR 10305; Service 1996; HINHP Database 2000).

Isodendron laurifolium (aupaka)

Isodendron laurifolium, a member of the violet family (Violaceae), is a slender, straight shrub with few branches. The short-lived perennial species is distinguished from others in the genus by its leathery, oblong-elliptic or narrowly elliptic lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the life history of *Isodendron laurifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Isodendron laurifolium* is known from scattered locations on

Kauai and Oahu. Currently, on Kauai, this species is found on State-owned land within the Alakai Wilderness Preserve, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve in the following locations: Paaiki, Poopooiki, Kawaiula Valley, Mehanaloa Valley, Makaha Valley, Haelele Valley, Kipalau Valley, Kawaiiki Valley and Kaluahaulu Ridge. There are a total of five populations with 151 individuals (HINHP Database 2000; GDSI 2000; Service 1999).

Isodendron laurifolium is usually found at elevations between 376 and 1,163 m (1,233 and 3,817 ft) in diverse mesic forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. Associated native species include *Alphitonia ponderosa*, *Antidesma* spp., *Claoxylon sandwicense*, *Dodonaea viscosa*, *Dubautia* spp., *Elaeocarpus bifidus*, *Euphorbia haeleleana*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Melicope anisata*, *Melicope barbigerata*, *Melicope ovata*, *Melicope peduncularis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum glabrum* (hoawa), *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Streblus pendulinus*, or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Isodendron laurifolium* on Kauai are habitat degradation by feral goats, pigs and deer and competition with non-native plants (61 FR 53108; HINHP Database 2000; Service 1999).

Isodendron longifolium (aupaka)

Isodendron longifolium, a member of the violet family (Violaceae), is a slender, straight shrub. Hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of *Isodendron longifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Isodendron longifolium* is known from scattered locations on Kauai and Oahu. On Kauai, this species is reported from Limahuli Valley, Manoa Stream, Hanakapiai, Pohakea, Waioli Valley, the left branch of Kalalau Valley, Honopu Valley, Kawaiula Valley, Wahiawa, and Haupu. There is a total of nine populations containing approximately 521 individual plants on State (Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned

lands (Lorence and Flynn 1991, 1993; 61 FR 53108; Service 1999; HINHP Database 2000; GDSI 2000).

Isodendron longifolium is found on steep slopes and some flats in certain undisturbed areas, gulches, or stream banks in mesic or wet *Metrosideros polymorpha*-*Acacia koa* forests, usually at elevations between 38 and 1,541 m (125 and 5,057 ft). Associated native plant species include *Antidesma* spp., *Bidens* spp., *Bobea brevipes*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diospyros* spp., *Eugenia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Nestegis sandwicensis*, *Peperomia* spp., *Perrottetia sandwicensis*, *Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odoratum*, or *Syzygium* spp. (61 FR 53108; Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Isodendron longifolium* on Kauai are habitat degradation or destruction by feral goats and pigs, and competition with various non-native plants (Lorence and Flynn 1993; 61 FR 53108; Service 1999; HINHP Database 2000).

Isodendron pyriformium (wahine noho kula)

Isodendron pyriformium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole is subtended by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The pedicel (flower stalk) is white-hairy, and subtended by two bracts. Bracts arise at the tip of the peduncle. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendron pyriformium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. No other life history information is currently known for this species (Service 1996).

Isodendron pyriformium is known historically from six of the Hawaiian Islands. Locations of the populations on Niihau, Molokai, and Lanai were

unspecified. Specific populations were found in Oahu's central Waianae Mountains, Maui's southwestern Mountains, and on the western slope of Hualalai mountain on the island of Hawaii. It is currently found only on the island of Hawaii. It was last seen on Niihau in the 1850s (59 FR 10305; Service 1996; GDSI 2000; HINHP Database 2000; Marie Brueggemann, pers. comm., 2000).

Information on the physical and biological features that are essential to the conservation of *Isodendron pyrifolium* on the island of Niihau is not known.

Information on the threats of *Isodendron pyrifolium* on the island of Niihau is not known.

Lobelia niihauensis (NCN)

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This short-lived perennial species is distinguished from others in the genus by lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flowers (Lammers 1999).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature a month to six weeks later. Plants are known to live as long as 20 years. Little else is known about the life history of *Lobelia niihauensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Lobelia niihauensis* was known from Oahu, Niihau, and Kauai. It is now known to be extant only on Kauai and Oahu. On Kauai, 11 populations containing 1,106 individuals can be found on State (Hono o Na Pali Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands in Limahuli Valley, Hoolulu Valley, Hanakoa Valley, Pohakuao, the left and right branches of Kalalau Valley, Koaie Canyon, Kipalau Valley, Polihale Spring, Kaaweiki Valley, and Keopaweo (Service 1998b; HINHP Database 2000; GDSI 2000).

Lobelia niihauensis typically grows on exposed, mesic mixed shrubland or coastal dry cliffs at elevations between 11 and 887 m (37 and 2,911 ft). Associated native plant species include *Artemisia australis*, *Bidens sandwicensis*, *Chamaesyce celastroides*, *Charpentiera* spp., *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint-johnianus*, *Lipochaeta connata* var. *acris*, *Lythrum* spp. (pukamole), *Nototrichium* spp., *Plectranthus parviflorus*, *Schiedea*

apokremnos, or *Wilkesia hobdyi* (Service 1998b; Lammers 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

On Kauai, the major threats to this species are habitat degradation and browsing by feral goats and competition from non-native plants (56 FR 55770).

Lysimachia filifolia (NCN)

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub. This short-lived perennial species is distinguished from other species of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai. This species is now also known from Oahu, and the "Blue Hole" area of Waialeale, Kauai. There is currently one population containing a total of 75 individuals on State-owned land on Kauai within the Lihue-Koloa Forest Reserve (Service 1995; HINHP Database 2000; GDSI 2000).

This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations between 177 and 1,088 m (581 and 3,568 ft). Associated native plant species include mosses, ferns, liverworts, *Antidesma platyphyllum*, *Bidens valida* (kookoolau), *Bobea elatior* (ahakea lau nui), *Cyanea asarifolia*, *Chamaesyce remyi* var. *kauaiensis* (akoko), *Dubautia plantaginea* ssp. *magnifolia* (naenae), *Eragrostis variabilis*, *Metrosideros polymorpha*, *Machaerina angustifolia*, *Melicope* spp., or *Panicum lineale* (59 FR 9304; Service 1995; Wagner *et al.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Lysimachia filifolia* on Kauai include competition with non-native plant species; feral pigs; and the risk of extinction on Kauai from naturally occurring events (e.g., landslides and hurricanes), due to the small number of individuals in the only known population (59 FR 9304; HINHP Database 2000).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with

brown scales. *Mariscus pennatiformis* is a subdivided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui, the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands). *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. It was last seen on Kauai in 1927 (K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000).

Mariscus pennatiformis is found at elevations between 544 and 1,104 m (1,785 and 3,621 ft) in open sites in *Metrosideros polymorpha-Acacia koa* mixed mesic forest. Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Alsinidendron viscosum*, *Carex alligata* (NCN), *Cyperus laevigatus* (makaloo), *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Myrsine linearifolia*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Poa sandwicensis*, *Psydrax odoratum*, *Schiedea stellarioides*, *Styphelia tameiameia*, or endemic ferns (Koyama 1990; HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Mariscus pennatiformis* on Kauai include grazing and habitat destruction caused by ungulates; competition from non-native plant species; and extinction from random naturally occurring events (59 FR 56333; Service 1999).

Melicope knudsenii (alani)

Melicope knudsenii, a member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The long-lived perennial species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in

the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope knudsenii* is known from Maui and Kauai. On Kauai, this species is known from seven populations on State-owned land, with a total of 10 individuals, in Poopooiki Valley, Kuia Valley, Mahanaloa Valley, Makaha Ridge, Koaie Canyon, Koaie Falls, and Kawaiiki Valley within the Kuia Natural Area Reserve and Na Pali-Kona Forest Reserve (59 FR 9304; Service 1995; GDSI 2000; HINHP Database 2000; K. Wood, pers. comm., 2001).

Melicope knudsenii grows on forested flats with brown granular soil in lowland dry to montane mesic forests at elevations between 111 and 1,141 m (364 and 3,745 ft) with *Alectryon macrococcus*, *Antidesma platyphylla*, *Bobea brevipes*, *Carex meyenii*, *Cryptocarya mannii*, *Diospyros sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Euphorbia haeleleana*, *Gahnia becheyi* (NCN), *Hedyotis* spp., *Hibiscus waimeae*, *Isodendron laurifolium*, *Metrosideros polymorpha*, *Melicope* spp., *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Peucedanum sandwicense*, *Pisonia sandwicensis*, *Pittosporum kauaiensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria hobdyi*, *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Remya kauaiensis*, *Scaevola procera*, *Styphelia tameiameia*, or *Xylosma hawaiiense* (Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Melicope knudsenii* on Kauai include competition with the non-native plant *Lantana camara*; habitat degradation by feral goats and pigs; fire; black twig borer; and the risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals and populations (59 FR 9304; Service 1995).

Melicope pallida (alani)

Melicope pallida, a member of the rue family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The long-lived perennial species differs from *M. haupuensis*, *M.*

knudsenii, and other members of the genus by presence of resinous new growth, leaves folded in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope pallida* is known from Oahu and Kauai. On Kauai, the species is currently known in the following locations: Pohakuao, the left branch of Kalalau Valley, Honopu Trail, Awaawapuhi Valley, and Koaie Canyon. There is a total of five populations with 181 individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (K. Wood, in litt. 1999; D.W. Mathias, U.S. Navy (Navy), in litt. 1999; HINHP Database 2000; GDSI 2000).

Melicope pallida usually grows on steep rock faces in lowland to montane mesic to wet forests or shrubland at elevations between 359 and 1,081 m (1,179 and 3,546 ft). Associated native plant species include *Abutilon sandwicense*, *Alyxia oliviformis*, *Artemisia australis*, *Boehmeria grandis*, *Carex meyenii*, *Chamaesyce celastroides* var *hanapepensis*, *Coprosma waimeae*, *Coprosma kauensis* (koi), *Dodonaea viscosa*, *Dryopteris* spp., *Hedyotis terminalis*, *Lepidium serra*, *Melicope* spp., *Metrosideros polymorpha*, *Nototrichium* spp., *Pipturus albidus* (mamaki), *Pleomele aurea*, *Poa mannii*, *Psychotria mariniana*, *Pritchardia minor*, *Sapindus oahuensis*, *Schiedea membranacea*, *Tetraplasandra waialealae*, or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Melicope pallida* are habitat destruction by feral goats and pigs; the black twig borer; fire; susceptibility to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations; and competition with non-native plant species (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; Service 1995; HINHP Database 2000).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This short-lived perennial species is the only

member of the genus in the Hawaiian Islands, one of three genera of the family with species endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the Waianae Mountains on the island of Oahu. Additionally, a population is known from State-owned Keopuka Rock, an islet off the coast of Maui. On Kauai, there are 14 populations on State (Haena State Park, Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands, containing approximately 340 individuals, in Maunahou Valley, Limahuli Valley, Hoolulu, Hanakoa, Pohakuao, Kanakou, the left branch of Kalalau Valley, Nualolo Valley, Kuia Valley, Mahanaloa Valley, Koaie Canyon, and Haupu (59 FR 9304; Service 1995; K. Wood, in litt. 1999; HINHP Database 2000; GDSI 2000).

This species grows on cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest between 0 and 1,232 m (0 and 4,041 ft). Associated native plant species include *Acacia koa*, *Artemisia australis*, *Brighamia insignis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokia*, *Lobelia niihauensis*, *Metrosideros polymorpha*, *Panicum lineale*, *Psydrax odoratum*, *Psychotria* spp., or *Wilkesia* spp. (59 FR 9304; Constance and Affolter 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Peucedanum sandwicense* on Kauai include competition with introduced plants; habitat degradation and browsing by feral goats and deer; and trampling and trail clearing (Hanakapiai population) (59 FR 9304; Service 1995; HINHP Database 2000).

Phlegmariurus mannii (wawaeiole)

Phlegmariurus mannii, a member of the clubmoss family (Lycopodiaceae) and a short-lived perennial, is a pendant (hanging) epiphyte with clustered,

delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Holub 1991).

Little is known about the life history of *Phlegmariurus mannii*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui, and Hawaii island. Currently, this species is extant on Maui and Hawaii island. It was last observed on Kauai in 1900 (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Phlegmariurus mannii* on the island of Kauai.

Nothing is known of the threats to *Phlegmariurus mannii* on the island of Kauai.

Phlegmariurus nutans (waewaeiole)

Phlegmariurus nutans is an erect of pendulous herbaceous epiphyte (plant not rooted in the ground) of the clubmoss family (Lycopodiaceae). Its stiff, light green branches, 25 to 40 cm (10 to 16 in.) long and about 6 mm (0.2 in.) thick, are covered with stiff, flat, leathery leaves, 12 to 16 mm (0.5 to 0.6 in.) long and about 2.5 mm (0.1 in.) wide that overlap in acute angles. The leaves are arranged in six rows and arise directly from the branches. The branches end in thick, 7 to 13 cm (2.8 to 5.1 in.) long fruiting spikes that are unbranched or branch once or twice, and taper toward a downward-curving tip. Bracts on the fruiting spikes, between 3 to 6 mm (0.6 and 0.2 in.) long, are densely layered and conceal the spore capsules. This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, simple or forking fruiting spikes, and larger and stiffer leaves (Wagner and Wagner 1987).

Phlegmariurus nutans has been observed fertile, with spores, in May and December. Little else is known about the life history of *Phlegmariurus nutans*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Phlegmariurus nutans* was known from the island of Kauai and from scattered locations in the Koolau Mountains of Oahu. It is currently only known from Oahu. It was last observed on Kauai in 1900 (Service 1998b; HINHP Database 2000).

Phlegmariurus nutans grows on tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha*-

Dicranopteris linearis wet forests and occasionally mesic forests at elevations between 601 and 1,594 m (1,971 and 5,228 ft). The vegetation in those areas typically include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cibotium chamissoi* (hapuu), *Cheirodendron fauriei*, *Diploterygiun pinnatum*, *Hedyotis terminalis*, *Hibiscus kokia* ssp. *kokia*, *Melicope waialealae* (alani wai), *Scaevola gaudichaudii*, *Syzygium sandwicensis*, *Perrottetia sandwicensis*, *Psychotria hexandra*, *P. mariniana*, or *P. wawrae* (K. Wood, pers. comm., 2001).

The primary threat to *Phlegmariurus nutans* is extinction due to naturally-occurring events and/or reduced reproductive vigor because of the small number of remaining individuals and limited distribution. Additional threats to *Phlegmariurus nutans* are feral pigs and the noxious non-native plants *Clidemia hirta* or *Psidium cattleianum* (Service 1998b).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This short-lived perennial species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala*, *laxiflora*, *longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (Service 1999).

Historically, *Plantago princeps* was found on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. It no longer occurs on the island of Hawaii. Two varieties of the species, totaling six populations, with 471 individuals, are extant on the island of Kauai, on both State (Halelea Forest Reserve, Lihue-Koloa Forest Reserve, and Na Pali Coast State Park) and privately owned lands. Historically on Kauai, *Plantago princeps* var. *anomala* was reported from a ridge west of Hanapepe River. Currently, this variety is found in the left branch of Kalalau Valley and Puu Ki. *Plantago princeps* var. *longibracteata* was historically known from Hanalei, the

Wahiawa Mountains, and Hanapepe Falls. Currently, populations are known from Waioli Valley, Alakai Swamp, the left branch of Wainiha Valley, and Blue Hole (59 FR 56333; Service 1999; GDSI 2000; HINHP Database 2000).

Plantago princeps var. *longibracteata* is found in windswept areas near waterfalls in *Metrosideros polymorpha*-*Cheirodendron montane* wet forest with riparian vegetation at elevations between 347 and 1,598 m (1,139 and 5,244 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Bobea elatior*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis elatior*, *Huperzia* spp., *Hedyotis centranthoides*, *Isachne pallens* (NCN), *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pilea peploides* (NCN), *Pipturus* spp., *Sadleria cyatheoides* (amau), or *Tetraplasandra* spp. (K. Wood, pers. comm., 2001).

Plantago princeps var. *anomala* is found in *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops. Associated native plant species include *Bidens sandwicensis*, *Carex meyenii*, *Carex wahuensis*, *Charpentiera elliptica*, *Hedyotis* spp., *Lipochaeta connata*, *Lysimachia glutinosa*, *Lysimachia kalalauensis*, *Melicope* spp., *Myrsine linearifolia*, *Poa mannii*, or *Wilkesia gymnoxiphium* (K. Wood, pers. comm., 2001).

The primary threats to both species of *Plantago princeps* on Kauai are herbivory and habitat degradation by feral pigs and goats and competition with various non-native plant species. Ungulate herbivory is especially severe, with numerous observations of *P. princeps* individuals exhibiting browse damage (61 FR 53108; Service 1999).

Platanthera holochila (NCN)

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped, and the greenish-yellow flowers occur in open spikes. This short-lived perennial is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Platanthera holochila* was known from the Alakai Swamp, Kahouamano area, and the Wahiawa Mountains on Kauai, and scattered locations on Oahu, Molokai, and Maui. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Kauai, there are two populations with 28 individuals reported on State (Alakai Wilderness Preserve) owned lands at Kilohana and the Alakai Swamp (HINHP Database 2000; GDSI 2000).

Platanthera holochila is found in montane *Metrosideros polymorpha*-*Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog at elevations between 803 and 1,563 m (2,635 and 5,128 ft). Associated native plant species include mosses, grammitid ferns, *Carex montis-eeka* (NCN), *Cibotium* spp., *Clermontia fauriei* (ohawai), *Coprosma elliptica* (pilo), *Dichantherium* spp., *Lobelia kauaensis*, *Machaerina angustifolia*, *Myrsine denticulata* (kolea), *Oreobolus furcatus*, *Rhynchospora laxa* (kuolohia), *Styphelia tameiameia*, or *Vaccinium* spp., or *Viola kauaensis* (61 FR 53108; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Platanthera holochila* on Kauai are habitat degradation and destruction by pigs; competition with non-native plants; and a risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by introduced slugs may also be a potential threat to this species (61 FR 53108; Service 1999).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect shrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (a flower containing both male and female sexual parts). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet

season but can be found throughout the year (Service 1999).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai. On Kauai, one population with 50 individuals is found on Haupu Peak on privately owned land. The status of individuals previously found in the Limahuli Valley is currently unknown (61 FR 53108; HINHP Database 2000; GDSI 2000; Service 1999).

Schiedea nuttallii typically grows on cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* at elevations between 37 and 702 m (120 and 2,303 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens valida*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Hedyotis acuminata*, *Hedyotis fluviatilis*, *Heteropogon contortus*, *Lepidium* spp. (anaunau), *Lobelia niihauensis*, *Psychotria* spp., *Perrottetia sandwicensis*, or *Pisonia* spp. (Service 1999; K. Wood, pers. comm., 2001).

Schiedea nuttallii is threatened on Kauai by habitat degradation and/or destruction by feral pigs, goats, and possibly deer; competition with several non-native plants; landslides; predation by the black twig borer; and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor, due to the small number of individuals in the only known population. Based on observations that indicate that introduced snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53108; Service 1999).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptical leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many

insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown year (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands. On Kauai, *S. tomentosa* is known from one population, with 18 individuals, on State-owned land from the Polihale State Park (59 FR 56333; HINHP Database 2000; GDSI 2000).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 0 and 212 m (0 and 694 ft). It commonly occurs in coastal dry shrublands or mixed coastal dry cliffs with the associated native plant species *Chamaesyce celastroides*, *Cluscuta sandwichiana* (kaunaoa), *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, *Vitex rotundifolia* or *Waltheria indica* (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Kauai are habitat degradation caused by competition with various non-native plant species; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; Service 1999).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in.) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *S. alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.* 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed

dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 46325; Service 1996).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and the island of Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and the island of Hawaii. It was last observed on Kauai in the 1850s (57 FR 46325; GDSI 2000; Service 1996).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Kauai.

Nothing is known of the threats to *Silene lanceolata* on the island of Kauai.

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in.) long, and berries 1 to 2 cm (0.4 to 0.8 in.) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333).

Historically, *Solanum incompletum* was known Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. The reported presence on Kauai may be erroneous (HINHP Database 2000; Christopher Puttock, Bernice P. Bishop Museum, pers. comm., 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Kauai.

Nothing is known of the threats to *Solanum incompletum* on the island of Kauai.

Solanum sandwicense (aiakeakua, popolo)

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to 4 lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Symon 1999).

Little is known about the life history of *Solanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Solanum sandwicense* was known from both Oahu and Kauai. Currently, this species is only known from Kauai. On Kauai, this species was historically reported from locations in the Kokee region bounded by Kalalau Valley, Milolii Ridge, and extending to the Hanapepe River. Currently, *Solanum sandwicense* is only known from six populations of 14 individual plants on private and State lands (Kokee State Park, Kuia Natural Area Reserve, and Na Pali-Kona Forest Reserve) at Kahuamaa Flats, Awaawapuhi Valley, Kumuwela Ridge, Waialae Valley, and Mokuone Stream (59 FR 9304; Service 1995; K. Wood, *in litt.* 1999; HINHP Database 2000; GDSI 2000; Joan Yoshioka, The Nature Conservancy of Hawaii (TNCH), pers. comm., 2000).

This species is typically found under forest canopies at elevations between 445 and 1,290 m (1,460 and 4,232 ft) in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic forests or occasionally in wet forests. Associated native plant species include *Alphitonia ponderosa*, *Athyrium sandwicense*, *Bidens* spp., *Carex meyenii*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Poa* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Syzygium sandwicense*, or *Xylosma hawaiiense* (59 FR 9304; Service 1995; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs, and competition with non-native plant species (*Passiflora mollissima*, *Rubus argutus*, *Psidium cattleianum*, *Hedychium gardnerianum* (kahili ginger), or *Lonicera japonica*); fire; human disturbance and development;

and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Service 1995; HINHP Database 2000).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and the island of Hawaii. Currently, it is found on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii. On Kauai, this species is known from State-owned land at Koaie Canyon, the rim of Waimea Canyon, and Kapahili Gulch within the Na Pali-Kona Forest Reserve. There are three known populations with five individuals total on Kauai (59 FR 56333; Service 1999; HINHP Database 2000; GDSI 2000).

Spermolepis hawaiiensis is known from *Metrosideros polymorpha* forest and *Dodonaea viscosa* lowland dry shrubland, at elevations between 56 and 725 m (184 and 2,377 ft). Associated native plant species include *Bidens sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax* (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Kauai are habitat degradation by feral goats; competition with various non-native plants; and erosion, landslides, and rock slides due to natural weathering which result in the death of individual plants as well as habitat destruction (59 FR 56333; Service 1999).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender twining short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish-yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain seven to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Maui, Molokai, Lanai, Kahoolawe, and the island of Hawaii. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. It was last observed on Niihau in the 1912 (59 FR

56333; HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Vigna o-wahuensis* on the island of Niihau.

Nothing is known of the threats to *Vigna o-wahuensis* on the island of Niihau.

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. On

Kauai, this species is only known from two populations with three individuals on State-owned land in Kawaiiki and Kipalau Valleys within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (HINHP Database 2000; GDSI 2000).

Zanthoxylum hawaiiense is reported from lowland dry or mesic forests, at elevations between 464 and 887 m (1,522 and 2,911 ft). This species is typically found in forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* with associated native plant species including *Antidesma platyphyllum*, *Alectryon macrococcus*, *Charpentiera elliptica*, *Dodonaea viscosa*, *Melicope* spp., *Myrsine lanaiensis*, *Pisonia* spp., *Pleomele aurea*, *Streblus pendulinus*, *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Kauai include competition with the non-native plant species *Melia azedarach* and *Lantana camara*; fire; human disturbance; and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population (59 FR 10305; Service 1996).

A summary of populations and landownership for the 95 plant species reported from the islands of Kauai and Niihau is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Acaena exigua</i>	0			
<i>Achyranthes mutica</i>	0			
<i>Adenophorus periens</i>	7		X	X
<i>Alectryon macrococcus</i>	6		X	
<i>Alsinidendron lychnoides</i>	2		X	
<i>Alsinidendron viscosum</i>	5		X	
<i>Bonamia menziesii</i>	8		X	X
<i>Brighamia insignis</i>	4		X	X
<i>Centaurium sebaeoides</i>	3		X	
<i>Chamaesyce halemanui</i>	6		X	
<i>Ctenitis squamigera</i>	0			
<i>Cyanea asarifolia</i>	1		X	
<i>Cyanea recta</i>	7		X	X
<i>Cyanea remyi</i>	7		X	X
<i>Cyanea undulata</i>	1			X
<i>Cyperus trachysanthos</i>	2		X	X
<i>Cyrtandra cyaneoides</i>	5		X	X
<i>Cyrtandra limahuliensis</i>	11		X	X
<i>Delissea rhytidosperma</i>	3		X	X
<i>Delissea rivularis</i>	2		X	
<i>Delissea undulata</i>	1		X	
<i>Diellia erecta</i>	1		X	
<i>Diellia pallida</i>	4		X	
<i>Diplazium molokaiense</i>	0			
<i>Dubautia latifolia</i>	9		X	

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Dubautia pauciflora</i>	2		X	X
<i>Euphorbia haeleeleana</i>	7		X	
<i>Exocarpos luteolus</i>	8		X	X
<i>Flueggea neowawraea</i>	8		X	X
<i>Gouania meyenii</i>	3		X	
<i>Hedyotis cookiana</i>	1		X	
<i>Hedyotis st.-johnii</i>	4		X	
<i>Hesperomannia lydgatei</i>	3		X	X
<i>Hibiscadelphus woodii</i>	1		X	
<i>Hibiscus brackenridgei</i>	0			
<i>Hibiscus clayi</i>	1		X	
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i>	3		X	X
<i>Ischaemum byrone</i>	2			X
<i>Isodendrion laurifolium</i>	5		X	
<i>Isodendrion longifolium</i>	9		X	X
<i>Isodendrion pyrifolium</i>	0			
<i>Kokia kauaiensis</i>	5		X	
<i>Labordia lydgatei</i>	6		X	X
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>	1			X
<i>Lipochaeta fauriei</i>	4		X	
<i>Lipochaeta micrantha</i>	5		X	X
<i>Lipochaeta waimeaensis</i>	1		X	
<i>Lobelia niihauensis</i>	11		X	X
<i>Lysimachia filifolia</i>	1		X	
<i>Mariscus pennatifolius</i>	0			
<i>Melicope haupuensis</i>	4		X	
<i>Melicope knudsenii</i>	7		X	
<i>Melicope pallida</i>	5		X	
<i>Melicope quadrangularis</i>	0			
<i>Munroidendron racemosum</i>	14		X	X
<i>Myrsine linearifolia</i>	8		X	X
<i>Nothoestrum peltatum</i>	6		X	
<i>Panicum niihauense</i>	1		X	
<i>Peucedanum sandwicense</i>	14		X	X
<i>Phlegmariurus mannii</i>	0			
<i>Phlegmariurus nutans</i>	0			
<i>Phyllostegia knudsenii</i>	1		X	
<i>Phyllostegia waimeae</i>	1		X	
<i>Phyllostegia wawrana</i>	4		X	X
<i>Plantago princeps</i>	6		X	X
<i>Platanthera holochila</i>	2		X	
<i>Poa mannii</i>	6		X	
<i>Poa sandwicensis</i>	9		X	
<i>Poa siphonoglossa</i>	5		X	
<i>Pritchardia aylmer-robinsonii</i>	1			X
<i>Pritchardia napaliensis</i>	3		X	
<i>Pritchardia viscosa</i>	1		X	
<i>Pteralyxia kauaiensis</i>	15		X	
<i>Remya kauaiensis</i>	12		X	
<i>Remya montgomeryi</i>	3		X	
<i>Schiedea apokremnos</i>	5		X	
<i>Schiedea helleri</i>	3		X	
<i>Schiedea kauaiensis</i>	2		X	
<i>Schiedea membranacea</i>	7		X	X
<i>Schiedea nuttallii</i>	1			X
<i>Schiedea spergulina</i> var. <i>leiopoda</i>	1			X
<i>Schiedea spergulina</i> var. <i>spergulina</i>	3		X	
<i>Schiedea stellarioides</i>	2		X	
<i>Sesbania tomentosa</i>	1		X	
<i>Silene lanceolata</i>	0			
<i>Solanum incompletum</i>	0			
<i>Solanum sandwicense</i>	6		X	X
<i>Spermolepis hawaiiensis</i>	3		X	
<i>Stenogyne campanulata</i>	2		X	
<i>Vigna o-wahuensis</i>	0			
<i>Viola helena</i>	1			X
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i>	2			X
<i>Wilkesia hobbyi</i>	6	X*	X	
<i>Xylosma crenatum</i>	3		X	

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
<i>Zanthoxylum hawaiiense</i>	2	.....	X	.....

*Pacific Missile Range Facility at Makaha Ridge.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Argyroxiphium kauense*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii* (as *Cyanea carlsonii*), *Cyanea platyphylla* (as *Cyanea bryanii*), *Cyanea shipmanii*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. “from Hawaii”), *Ischaemum byrone*, *Melicope zahlbruckneri* (as *Pelea zahlbruckneri*), *Neraudia ovata*, *Nothocestrum breviflorum* (as *Nothocestrum breviflorum* var. *breviflorum*), *Portulaca sclerocarpa*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata*, *Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum*, var. *incompletum*, and var.

mauiensis), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*) were considered endangered; *Cyrtandra giffardii*, *Diellia erecta*, *Silene hawaiiensis* (as *Silene hawaiiensis* var. *hawaiiensis*), *Zanthoxylum dipetalum* ssp. *tomentosum*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Clermontia pyrularia*, *Delissea undulata* (as *Delissea undulata* var. *argutidentata* and var. *undulata*), *Gouania vitifolia*, *Hedyotis coriacea*, *Isodendrion hosakae*, *Isodendrion pyriformium*, *Nothocestrum breviflorum* (as *Nothocestrum breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium*, var. *confertum*, and var. *dentatum*) were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant

to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except for *Cyrtandra giffardii* and *Silene hawaiiensis*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51, and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 95 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 95 species as endangered or threatened between 1991 and 1996. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Acaena exigua</i>	C1	C1	C1	.....
<i>Achyranthes mutica</i> .....	.....	.....	.....	.....
<i>Adenophorus periens</i>	C1	C1	C1	.....
<i>Alectryon macrococcus</i>	C1	3C	C1	.....
<i>Alsinidendron lychnoides</i> .....	.....	C1*	.....	C2
<i>Alsinidendron viscosum</i> .....	.....	C1*	3A	.....
<i>Bonamia menziesii</i>	C1	C1	C1	.....
<i>Brighamia insignis</i>	C1	C1	C1	.....
<i>Centaurium sebaeoides</i> .....	.....	.....	C1	.....
<i>Chamaesyce halemanui</i>	C1	C1	C1	.....
<i>Ctenitis squamigera</i>	C1*	C1*	C1*	.....
<i>Cyanea asarifolia</i> .....	.....	.....	C1	.....
<i>Cyanea recta</i> .....	.....	.....	3A	.....
<i>Cyanea remyi</i> .....	.....	.....	.....	.....
<i>Cyanea undulata</i> .....	.....	.....	3A	.....

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Cyperus trachysanthos</i>				C2
<i>Cyrtandra cyaneoides</i>				C2
<i>Cyrtandra limahuliensis</i>			C1	
<i>Delissea rhytidosperra</i>	C1	C1	C1	
<i>Delissea rivularis</i>	C2	C2	3A	
<i>Delissea undulata</i>	C1	C1*	C1*	
<i>Diellia erecta</i>	C1	C1	C1	
<i>Diellia pallida</i>			C1*	
<i>Diplazium molokaiense</i>	C1*	C1*	C1	
<i>Dubautia latifolia</i>	C1	C1	C1	
<i>Dubautia pauciflora</i>			C1	
<i>Euphorbia haeleeeleana</i>	C1	C1	C1	
<i>Exocarpos luteolus</i>		C1	C1	
<i>Flueggea neowawraea</i>	C1	C1	C1	
<i>Gouania meyenii</i>	3A	3A	C1	
<i>Hedyotis cookiana</i>	3A	3A	C1	
<i>Hedyotis st.-johnii</i>	C1	C1	C1	
<i>Hesperomannia lydgatei</i>	C1	C1	C1	
<i>Hibiscadelphus woodi</i>				
<i>Hibiscus brackenridgei</i>	C1	C1	C1	
<i>Hibiscus clayi</i>	C1	C1	C1	
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i>				
<i>Ischaemum byrone</i>	3C	3C	C2	C2
<i>Isodendron laurifolium</i>	C1	C1	C1	C2
<i>Isodendron longifolium</i>	C1	C1	C1	C2
<i>Isodendron pyrifolium</i>				
<i>Kokia kauaiensis</i>	C2	C2	C2	
<i>Labordia lydgatei</i>	C2	C2	C2	
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>				
<i>Lipochaeta fauriei</i>	C1*	C1*	C1	
<i>Lipochaeta micrantha</i>	C1	C1	C1	
<i>Lipochaeta waimeaensis</i>	C1	C1	C1	
<i>Lobelia niihauensis</i>	C1	C1	C1	
<i>Lysimachia filifolia</i>	C2	C2	C1	
<i>Mariscus pennatifolius</i>		C1	C1	
<i>Melicope haupuensis</i>	C1	C1	C1	
<i>Melicope knudsenii</i>	C1*	C1*	C1	
<i>Melicope pallida</i>			C1*	
<i>Melicope quadrangularis</i>	C1	C1	C1*	
<i>Munroidendron racemosum</i>	C1	C1	C1	
<i>Myrsine linearifolia</i>	C1	C1	C2	C2
<i>Nothoestrum peltatum</i>	C1	C1	C1	
<i>Panicum niihauense</i>				C2
<i>Peucedanum sandwicense</i>	C2	C2	C2	
<i>Phlegmariurus mannii</i>	C1	C1	C1	
<i>Phlegmariurus nutans</i>	C1	C1	C1	
<i>Phyllostegia knudsenii</i>	C1	C1	3A	
<i>Phyllostegia waimeae</i>			C1	
<i>Phyllostegia wawrana</i>			3A	
<i>Plantago princeps</i>	C2	C2	C1	
<i>Platanthera holochila</i>	C1	C1	C1	C2
<i>Poa mannii</i>	C1	C1	C1*	
<i>Poa sandwicensis</i>	C1	C1	C1	
<i>Poa siphonoglossa</i>	C1	C1	C1	
<i>Pritchardia aylmer-robinsonii</i>	C1	C1	C1	
<i>Pritchardia napaliensis</i>			C2	C2
<i>Pritchardia viscosa</i>			C2	C2
<i>Pteralyxia kauaiensis</i>	C1	C1	C1	
<i>Remya kauaiensis</i>	C1*	C1*		
<i>Remya montgomeryi</i>		C1	C1	
<i>Schiedea apokremnos</i>		C1*	3A	
<i>Schiedea helleri</i>				
<i>Schiedea kauaiensis</i>				
<i>Schiedea membranacea</i>	C2	C2	C2	C2
<i>Schiedea nuttallii</i>				C2
<i>Schiedea spergulina</i> var. <i>leiopoda</i>		C1	C1*	
<i>Schiedea spergulina</i> var. <i>spergulina</i>		C1	C1	
<i>Schiedea stellarioides</i>		C1*	3A	
<i>Sesbania tomentosa</i>	C1*	C1*	C1	
<i>Silene lanceolata</i>	C1	C1	C1	

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
<i>Solanum incompletum</i>	C1*	C1*	C1	
<i>Solanum sandwicense</i>	C1*	C1*	C1	
<i>Spermolepis hawaiiensis</i> .....	.....	.....	C1	
<i>Stenogyne campanulata</i> .....	.....	.....	C1	
<i>Vigna o-wahuensis</i>	C1	C1	C1	
<i>Viola helenae</i>	C1	C1	C1	
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i>	C1	C1	C2	C2
<i>Wilkesia hobdyi</i>	C1	C1		
<i>Xylosma crenatum</i>	C2	C2	C1	
<i>Zanthoxylum hawaiiense</i>	C1	C1	C1	

Key:

C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.

Federal Register Notice of Review:

1980: 45 FR 82479

1985: 50 FR 39525

1990: 55 FR 6183

1993: 58 FR 51144

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Acaena exigua</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20787	12/18/2000	65 FR 79192
<i>Achyranthes mutica</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	NA	NA
<i>Adenophorus periers</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000,	65 FR 66808,
<i>Alectryon macrococcus</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772	12/29/2000,	66 FR 83157
<i>Alsiniidendron lychnoides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000,	65 FR 66808,
<i>Alsiniidendron viscosum</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Bonamia menziesii</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000,	65 FR 66808,
<i>Brighamia insignis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	12/18/2000,	65 FR 79192,
<i>Centaurium sebaeoides</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	12/27/2000,	65 FR 82086,
<i>Chamaesyce halemanui</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Ctenitis squamigera</i>	E	06/24/1993	58 FR 34231	09/09/1994	59 FR 49025	12/18/2000,	65 FR 79192,
<i>Cyanea asarifolia</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	12/29/2000	66 FR 83157
<i>Cyanea recta</i>	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyanea remyi</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyanea undulata</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Cyperus trachysanthos</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Cyrtandra cyaneoides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Cyrtandra limahuliensis</i>	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Delissea rhytidosperra</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Delissea rivularis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Delissea undulata</i>	E	06/27/1994	59 FR 32946	10/10/1996	61 FR 53124	11/07/2000	65 FR 66808
<i>Diellia erecta</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000,	65 FR 79192,
<i>Diellia pallida</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	12/29/2000	66 FR 83157
<i>Diplazium molokaiense</i>	E	06/24/1993	58 FR 34231	09/09/1994	59 FR 49025	11/07/2000	65 FR 66808
<i>Dubautia latifolia</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	12/18/2000	65 FR 79192
<i>Dubautia pauciflorula</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Euphorbia haeleeleana</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Exocarpos luteolus</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.—Continued

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Flueggea neowawraea</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000	65 FR 66808, 65 FR 79192
<i>Gouania meyenii</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	11/07/2000	65 FR 66808
<i>Hedyotis cookiana</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Hedyotis st. johnii</i>	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639	11/07/2000	65 FR 66808
<i>Hesperomannia lydgatei</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Hibiscadelphus woodii</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Hibiscus brackenridgei</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000, 12/27/2000	65 FR 79192, 65 FR 82086
<i>Hibiscus clayi</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Ischaemum byrone</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	12/18/2000, 12/29/2000	65 FR 79192, 65 FR 83157
<i>Isodendron laurifolium</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Isodendron longifolium</i>	T	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Isodendron pyriformis</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	NA	NA
<i>Kokia kauaiensis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Labordia lydgatei</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Lipochaeta fauriei</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Lipochaeta micrantha</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Lipochaeta waimeae</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Lobelia niihauensis</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	11/07/2000	65 FR 66808
<i>Lysimachia filifolia</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Meliscus pennatifolius</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000	65 FR 79192
<i>Melicope haupuensis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Melicope knudsenii</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000, 12/18/2000	65 FR 66808, 65 FR 79192
<i>Melicope pallida</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Melicope quadrangularis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Munroidendron racemosum</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Myrsine linearifolia</i>	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Nothoestrum peltatum</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Panicum niihauense</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Peucedanum sandwicense</i>	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Phlegmariurus mannii</i>	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772	12/18/2000	65 FR 79192
<i>Phlegmariurus nutans</i>	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770	NA	NA
<i>Phyllostegia knudsenii</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Phyllostegia waimeae</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Phyllostegia wawrana</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Plantago princeps</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Platanthera holochila</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Poa mannii</i>	E	04/07/1993	58 FR 18073	11/10/1994	59 FR 56330	11/07/2000	65 FR 66808
<i>Poa sandwicensis</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Poa siphonoglossa</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Pritchardia aylmer-robinsonii</i>	E	12/17/1992	57 FR 59970	08/07/1996	61 FR 41020	11/07/2000	65 FR 66808
<i>Pritchardia napaliensis</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Pritchardia viscosa</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Pteralyxia kauaiensis</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Remya kauaiensis</i>	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450	11/07/2000	65 FR 66808
<i>Remya montgomeryi</i>	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450	11/07/2000	65 FR 66808
<i>Schiedea apokremnos</i>	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639	11/07/2000	65 FR 66808
<i>Schiedea helleri</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Schiedea kauaiensis</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000	65 FR 66808
<i>Schiedea membranacea</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Schiedea nuttallii</i>	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108	11/07/2000, 12/29/2000	65 FR 66808, 65 FR 83157
<i>Schiedea spergulina</i> var. <i>leiopoda</i> .	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808
<i>Schiedea spergulina</i> var. <i>spergulina</i> .	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 9304	11/07/2000	65 FR 66808

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU.—Continued

Species	Federal status	Proposed Rule		Final Rule		Prudency determinations and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date(s)	Federal Register
<i>Schiedea stellarioides</i>	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Sesbania tomentosa</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157
<i>Silene lanceolata</i>	E	09/20/1991	56 FR 47718	10/08/1992	57 FR 46325	12/29/2000	65 FR 83157
<i>Solanum incompletum</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	NA	NA
<i>Solanum sandwicense</i>	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304	11/07/2000	65 FR 66808
<i>Spermolepis hawaiiensis</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	11/07/2000, 12/29/2000	65 FR 66808, 65 FR 83157
<i>Stenogyne campanulata</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Vigna o-wahuensis</i>	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333	12/18/2000, 12/27/2000, 12/29/2000	65 FR 79192, 65 FR 82086, 65 FR 83157
<i>Viola helenae</i>	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695	11/07/2000	65 FR 66808
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070	11/07/2000	65 FR 66808
<i>Wilkesia hobdyi</i>	E	10/02/1989	54 FR 40444	06/22/1992	57 FR 27859	11/07/2000	65 FR 66808
<i>Xylosma crenatum</i>	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580	11/07/2000	65 FR 66808
<i>Zanthoxylum hawaiiense</i>	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305	11/07/2000, 12/18/2000, 12/29/2000	65 FR 66808, 65 FR 79192, 65 FR 83157

Key:E = Endangered.
T = Threatened.**Critical Habitat**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii. Among other things, the court held that, in most cases, we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the

designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found

that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the DOFAW, county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation

because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On October 5, 1999, we mailed letters to more than 160 landowners on the islands of Kauai and Niihau requesting any information considered germane to the management of any of the 95 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or whether hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19 to 21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 48 people attended the three open houses. In addition, we met with Kauai County Division of Forestry and Wildlife staff and Kauai State Parks staff to discuss their management activities on the island.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for 76 Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat

designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court's order. In those proposals we determined that critical habitat was prudent for 85 species (*Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Vigna o-wahuensis*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*) that are reported from Kauai and/or Niihau as

well as on Maui, Kahoolawe, Lanai, and Molokai.

In the November 7, 2000, proposal we determined that it was prudent to designate approximately 24,348 ha (60,165 ac) of lands on the island of Kauai and approximately 191 ha (471 ac) of lands on the island of Niihau as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on January 7, 2001. On January 18, 2001, we published a notice (66 FR 4782) announcing the reopening of the comment period until February 19, 2001, on the proposal to designate critical habitat for 76 plants from Kauai and Niihau and a notice of a public hearing. On February 6, 2001, we held a public hearing at the Radisson Kauai Beach Resort in Lihue, Kauai.

On March 7, 2001, we published a notice announcing the reopening of the comment period, and announced the availability of the draft economic analysis on the proposal to designate critical habitat for 76 plants from Kauai and Niihau (66 FR 13691). This third public comment period was open until April 6, 2001.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Kauai and Niihau is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the November 7, 2000, proposed rule (65 FR 66808), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on December 7, 2000. We reopened the comment period from January 18, 2001, to February 19, 2001 (66 FR 4782), to accept comments on the proposed designations and to hold a public hearing on February 6, 2001, in Lihue, Kauai. The comment period was reopened from March 7, 2001, to April 6, 2001 (66 FR 13691), to allow for additional comments on the proposed rule and comments on the

draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on November 13, 2000, and the *Garden Island* on November 15, 2000. We received two requests for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and in the *Garden Island* newspaper on January 19, 2001. A transcript of the hearing held in Lihue, Kauai on February 6, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Kauai and Niihau plants to peer review the proposed critical habitat designations. All three peer reviewers submitted comments on the proposed critical habitat designations, providing updated biological information, critical review, and editorial comments.

We received a total of 37 oral and 202 written comments during the three comment periods. These included responses from one Federal agency, seven State offices, one local agency, one elected official, and 207 private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Kauai and Niihau plants. Of the 239 comments we received, 157 supported designation, 25 were opposed to it, and eight provided information or declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat determinations and draft economic analysis on the proposed determinations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c,

1999) identify the need to expand existing populations and reestablish wild populations within historic range. We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species.

(2) *Comment:* The data cited in the critical habitat proposal documenting the habitat losses and threats is questionable. We do not agree with the threats to the species as described in the proposed rule.

Our Response: In the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau, we provided information on the status of and threats to, the Kauai and Niihau plants. The threats to these species, and the species status, were documented in the listing rules for the Kauai and Niihau plants (56 FR 1450, 56 FR 47695, 56 FR 49639, 56 FR 55770, 57 FR 20580, 57 FR 20772, 57 FR 20787, 57 FR 27859, 57 FR 46325, 59 FR 9304, 59 FR 10305, 59 FR 49025, 59 FR 56330, 59 FR 56333, 61 FR 53070, 61 FR 53108, 61 FR 53124, and 61 FR 41020), and in the recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, and 1999), and in the supporting documentation in the files at the Pacific Islands Office (See **ADDRESSES** section).

(3) *Comment:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, some of the data used by the Service was 30 years old or older.

Our Response: When developing the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the three informational open houses held on Kauai at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19 to 21, 1999, respectively; recent biological surveys and reports; our recovery plans for these species; information received in response to

outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. This additional information comes from the Geographic Information System (GIS) coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); new information; completed recovery plans, and information received during the public comment periods and public hearings.

(4) *Comment:* We received comments that the proposed critical habitat designations were not specific enough, and were over broad and therefore, failed to comply with Congressional intent to restrict critical habitat to those areas "essential to the conservation of the species." On the other hand, we also received comments that the designation was not inclusive enough and failed to include areas where Kauai and Niihau plants have occurred and which are necessary for recovery of the species.

Our Response: We used the best scientific information available to develop the November 7, 2000, proposal to designate critical habitat for 76 Kauai and Niihau plants. This information is detailed above in our response to Comment (3). Based on the information described above, we believe we have identified those areas essential to the conservation of the Kauai and Niihau plant species at issue in this proposed rule.

(5) *Comment:* We are concerned that our property infrastructure (*i.e.*, roads, buildings, etc.) is within proposed critical habitat boundaries, even though it does not contain any habitat for listed plants. Areas seaward of the vegetation line were included in the maps. Also, Units J, G, and H (on Navy lands) appear to include missile launch pads, buildings, towers, and paved roads. Modify specific units in order to avoid areas where existing projects (*i.e.*, agricultural lands with irrigation infrastructure) are planned or may occur.

Our Response: When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands

unlikely to contribute to the conservation of these species. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features do not contain, and are not likely to develop, constituent elements, and would be specifically excluded from designation under this proposed rule. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

(6) *Comment:* The presence of non-native plants makes habitat unsuitable and inappropriate for designation as critical habitat.

Our Response: The presence of non-native plant competitors does not preclude designation of an area as critical habitat, if the area contains physical and biological features that are essential to the conservation of the species, and that may require special management considerations or protection. We defined the primary constituent elements on the basis of the habitat features of the areas in which the plants are reported from, such as the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation.

(7) *Comment:* The Service avoided a statutory obligation to determine whether the benefits of excluding particular areas (e.g., areas with conservation agreements, etc.) from critical habitat designation outweigh the benefits of including each area.

Our Response: Section 4(b)(2) of the Act requires that we consider the economic and other impacts of critical habitat designation and allows us to exclude potentially suitable areas when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We base our decision to exclude an area from critical habitat designation on the best scientific data available, taking into consideration the economic and other impacts of specifying any particular area as critical habitat. We completed an economic analysis of the November 7, 2000, proposal. However, we will revise that analysis to reflect this new proposal and provide another opportunity for public comment. We will use that final

economic analysis in determining whether exclusions under section 4(b)(2) are appropriate (see 50 CFR 424.19).

We will provide technical assistance and work closely with applicants throughout the development of any future Habitat Conservation Plans (HCPs) or other conservation plans to identify lands essential for the long-term conservation of the Kauai and Niihau plants and appropriate management for those lands. If an HCP or other conservation management plan is approved by us, we will reassess the critical habitat boundaries in light of the conservation plan. We will seek to undertake this review when an HCP or conservation management plan is approved, but funding constraints may influence the timing of such a review.

Issue 2: Site-Specific Biological Comments

(8) *Comment:* Critical habitat should be designated for *Phyllostegia waimeae* and *Melicope quadrangularis* because habitats have not been adequately surveyed and these species may still be extant in the wild.

Our Response: We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information and/or address comments and new information received during the comment periods including information on the recent rediscovery in August 2000 of *Phyllostegia waimeae* on Kauai. In light of this new information we have reconsidered an earlier not prudent finding and determine that the designation of critical habitat is prudent for *Phyllostegia waimeae*. We determined on November 7, 2000, that critical habitat designation is not prudent for *Melicope quadrangularis* because it has not been seen recently in the wild on Kauai and no viable genetic material of this species is known to exist. Therefore, critical habitat designation would be of no benefit to this species and no change is made to that determination here. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available.

(9a) *Comment:* Critical habitat should be designated for *Pritchardia* or loulu palm species if the units are of adequate ecological size and because the habitat is too inaccessible and remote for vandals. (9b) *Comment:* Critical habitat for *Pritchardia* should not be designated because of previous acts of vandalism to listed plant species.

Our Response: We have revised the November 7, 2000, proposal to designate

critical habitat for 76 plants from Kauai and Niihau to incorporate new information, and/or address comments and new information received during the comment periods. However, no additional information was provided during the comment periods that would ensure the protection of *Pritchardia* from vandalism or collection if critical habitat was designated for the three Kauai and Niihau species. We believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection of these three species of *Pritchardia*.

(10) *Comment:* Include *Sesbania tomentosa* on the border of the Navy's PMRF at Barking Sands and *Munroidendron racemosum* on the border of unit E.

Our Response: We have revised the November 7, 2000, proposal to designate critical habitat for 76 plants from Kauai and Niihau to incorporate new information, and/or address comments and new information received during the comment periods, including information on *Sesbania tomentosa* and *Munroidendron racemosum*. We have proposed critical habitat for *Sesbania tomentosa* in units Kauai D, H, and I; and for *Munroidendron racemosum* in units Kauai B, E, I, J and O in this revised rule.

(11) *Comment:* U.S. Navy lands should be excluded from the critical habitat designation because protections and management afforded the Kauai and Niihau plants under the Integrated Natural Resource Management Plans (INRMP), pursuant to the Sikes Act and amendments, and under existing programmatic biological opinions were sufficient, thereby resulting in these lands not requiring special management or protection and not meeting the definition of critical habitat. In addition, the PMRF should be excluded from critical habitat because its existing programmatic, habitat-based management efforts reflected in the *Cooperative Agreement for the Conservation and Management of Fish and Wildlife Resources at Pacific Missile Range Facility, Barking Sands, Kauai, Hawaii*, and signed between the Service and the Navy in 1986, ensures long-term conservation of Federal trust species. Furthermore, designation of critical habitat would detrimentally restrain and limit the installation's flexibility, adversely affecting its ability to perform its national defense mission.

Our Response: We agree that an INRMP can provide special management for lands such that they no longer meet the definition of critical habitat when the plan meets the following criteria: (1)

The plan must be complete and provide a conservation benefit to the species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation management strategies will be effective, *i.e.*, provide for periodic monitoring and revisions as necessary. If all of these criteria are met, the lands covered under the plan would no longer meet the definition of critical habitat.

We believe that occupied and unoccupied areas that contain the primary constituent elements for plants occurring on the Barking Sands and Makaha Ridge Facility lands are needed for recovery of these species. Management at the Barking Sands and Makaha Ridge Facility lands currently consists of restricting human access and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of *Panicum niihauense* and *Wilkesia hobyi* and address the primary threats to these species. Also, we believe that the INRMP may not ensure that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. If the Navy completes and implements an INRMP or other endangered species management plans that addresses the maintenance and improvement of the essential elements for these two plant species, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

(12) *Comment*: The State of Hawaii identified specific areas that they thought should not be designated as critical habitat.

Our Response: During the public comment periods for the November 7, 2000, proposal for plants from Kauai and Niihau, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We have revised the November 7, 2000, proposed designations to incorporate new information, and/or address comments and new information received during the comment periods,

including information received from DOFAW.

We evaluated DOFAW's comments on a species by species basis and incorporated information that was consistent with our methodology. DOFAW recommended deletion of some of the proposed critical habitat units as they do not believe these areas are suitable for the recovery of some species because they (DOFAW) would not be able to manage these areas with their limited staff and funding. Because the basis for identifying areas by DOFAW was made on the manageability of the area, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Issue 3: Legal Issues

(13) *Comment*: A premise for the proposed rule is that the Service was ordered by the court on August 10, 1998, to designate critical habitat by November 30, 2000. The court may not order critical habitat to be designated. Rather, the court may order the Service to make a decision on whether to designate critical habitat. The designation of critical habitat is an action that is ultimately discretionary, and the Service must apply the criteria in the Act and its regulations to decide whether to designate critical habitat. Thus, the Service should seek correction of that court order and reconsider whether, and to what extent, critical habitat should be designated.

Our Response: As stated earlier, on August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074). Among other things, the court did not order us to designate critical habitat for all species. In fact, the court state that it "expresse[d] no opinion as to whether or not critical habitat should be designated for any of the subject species." (24 F. Supp. at 1288). Instead, Judge Kay remanded our 245 "not prudent" decisions to the Service to consider designation of critical habitat consistent with his opinion (*Id.* at 1288-89). The court explicitly stated that the designation of critical habitat was beneficial because it: (1) Triggers section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied, or the occupancy is in question; (2) focuses conservation activities on the most essential areas; (3) provides educational benefits to State or county governments or private entities; and (4) prevents people from causing

inadvertent harm to the species (see 24 Supp.2d 1280 for the full text of Judge Kay's opinion). In the November 7, 2000, proposal we published proposed determinations of whether designation of critical habitat is prudent for 81 plants from Kauai and Niihau, and proposed designations of critical habitat for 76 of those plants. We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods.

(14a) *Comment*: In the State of Hawaii, Native Hawaiians have a constitutional right to access and gather certain resources for traditional and cultural purposes. The proposal will limit and extinguish these rights. (14b) *Comment*: The designations of areas as critical habitat will affect human access to those areas. (14c) *Comment*: Hunting and recreational opportunities need to be considered when designating critical habitat. Also, the designation of critical habitat will prohibit recreational, commercial, and subsistence activities from taking place, as well as access for these activities.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some sort of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies.

Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives.

Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(15) *Comment*: The Service needs to make its decisions on objective studies based on science rather than let the courts dictate its decisions.

Our Response: We must comply with the orders of Federal courts. See also our response to comment 13. When developing the proposed critical habitat designations, we used the best scientific and commercial data available at the time. We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. All of the information that we used in our decision-making process is part of our administrative record and can be reviewed at the Pacific Islands Field Office (see **ADDRESSES** section).

Issue 4: Section 7 Consultation Issues

(16) *Comment*: Does section 7 apply to State and county agencies with permit authority such as the Hawaii Pollution Discharge Elimination System permit issued by the State of Hawaii and authorized by the Environmental Protection Agency, and programs administered under the Natural Resources Conservation Service?

Our Response: Section 7 of the Act requires each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat. Section 7 also requires that Federal agencies consult with us if their actions may affect a listed species. State or county agencies are not required to consult with us under section 7 of the Act if their programs are not authorized, permitted, or funded by a Federal agency.

The Environmental Protection Agency (EPA) may delegate the National Pollutant Discharge Elimination System (NPDES) permit authority to the State. Therefore, any individual permit that is issued by the State of Hawaii is not subject to section 7 consultation. Instead, procedures in the January 2001 Memorandum Of Understanding between ourselves and the EPA would apply. These procedures provide for us to notify EPA of any concerns we may have with individual permits, and the EPA would take corrective action if an individual permit has severe enough impacts on a listed species or designated critical habitat and the State fails to correct the problem. The Natural Resources Conservation Service (NRCS) does consult with us on projects and specific actions that they fund, authorize, or permit.

(17) *Comment*: The State of Hawaii endangered species law does not require critical habitat.

Our Response: There is no State equivalent of critical habitat designation under the State of Hawaii's endangered species law. However, the Federal Endangered Species Act of 1973, as amended, is applicable to all federally listed species, including those in the State of Hawaii.

Issue 5: Mapping and Primary Constituent Elements

(18a) *Comment*: The designated areas are too large. (18b) *Comment*: The units are not large enough, and don't allow for changes that occur during known environmental processes.

Our Response: We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. Areas that contain habitat necessary for recovery were identified and delineated on a species by species basis. When species units overlapped, we combined units for ease of mapping (see also **Methods** section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of these plant species.

(19) *Comment*: Map exhibits in the proposed rule and at the public hearings did not show enough detail.

Our Response: The maps in the **Federal Register** are meant to provide a general location and shape of critical habitat. At the public hearing, these maps were expanded to wall-size to assist the public in better understanding the proposal. These larger scale GIS products also were provided to individuals upon request. The legal descriptions are readily plotted and transferable to a variety of mapping formats.

(20) *Comment*: Once the designations are made, they will become permanent.

Our Response: The Act specifically provides that we may, from time to time, revise designations as appropriate (16 U.S.C. 1533(a)(3)(B)). Thus, if new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, under the section 3(5)(A) definition, or because the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species, under section 4(b)(2), we may revise critical habitat designations to exclude these areas. Also, we can always revise the critical habitat designations to add land at a later date.

Critical habitat designations are removed at the time a species is no longer protected under the Act (*i.e.*, delisted).

Issue 6: Definition of Critical Habitat

(21) *Comment*: Critical habitat is being designated in otherwise protected areas, such as State conservation lands, Navy lands with an INRMP, and State parks. Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat.

Our Response: In the November 7, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Kauai and Niihau plant species to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Kauai and Niihau with a known occurrence of one of the plant species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at three locations (Waimea, Lihue, and Kilauea) on the island of Kauai from October 19 to 21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Kauai under State of Hawaii jurisdiction, we met with staff from Kauai's DOFAW office and Kauai State Parks to discuss their current management for the plants on their lands. And, we contacted the State's Department of Hawaiian Home Lands (DHHL) regarding management for the plants on lands under their jurisdiction. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas newly proposed for designation by this revised proposal, we have also reviewed any management information available to use at this time. In addition, we are requesting information on management

of these lands during the comment period. Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections."

Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and, (3) provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

Based upon review of the information available to us at this time, we have not been able to find that management on these lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii, the Navy, and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the island of Kauai. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of

management actions for the conservation of these species should proceed; however, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available.

(22) *Comment:* Critical habitat for Kauai and Niihau plants is not determinable because their biological needs are not sufficiently known. Hawaiian plants are "biologically incompetent" and cannot maintain self-sustaining wild populations. Recovery plans for the species recommend significant research; without such information it cannot be determined with reasonable scientific certainty which areas are essential to the species.

Our Response: We are required under section 4 of the Act to designate critical habitat based on what we know at the time of designation. When we designate critical habitat at the time of listing, or, as in this case, under court-ordered deadlines we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designation on the best available information we have at the time.

(23) *Comment:* There is no direct relationship between the recovery plans for these species and critical habitat.

Our Response: Development and completion of the recovery plans and designation of critical habitat for these plant species are two separate processes with two separate timeframes. The recovery plans for these species were completed between 1994 and 1999. We recognize that information contained within the recovery plans is directly relevant to the development of the critical habitat designations, and we relied heavily upon them. In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas, and that new survey information or research finding may also lead to additional refinements. Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species, and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined

by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the listed species at issue. As a result, the proposed critical habitat designations in this revised proposed rule include habitat that was not identified as essential in the 1998 recommendations.

Issue 7: Effects of Designation

(24) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson program).

Our Response: We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat requires Federal agencies to consult under section 7 of the Act with us on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies can not result in jeopardy to listed species, and they can not adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the recovery of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs are implemented consistent with this need.

(25) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. It's regulatory implications apply only to activities sponsored at least in part by

Federal agencies. Land uses such as logging, grazing, and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans.

(26) *Comment:* The designation of critical habitat would justify the "destruction of private property rights," harassment from Federal agents, and lawsuits.

Our Response: Section 3(5) of the Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are to be made on the basis of the best scientific and commercial data available, after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species).

To a property owner, the designation of critical habitat becomes important when viewed in the context of section 7 of the Act, which requires all Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by the agency does not result in the destruction or adverse modification of designated critical habitat. If, after consultation, our biological opinion concludes that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives to the action which would avoid the destruction or adverse modification of the critical habitat (16 U.S.C. 1536(b)(3)(A)). If we cannot suggest acceptable reasonable and prudent alternatives, the agency (or the applicant) may apply for an exemption from the Endangered Species Committee under section 7(e)-(p) of the Act.

The mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins v. City of Tiburon*, 447 U.S. 255, 260-263 (1980); *Hodel v. Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992)). The designation of critical habitat alone does not deny

anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives.

We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for on-going projects. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

Since these 83 plant species were listed (between 1990 and 1996), there have been no formal consultations on them, and we have conducted only one informal consultation on Kauai, in addition to consultations on purely Federal activities (ie. Defense installations). That informal consultation was conducted with the NRCS through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinitiate consultation for these on-going actions as these actions are not occurring within the areas of proposed critical habitat (Terrell Kelly, NRCS, pers. comm., 2001). There have been no consultations on any of these 83 species on the island of Niihau.

Nearly all of the land within the critical habitat units is unsuitable for development or economically productive land uses because of the remote locations, lack of access, and rugged terrain of these lands. Also, nearly all of this land (99.2 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 0.7 percent of this land is within the State Agricultural District, and about 0.1 percent is within the State Urban District.

The limited economic activities that may occur consist of improvements to roads and communications and tracking facilities; recreational use such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and crop farming. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch

system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant future activities that would require Federal permitting or authorization in these coastal areas.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (DAHI 2001).

The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D-4), and thus would have received some protections even without the Act.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously available draft economic analysis of the likely economic impacts of designating critical habitat for 76 plants from the islands of Kauai and Niihau (66 FR 13691). In that analysis, which included proposed designations of critical habitat within 23 units on 24,349 ha (60,166 ac) on Kauai and 191 ha (471 ac) on Niihau, we determined that the designations would have modest economic impacts because nearly all of the land within the critical habitat units has limited suitability for development, land uses, and activities

because of the remote locations, lack of access, and rugged terrain, of the land, and their inclusion within the State Conservation District where State land-use controls severely limit development and most activities. The proposed critical habitat designations were expected to cause little or no increase in the number of section 7 consultations; and few, if any, increases in costs of projects or delays in, or modifications to planned projects, land uses and activities.

Issue 8: Economic Issues

(27) *Comment:* We should have been directly contacted for our opinions on the economic impacts of critical habitat designation.

Our Response: The methodology outlined in the economic analysis report relies primarily on information provided by the Service, the State of Hawaii's Department of Land and Natural Resources (DNLR), and the consultant, Decision Analysts Hawaii, Inc. (DAHI). To better understand the concerns of stakeholders, the Service solicited comments and suggestions from the public, other concerned government agencies, the scientific community, industry, and other interested parties concerning aspects of the proposed rule and the proposed critical habitat. These comments and suggestions were taken into consideration in conducting the economic analysis. Additional clarifications were obtained directly from landowners and other parties.

In addition, we have revised the November 7, 2000, proposed designations to incorporate new information, and/or address comments and new information received during the three comment periods. In addition, we will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination and revise the economic analysis. When completed, we will announce the availability of the draft revised economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the revised draft economic analysis and proposed rule at that time. In addition, we will mail letters to landowners and other interested parties and publish a notice in the *Garden Island* newspaper announcing the availability of and seeking public comment on the draft economic analysis and proposed rule. We would strongly encourage anyone who has information or opinions concerning the economic impacts of this proposal to provide them to us.

(28) *Comment:* The Service failed to properly consider the economic (e.g., costs associated with hunting, costs associated with section 7 consultation, etc.) and other impacts (e.g., special management protections on private lands, planned highway projects, diminished activities on military lands, etc.) of designating particular areas as critical habitat.

Our Response: We originally proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. On March 7, 2001, we published a notice announcing the availability of the draft economic analysis on the November 7, 2000, proposal. That draft economic analysis concluded that for the most part the critical habitat designations for Kauai and Niihau generally will have modest economic impacts. They are expected to cause little or no increase in the number of section 7 consultations with the Service; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities. These findings reflect the following:

- Nearly all of the land within the critical habitat units is unsuitable for development as well as for most projects, land uses, and activities. This is due to the remote locations, lack of access, and rugged terrain.
- On Kauai, nearly all of this land (98.5 percent) is within the State Conservation District where State land-use controls, severely limits development and most activities.
- Very few of the current and planned projects, land uses, and activities that could affect the proposed critical habitat units have a federal involvement requiring section 7 consultations with the Service, so they are not restricted by the Service requirements.
- And most of the activities that do have federal involvement are operations and maintenance of existing facilities and structures, so they would not be impacted by the critical habitat designation.

We have revised the proposed designations to incorporate new information, and/or address comments and new information received during the comment periods. In addition, we will conduct another 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 open a 30-day public comment period on the

draft economic analysis and proposed rule at that time.

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat, for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoctrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobydi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808). In this proposal we have revised the proposed designations for the 76 plants based on new information received during the comment periods. In addition, we incorporate new information, and/or address comments and new information received during

the comment periods on the November 7, 2000, proposal.

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*. We determined that critical habitat designation was not prudent because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau. No change is made to these determinations here and they are hereby incorporated by reference (65 FR 66808). In that proposal, we also determined that critical habitat was not prudent for *Melicope quadrangularis* and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Due to new information received during the comment periods regarding the rediscovery of *Phyllostegia waimeae* on Kauai, we have reconsidered our earlier finding and determine that critical habitat is prudent for this species because we believe that such designation would be beneficial to this species. Designation of critical habitat is proposed for this species on Kauai. No change is made here to the November 7, 2000, not prudent determination for *Melicope quadrangularis* and it is hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not determine prudence nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), and on December 29, 2000 (Molokai). In this proposal, no change is made to the earlier prudence determinations for these nine species and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatiformis* on the island of Kauai, based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical

habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

No change is made here to the prudence determination for *Acaena exigua*, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000, and it is hereby incorporated by reference (65 FR 79192). In that proposal, we determined that critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material was known to exist.

In this proposal, we determine that critical habitat is prudent for four other species (*Achyranthes mutica*, *Isodendron pyrifolium*, *Phlegmariurus nutans*, *Solanum incompletum*) for which prudence determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands. These four plants were listed as endangered species under the Act, between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. In this proposal, we determine that critical habitat is prudent for these four species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Phlegmariurus nutans* on Kauai based on new information and information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Achyranthes mutica*, *Isodendron pyrifolium*, and *Solanum incompletum* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to their conservation on these islands.

Based on a review of new biological information and public comments received we have revised our November 7, 2000, proposal to incorporate the following changes in addition to those described above: changes in our approach to delineating proposed critical habitat (see Criteria Used to Identify Critical Habitat); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid nonessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and, inclusion of new areas within the proposed critical

habitat units that are essential for the conservation of one or more of the 83 plant species.

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 a 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 a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help 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, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take 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 the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be

necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent, and proposed designation of critical habitat for 76 plants from the islands of Kauai and Niihau on November 7, 2000. These species are: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lynchoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus warmeae* ssp. *hannetae*, *Idsodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoctrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa*

sandwicensis, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schieda nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hodbdvi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. No change is made to these prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal we did not propose critical habitat for three species of loulou palm, *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa*. Since publication of the listing rule for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa*, we learned of instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia* (65 FR 66808). In light of this information, we believed that the designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism and collection. We determined that the benefits of designation critical habitat designation did not outweigh the potential increased threats from vandalism or collection. Given these considerations, we determined that designation of critical habitat for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa* was not prudent. During the public comment periods for the November 7, 2000, proposal two commenters suggested that critical habitat should be designated for these three species of palm if the units are of adequate ecological size or because the habitat is too inaccessible and remote for vandals. We also received comments that critical habitat should not be designated for these three species of palm because of previous acts of vandalism to listed plant species. Given the considerations described in the November 7, 2000, proposal regarding instances of vandalism, collection, and commercial trade of these species no change is made to the earlier prudency determinations for *Pritchardia aylmer-robinsonii*, *P. napalienses*, and *P. viscosa* in this proposal and they are hereby incorporated by reference (65 FR 66808).

In the November 7, 2000, proposal, we determined that critical habitat was not prudent for *Melicope*

quadrangularis and *Phyllostegia waimeae*, two species endemic to Kauai, because they had not been seen recently in the wild, and no viable genetic material of these species was known to exist. Therefore, such designation would be of no benefit to these species. Since publication of the November 7, 2000, proposal we received new information during the comment periods regarding the rediscovery in August 2000 of six individuals of *Phyllostegia waimeae* in Kawaiiki Valley on Kauai, and have reconsidered our earlier prudency finding. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Phyllostegia waimeae* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Phyllostegia waimeae* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Phyllostegia waimeae* does not occur on Federal lands on Kauai where actions are subject to section 7 consultation. This species is located exclusively on State land with limited Federal activities, though there could be Federal actions affecting this land in the future. While a critical habitat designation for habitat currently occupied by *Phyllostegia waimeae* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there

may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Phyllostegia waimeae*.

No change is made here to the prudency determination for *Melicope quadrangularis*, a species known only from the Wahiawa drainage area on Kauai, published in the November 7, 2000, proposal and hereby incorporated by reference (65 FR 66808). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991 and has not been observed in this area in surveys following Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm., 2000). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Melicope quadrangularis* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

In November 7, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that no longer occur on Kauai and Niihau but are reported from one or more other islands. We determined that critical habitat was prudent and proposed designation of critical habitat for nine of these species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Mariscus pennatififormis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) in other proposed rules published on December 18, 2000 (Maui and Kahoolawe), on December 27, 2000 (Lanai), or on December 29, 2000 (Molokai). No change is made to these prudency determinations for these nine species in this proposal and they are hereby incorporated by reference (65 FR 79192, 65 FR 82086, 65 FR 83158). In this proposal, we propose designation of critical habitat for *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatififormis* on the island of Kauai, based on new information and

information received during the comment periods on the November 7, 2000, proposal. Critical habitat is not proposed for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau because we are unable to determine habitat which is essential to other conservation on these islands.

No changes is made here to the prudency determination for *Acaena exigua*, a species known only from Kauai and Maui, published in the proposed rule for Maui and Kahoolawe on December 18, 2000 and hereby incorporated by reference (65 FR 79192). On Kauai, this species was only known from a collection made between 1869 and 1870 (Wagner et al. 1999). On Maui, this species was last observed in 1997 and no individuals were observed during subsequent visits in 1998 and 1999 to the only known location (H. Oppenheimer and S. Perlman, pers. comm., 2000). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

To determine whether critical habitat would be prudent for four other species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudency determinations have not been made previously, and that no longer occur on Kauai but are reported from one or more other islands we analyzed the potential threats and benefits for each species in accordance with the court's order. These four plants were listed as endangered species under the Endangered Species Act of 1973, as amended (9Act) between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for these four species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do

not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. None of these four species are reported from Federal lands on Kauai (the entire island of Niihau is privately-owned) where actions are subject to section 7 consultation. However, two of these species, *Phlegmariurus nutans* and *Solanum incompletum*, are reported from Federal lands or lands that are administered by a Federal agency on other islands (*S. incompletum* is reported from the United States Army's Pohakuloa Training Area on the island of Hawaii; *Phlegmariurus nutans* is reported from the United States Army's Schofield Barracks Military Reservation and Kawaiiloa Training Area, and the Service's Oahu Forest National Wildlife Refuge on Oahu). Although *Achyranthes mutica* and *Isodendron pyriformis* are located exclusively on non-Federal lands with limited Federal activities on the island of Hawaii, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits

include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*.

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Achyranthes mutica*, *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus brackenridgei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus mannii*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Solanum sandwicense*,

Spermolepis hawaiiensis, *Stenogyne campanulata*, *Vigna o-wahuensis*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (e.g. vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 90 species; the November 7, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; CPC, *in litt.* 1999; HINHP Database 2000; K. Wood, pers. comm., 2001; M. Buck, *in litt.* 2001; 65 FR 66808).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been

gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of 83 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

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

In the November 7, 2000, proposal we determined that the designation of critical habitat was prudent for 76 plant species known currently from the islands of Kauai or Niihau and in that proposal we identified the physical and biological features that are considered essential to the conservation of the 76 species on the islands of Kauai or Niihau (65 FR 66808). In other proposals published on December 18, 2000, December 27, 2000, or on December 29, 2000, we determined that the designation of critical habitat was prudent for nine species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Hibiscus brackenridgei*, *Ishaemum byrone*, *Mariscus pennatiformis*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis*) that no longer occur on Kauai and Niihau but are reported from one or more other islands. Based on new information and information received during the comment periods on the November 7, 2000, proposal we have identified the physical and biological features that are considered essential to

the conservation of five of these nine species (*Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, *Ischaemum byrone*, and *Mariscus pennatiformis*) on the island of Kauai. We are unable to identify these features for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai and Niihau based on the information available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* on the islands of Kauai or Niihau. However, proposed critical habitat designations for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* were included in proposals published on December 18, 2000, December 27, 2000, or December 29, 2000 (65 FR 79192, 65 FR 82086, 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Hibiscus brackenridgei*, *Phlegmariurus manni*, *Silene lanceolata*, and *Vigna o-wahuensis* within the historic range for each species on other Hawaiian islands.

In this proposal, we determine that the designation of critical habitat is prudent for *Phyllostegia waimeae* based on new information received during the comment periods on the November 7, 2000, proposal regarding the rediscovery of this species on Kauai. Based on new information received during the comment periods we have identified physical and biological features that are considered essential to the conservation of *Phyllostegia waimeae* on the island of Kauai.

In this proposal, we determine that the designation of critical habitat is prudent for four species (*Achyranthes mutica*, *Isodendron pyriformis*, *Phlegmariurus nutans*, and *Solanum incompletum*) for which prudence determinations have not been made previously, and which no longer occur on Kauai but are reported from one or more other islands. Based on new information and information received during the comment periods on the November 7, 2000, proposal we have identified the physical and biological features that are considered essential to the conservation of *Phlegmariurus nutans* on the island of Kauai. We are unable to identify these features for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau

based on the information available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* on the islands of Kauai and Niihau. However, we will consider proposing designation of critical habitat for *Achyranthes mutica*, *Isodendron pyriformis*, and *Solanum incompletum* within the historic range for each species on other Hawaiian Islands.

All areas proposed as critical habitat are within the historical range of one or more of the 83 species at issue and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 83 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicated information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with these species, location, and elevation, as described in the Supplementary Information: Discussion of the Plant Taxa section above, constitute the primary constituent elements for these species on the islands of Kauai and Niihau.

D. Criteria Used To Identify Critical Habitat

In the November 7, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes, stream banks), and

elevation. The areas we proposed to designate as critical habitat provided some or all of the habitat components essential for the conservation of the 76 plant species. Specific details regarding the delineation of the proposed critical habitat units were given in the November 7, 2000, proposal (65 FR 66808). In that proposal we did not include potentially suitable unoccupied habitat that is important to the recovery of the 76 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

Based on a review of new biological information and public comments received following publication of the four proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), Lanai (65 FR 82086), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 83 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). Therefore, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. (However, there are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island (e.g., the Wahiawa plant cluster (Service 1994) and *Schiedea*

spergulina var. *leiopoda*), and the proposed critical habitat designations reflect this exception for these species.). To be considered recovered each population of a species endemic to the islands of Kauai or Niihau should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is defined as a unit in which the individuals within a population could be regularly cross-pollinated, individuals that could be influenced by the same small-scale events (such as landslides), and should be considered at recover-level numbers of individuals (e.g., 100–500 individuals) for each population (rather than current numbers).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides or hurricanes, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species, and are expected to be further refined as more information on the population biology of each species becomes available.

The general justification for these objectives is found in the current conservation biology literature addressing the coconservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery and reintroduction in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration. The long-term objectives, as reviewed by Pavlik, range from 50 to 2,500 individuals per population, based largely on research

and theoretical modeling on endangered animals. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of the afore-mentioned characteristics that can be uniformly applied to all species is longevity (i.e., long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 individuals per population for annual species. These guidelines are general and we expect to revise them for individual species to incorporate new data as it becomes available.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (e.g., population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion and professional judgement of non-Service scientists and members of the HPPRCC, to identify

potentially suitable habitat within the known historic range of each species.

The HPPRCC recommended the conservation and establishment of 8–10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach nevertheless employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plants. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm

et al. 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat—and implementation of recovery actions thereon—gives the species a reasonable likelihood of long-term survival and recovery, based on currently available information. These guidelines are general and we expect to revise for individual species to incorporate new data as it becomes available.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (e.g., hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

(1) We focused on designating units representative of the known current and historical geographic and elevational range of each species;

(2) Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

(3) Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (i.e., not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat

on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for full recovery would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on two Service biologists review of current literature on gene flow (Havens 1998; Barret and Kohn 1991; M.H. Schierup and F.B. Christiansen 1996; Fenster and Dudash 1994).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or elevations such as cultivated agriculture fields, housing developments or other areas that are unlikely to contribute to the conservation of one or more of the 83 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In

addition, existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features do not contain, and are not likely to develop, constituent elements and would be excluded under the terms of this proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 83 species.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. These areas are the Service's best estimation of the habitat necessary to provide for the recovery of these species.

E. Managed Lands

Currently occupied or historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 83 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Kauai and Niihau with a known occurrence of one of the 83 species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at three locations (Waimea, Lihue, and Kilauea) on the island of Kauai from October 19 to 21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of

the large amount of land on the island of Kauai under State of Hawaii jurisdiction, we met with staff from Kauai's DOFAW office and Kauai State Parks to discuss their current management for the plants on their lands. And, we contacted the State's DHHL regarding management for the plants on lands under their jurisdiction (any species of aquatic life, wildlife, or plant that is federally listed as endangered or threatened is State listed as well). In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it:

(1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan);

(2) Provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and,

(3) Provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985;

Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 83 species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.*

1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 83 species of plants are found on Federal, State, and private lands on the islands of Kauai and Niihau. In response to our public notices; letters to landowners; open houses; meetings; the November 7, 2000, proposal; public comment periods; the March 7, 2001, draft economic analysis; and the February 6, 2001, public hearing along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on

various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants.

Federal Lands

The PMRF at Barking Sands and Makaha Ridge, both on Kauai's west side, are on federally owned or State leased lands administered by the Navy for instrumented and multi-environment weapon testing and tracking. *Wilkesia hobdyi* occurs on lands at the Makaha Ridge Facility while *Sesbania tomentosa* and *Panicum niihauense* are reported from the dunes on State lands adjacent to the Barking Sands Facility at Polihale State Park. The dune system extends from Polihale State Park through the Barking Sands Facility to State-owned lands at Kekaha, and may be one of the best intact coastal dune systems remaining on the main Hawaiian Islands. We evaluated the dune habitat at the Barking Sands Facility for *Sesbania tomentosa* and *Panicum niihauense* and determined that these lands are not essential for the conservation of *Sesbania tomentosa* though they are essential for *Panicum niihauense*. The Navy is currently engaged in discussions with us to identify training-related impacts to *Wilkesia hobdyi* and *Panicum niihauense* and to develop an Integrated Natural Resources Management Plan (INRMP 2001) that will identify measures that will address the maintenance and improvement of the essential elements for these two plant species and provide for their long-term conservation.

Management at the Barking Sands and Makaha Ridge Facility lands currently consists of restricting human access and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of *Panicum niihauense* and *Wilkesia hobdyi*. Therefore, we can not at this time find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. If the Navy completes and implements an INRMP or other endangered species management plans that addresses the maintenance and improvement of the essential elements for these two plant species and provides for their long-term conservation we will reassess the critical habitat boundaries in light of these management plans. We will solicit specific comments from the Navy on their concerns on our proposed designation on military lands, and its effect of military activities. We will give full consideration to their comments,

and after completing our analysis of public comments, we may exclude some or all of these Navy lands under section 4(b)(2) of the Act.

State of Hawaii Lands

The State lands on the island of Kauai include ceded and leased lands, and those that are administered by the Department of Land and Natural Resources (DLNR). DLNR lands are made up of State Parks, which are administered by the State Division of State parks; and Forest Reserves, Natural Area Reserves, and the Alakai Wilderness Preserve which are administered by the DOWFAW. The DLNR also manages DHHL lands on the island of Kauai. We determined that habitat that is essential to the conservation of 74 of the 83 federally threatened or endangered plant species is found on State lands: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pritchardia napaliensis*, *Pritchardia viscosa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spargulina* var. *spargulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*.

Although the State conducts some conservation management actions on these lands and provides access to others who are conducting such activities, these programs do not adequately address the threats to these listed plant species on their lands. In addition, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands, no updated detailed reports on management actions conducted, and no assurances that management actions will be implemented. Therefore, we cannot, at this time, find that management on these State lands is adequate to preclude a proposed designation of critical habitat. However, we will work with the State in developing conservation planning efforts.

Private Lands

We determined that habitat that is essential to the conservation of 32 of the 83 federally listed plant species is found on privately owned lands on Kauai and Niihau: *Adenophorus periens*, *Bonamia menziesii*, *Brighamia insignis*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Dubautia pauciflorula*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron longifolium*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Schiedea*

membranacea, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Solanum sandwicense*, and *Viola helena*, and *Viola kauaiensis* var. *wahiawaensis*.

We received 25 responses from the over 160 private landowners who received letters inquiring about management actions on their lands. The main activities being conducted by several of these landowners are weeding, control of human access, and planting of native species. In addition, responses and comments we received during the three comment periods and the public hearing, and new information used in preparing this revised proposal did not adequately address the threats to these listed plant species on private lands on Kauai and Niihau. We are aware of only a few private landowners who are drafting management plans for their areas. Without such plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 83 listed species at issue in this revised proposed designation, in accordance with long term conservation plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat.

In addition, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or

agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We support these efforts and provide technical assistance whenever possible. We are also soliciting comments on whether future development and approval of conservation measures (e.g. HCPs, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands, and if so, by what mechanism.

The proposed critical habitat units described below constitute our best assessment of the physical and biological features needed for the conservation of the 83 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this revised proposal acknowledging that we may have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from the public hearing will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII ¹

Unit name	State/local	Private	Federal	Total
Kauai A1		2 ha (6 ac)		2 ha (6 ac)
Kauai A2		6 ha (16 ac)		6 ha (16 ac)
Kauai A3		6 ha (16 ac)		6 ha (16 ac)
Kauai B	271 ha (669 ac)			271 ha (669 ac)
Kauai C	<0.5 ha (<1 ac)	97 ha (239 ac)		97 ha (239 ac)
Kauai D1	2 ha (4 ac)	13 ha (31 ac)		15 ha (35 ac)
Kauai D2		240 ha (594 ac)		240 ha (594 ac)
Kauai E		563 ha (1,390 ac)		563 ha (1,390 ac)
Kauai F		5 ha (12 ac)		5 ha (12 ac)
Kauai G	317 ha (784 ac)			317 ha (784 ac)
Kauai H1	67 ha (165 ac)		71 ha (176 ac)	138 ha (341 ac)
Kauai H2	3 ha (7 ac)		104 ha (258 ac)	107 ha (265 ac)
Kauai H3	42 ha (103 ac)		42 ha (103 ac)	84 ha (206 ac)
Kauai I	8,226 ha (20,326 ac)	12 ha (29 ac)		8,237 ha (20,355 ac)
Kauai J	363 ha (898 ac)	5,173 ha (12,783 ac)		5,536 ha (13,681 ac)
Kauai K	718 ha (1,774 ac)	1,034 ha (2,556 ac)		1,752 ha (4,330 ac)
Kauai L	3,372 ha (8,333 ac)	35 ha (85 ac)		3,407 ha (8,418 ac)
Kauai M	1,459 ha (3,606 ac)	1,843 ha (4,554 ac)		3,302 ha (8,160 ac)
Kauai N	2,713 ha (6,704 ac)	3,886 ha (9,603 ac)		6,599 ha (16,307 ac)

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII¹—Continued

Unit name	State/local	Private	Federal	Total
Kauai O	9,451 ha (23,355 ac)	11 ha (27 ac)		9,462 ha (23,382 ac)
Kauai Total	27,004 ha (66,728 ac)	12,926 ha (31,941 ac)	217 ha (537 ac)	40,147 ha (99,206 ac)
Niihau A		282 ha (697 ac)		282 ha (697 ac)
Grand Total	27,004 ha (66,728 ac)	13,208 ha (32,638 ac)	217 ha (537 ac)	40,429 ha (99,903 ac)

¹ Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.

Proposed critical habitat includes habitat for 83 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense. Lands proposed as critical habitat have been divided into 15 units (Kauai A through Kauai O) on the island of Kauai, and one unit on the island of Niihau (Niihau A). A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Kauai A

The proposed unit Kauai A (units A1 through A3) provides occupied habitat

for one species: *Ischaemum byrone*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Ischaemum byrone*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species. This unit also provides unoccupied habitat for one species: *Centaurium sebaeoides*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological

features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 500 mature individuals per population for *Centaurium sebaeoides*, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai A).

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Table for Kauai A

Notes	*Species is wide ranging. †	**Volcanic or clay coastal cliffs with native associates.	*Species is wide ranging. †, **Coastal shrubland, near the ocean among rocks and seepy cliffs.
14. Hybridization is possible.			
13. Restricted habitat requirements	X**		X**
12. Narrow endemic.			
11. Annual-500/pop.	X		
10. Short-lived perennial-300/pop.			X
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed			
7. Species with variable habitats.			
6. Several occ. vulnerable to destruction	X		X
5. Non-viable populations.	X		X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.	X		X
2. Island endemic.			
1. 8-10 pop. guidelines	X*		X*
Species	<u>Centaurium sebaeoides</u>		<u>Ischaemum byrone</u>

This unit (Kauai A) cluster contains a total of 15 ha (38 ac) on privately owned land. It is bordered on the northeast by the coastline and on the west by

Princeville or Kilauea Point. Areas of dense development and subdivisions are excluded. It is within portions of the Anini and Kauapea watersheds. The

natural features include: In unit A1, inland of the beach north of Princeville and north of Princeville Makai Golf Courses; unit A2, inland of the beach

north of Princeville, including Kaweonui Point; and in unit A3, inland of Kauapea Beach, between Niu flat and Kilauea Point.

Kauai B

The proposed unit Kauai B provides occupied habitat for two species: *Hibiscus clayi*, and *Munroidendron*

racemosum. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hibiscus clayi*, or 300 mature individuals per

population for *Munroidendron racemosum*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai B).

Table for Kauai B

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	
9. Long-lived perennial-100/pop.		X
8. Not all occupied habitat needed		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8-10 pop. guidelines	X*	X*
Species	<u>Hibiscus clayi</u>	<u>Munroidendron racemosum</u>

The unit (Kauai B) contains a total of 271 ha (669 ac) on State owned land. It is bounded on the south by the Wailua watershed and on the north by the

Waiakaea watershed. It contains the Nonou Forest Reserve. The natural features found in this unit are the

Nonou summit, and the Nonou Mountain or Sleeping Giant.

Kauai C

The proposed unit Kauai C provides occupied habitat for two species: *Brighamia insignis* and *Lobelia niihauensis*. It is proposed for designation because it contains the

physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population (*Brighamia insignis*) or 300 mature individuals per

population (*Lobelia niihauensis*), throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai C).

Table for Kauai C

Notes	*Rocky ledges and cliffs.	*Species is wide ranging.†
14. Hybridization is possible.		
13. Restricted habitat requirements	X*	
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.		X
9. Long-lived perennial-100/pop.	X	
8. Not all occupied habitat needed		
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines	X	X*
Species	<u>Brighamia insignis</u>	<u>Lobelia niihauensis</u>

This unit (Kauai C) contains a total of 97 ha (239 ac) on State and privately owned lands. It is within the Huleia watershed. The natural features found

in this unit are the cliffs north of Keopawee and Kalanipuu summits and south of Huleia Stream (as it empties into Nawiliwili Harbor).

Kauai D

The proposed unit Kauai D (units D1 and D2) provides unoccupied habitat for one species: *Sesbania tomentosa*.

Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides

habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population,

throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai D).

Table for Kauai D

Notes	*Species is wide ranging. †
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<i>Sesbania tomentosa</i>

This unit (Kauai D) cluster contains a total of 255 ha (629 ac) on State and privately owned lands. It is within the Mahaulepu and Kipu Kai watersheds. The natural features include: in unit D1, Haula bay, Kamala Point, Kawailoa Bay, Kaweliko Point, Kuahonu Point, Makawehi beach, Molehu cape, Naakea cape, Pakamoi bay, Paoo Point, and Puu Pihakapuu and in unit D2, Kaneaukai cape, Keoniloa Bay and Makahuena Point.

Kauai E

The proposed unit Kauai E provides occupied habitat for eight species: *Brighamia insignis*, *Delissea rhytidosperma*, *Isodendrion longifolium*, *Lipochaeta micrantha*,

Munroidendron racemosum, *Peucedanum sandwicense*, *Pteralyxia kauaiensis* and *Schiedea nuttallii*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia insignis*, *Munroidendron racemosum*, *Pteralyxia kauaiensis*, and *Schiedea nuttallii*, or 300 mature individuals per population for *Delissea rhytidosperma*, *Isodendrion longifolium*, *Lipochaeta micrantha*, and *Peucedanum sandwicense* throughout their known historical range considered by the recovery plans to be necessary for

the conservation of each species. This unit also provides unoccupied habitat for two species: *Melicope haupuensis* and *Myrsine linearifolia*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for each species, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai E).

This unit (Kauai E) contains a total of 563 ha (1,390 ac) on privately owned land. It is within the Huleia, Mahaulepu and Kipu Kai watersheds. The natural features include: the Haupu summit, Hokulei Peak, Naluakeina summit, and Queen Victoria's Profile (a natural stone pillar).

Kauai F

The proposed unit Kauai F provides occupied habitat for one species: *Schiedea spergulina* var. *leiopoda*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides

habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plans to be necessary for the conservation of the species (see the discussion of conservation requirements in Section D, and in the table for Kauai F).

Table for Kauai F

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Bare rock outcrops or sparsely vegetated portions of rocky cliffs.
14. Hybridization is possible.	X
13. Restricted habitat requirements.	X* *
12. Narrow endemic.	X
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X*
Species	<u>Schiedea spergulina</u> var. <u>leipoda</u>

The unit (Kauai F) contains a total of 5 ha (12 ac) on privately owned land. It is within the Lawai watershed. The natural features include: the north-eastern facing cliffs above Lawai Stream within the NTBG property and just below the Luawai Reservoir.

Kauai G

The proposed unit Kauai G provides occupied habitat for two species: *Lipochaeta waimeaensis* and *Spermolepis hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are

considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population (*Lipochaeta waimeaensis*), or 500 mature individuals per population (*Spermolepis hawaiiensis*), throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species: *Schiedea spergulina* var. *spergulina*. Designation of this unit

is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai G).

Table for Kauai G

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Eroded soil, precipitous shrub-covered gulches.	*Bare rock outcrops or sparsely vegetated portions of rocky cliffs.	*Species is wide ranging. †
14. Hybridization is possible.		X	
13. Restricted habitat requirements.	X**	X*	
12. Narrow endemic.	X		
11. Annual–500/pop.			X
10. Short-lived perennial–300/pop.	X	X	
9. Long-lived perennial–100/pop.			
8. Not all occupied habitat needed.		X	
7. Species with variable habitats.			X
6. Several occ. vulnerable to	X		
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.			X
2. Island endemic.	X	X	
1. 8–10 pop. guidelines.	X*	X	X*
Species	<u>Lipochaeta waimaensis</u>	<u>Schiedea spergulina</u> var. <u>spergulina</u>	<u>Spermolepis hawaiiensis</u>

This unit (Kauai G) contains a total of 317 ha (784 ac) on State owned land. It is within the Waimea watershed. The natural features include the east-facing cliffs of Waimea Canyon.

Kauai H

The proposed unit Kauai H (units H1 through H3) provides occupied habitat

for two species: *Panicum niihauense* and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and

300 mature individuals per population for each species, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kauai H).

Table for Kauai H

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Scattered in sand dunes in coastal shrubland.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.	X	
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed.		
7. Species with variable habitats.		X
6. Several occ. vulnerable to	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.	X	
3. Multi-island/current other islands.		X
2. Island endemic.		
1. 8-10 pop. guidelines.	X*	X*
Species	<u>Panicum niihauense</u>	<u>Sesbania tomentosa</u>

This unit (Kauai H) cluster contains a total of 329 ha (812 ac) on Federal and State owned lands. It is within the Nohomalu, Kaawaloa, Niu, and Hoesa watersheds. The natural features include: in unit H1, inland and along the beach in the Polihale State Park and PMRF from Barking Sands up to Nohili Point; unit H2, inland and along the beach in the PMRF including the geographic features Mana Point and Waieli Draw stream; and in H3, inland and along the beach, partially in the PMRF, including Kokole Point and up to Second Ditch next to the drag strip.

Kauai I

The proposed unit Kauai I provides occupied habitat for 49 species: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyperus trachysanthos*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hibiscadelphus woodii*, *Hibiscus waimeae ssp. hanneriae*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Lipochaeta fauriei*, *Lobelia niihauensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Poa*

mannii, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Solanum sandwicense*, *Stenogyne campanulata*, *Wilkesia hobdyi*, and *Xylosma crenatum*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Brighamia insignis*, *Flueggea neowawraea*, *Hibiscadelphus woodii*, *Hibiscus waimeae ssp. hanneriae*, *Kokia kauaiensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Pteralyxia kauaiensis*, and *Xylosma crenatum*, or 300 mature individuals per population for *Bonamia menziesii*, *Chamaesyce halemanui*, *Cyperus trachysanthos*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Isodendron laurifolium*, *Isodendron longifolium*, *Lipochaeta fauriei*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Phyllostegia wawrana*, *Plantago princeps*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea*

apokremnos, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Solanum sandwicense*, *Stenogyne campanulata*, and *Wilkesia hobdyi*, or 500 mature individuals per population for *Centaurium sebaeoides*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for eleven species: *Ctenitis squamigera*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Diplazium molokaiense*, *Hesperomannia lydgatei*, *Ischaemum byrone*, *Labordia lydgatei*, *Panicum niihauense*, *Platanthera holochila*, and *Sesbania tomentosa*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one of more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, or 300 mature individuals per population for *Ctenitis squamigera*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Diplazium molokaiense*, *Ischaemum byrone*, *Labordia lydgatei*, *Panicum niihauense*, *Platanthera holochila*, and *Sesbania tomentosa*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai I).

Table for Kauai I

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	
9. Long-lived perennial–100/pop.		X
8. Not all occupied habitat needed		X
7. Species with variable habitats.		
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Alectryon macrococcus</u>

<u>Alsindendron lychnooides</u>	X	X							X				X*	*Steep riparian clay or silty soil banks in montane wet forests.
<u>Bonamia menziesii</u>	X*		X		X	X	X	X	X					*Species is wide ranging. †
<u>Brighamia insignis</u>	X		X										X*	*Rocky ledges and cliffs.
<u>Centaurium seabacoides</u>	X*		X		X	X	X	X				X	X**	*Species is wide ranging. † **Volcanic or clay coastal cliffs with native associates.
<u>Chamaesyce halemanui</u>	X	X							X				X*	*Steep slopes of gulches.
<u>Ctenitis squamigera</u>	X*		X						X				X**	*Species is wide ranging. † **Rock faces in gulches in the forest understory.
<u>Cyanea recta</u>	X	X							X					
<u>Cyanea remyi</u>	X	X							X				X*	*Tight drainages and wet stream banks in lowland wet forest or shrubland.
<u>Cyperus trachysanthos</u>	X*		X						X				X**	*Species is wide ranging. † **Wet sites on seepy flats or tallus slopes.

<u>Diellia pallida</u>	X	X																		*Bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep slopes in lowland mesic forest.
<u>Diplazium molokaiense</u>	X*	X																		*Species is wide ranging. † **Brown soil with basalt outcrops near waterfalls.
<u>Dubautia latifolia</u>	X*	X																		*Species is wide ranging. †
<u>Euphorbia haeleleana</u>	X*		X																	*Species is wide ranging. †
<u>Exocarpos luteolus</u>	X	X																		
<u>Flueggea neowawraea</u>	X*		X																	*Species is wide ranging. †
<u>Gouania meyenii</u>	X	X																		*Rocky ledges, cliff faces, ridge tops.
<u>Hedyotis cookiana</u>	X		X																	*Stream beds or steep cliffs close to waterfalls.

<u>Kokia kauaiensis</u>	X	X	X			X							X	*Stream banks in
<u>Labordia lydgatei</u>	X	X				X							X*	<u>Metrosideros polymorpha-</u> <u>Dicranopteris linearis</u> forest.
<u>Lipochaeta fauriei</u>	X	X	X			X							X*	*Side of steep gulches in diverse mesic forests.
<u>Lobelia niihauensis</u>	X*		X	X			X							*Species is wide ranging. †
<u>Melicope haupuensis</u>	X	X	X	X				X					X*	*Moist tallus slopes.
<u>Melicope knudsenii</u>	X	X	X	X				X	X				X*	*Forested flats with brown granular soil.
<u>Melicope pallida</u>	X			X					X				X*	*Steep rock faces.
<u>Munroidendron racemosum</u>	X*	X	X	X			X	X	X					*Species is wide ranging. †
<u>Myrsine linearifolia</u>	X	X		X	X				X	X				
<u>Nothoctrum pellatum</u>	X*	X	X	X					X	X			X**	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Rich soil on steep slopes.

<u>Panicum niihauense</u>																						*Not enough suitable habitat exists for 8 to 10 populations at this time. **Scattered in sand dunes in coastal shrubland.
<u>Peucedanum sandwicense</u>																						*Cliff habitats.
<u>Phyllostegia wawrana</u>																						
<u>Plantago princeps</u>	X*									X	X	X	X	X	X	X	X	X	X	X	X	*Very specific, variable habitat requirements, i.e. windswept areas near waterfalls, cliff and ridges on rocky outcrops, windblown basalt cliffs with little vegetation.
<u>Platanthera holochila</u>	X																					*Mixed bogs – mid to high elevation, or montane bog, wet forest, mesic scrub.
<u>Poa mannii</u>																						*Cliff or rock faces.

<u>Poa sandvicensis</u>	X*	X				X														*Not enough suitable habitat exists for 8 to 10 populations at this time.
<u>Poa siphonoglossa</u>	X	X				X									X*					*Shady banks on steep slopes.
<u>Pteralyxia kauaiensis</u>	X*	X				X	X													*Species is wide ranging. †
<u>Remya kauaiensis</u>	X*	X				X	X								X**					*Species is wide ranging. † **Steep north- or northeast-facing slopes.
<u>Remya montgomeryi</u>	X*	X				X	X								X**					*Species is wide ranging. † **Steep north- or northeast-facing slopes.
<u>Schiedea apokremnos</u>	X	X				X	X								X*					*Crevices of near vertical basalt cliff faces.
<u>Schiedea kauaiensis</u>	X*	X				X	X													*Not enough suitable habitat exists for 8 to 10 populations at this time.
<u>Schiedea membranacea</u>	X	X				X	X								X*					*Cliff and cliff faces.

This unit (Kauai I) contains a total of 8,238 ha (20,355 ac) on State and privately owned lands. It is bordered by the Kaulaula watershed in the west and Maunapulo watershed in the east and includes the Awaawapuhi, Haeleele, Hanakapiai, Hanakoa, Hikimoe, Honopu, Hoolulu, Kaaweiki, Kalalau, Kauhao, Limahuli, Makaha, Milolii, Nahomalu, Nakeikionaiwi, Nualolo, Pohakuao, Waiahuakua, Waimea, Wainiha, and Waiolaa watersheds. The natural features include: Alapii Point, Alealau summit, Awaawapuhi Valley, Haeleele Valley, Hanakapiai Stream, Hanakoa Stream, Honopu Valley, Hoolulu Stream, Kaaalahina Ridge, Kaahole Valley, Kainamanu summit, Kalahu summit, Kalalau Beach, Kalalau Stream, Kalalau Trail, Kalalau Valley, Kalepa Ridge, Kanakou summit, Kauhao Ridge, Kauhao Valley, Kaunuohua Ridge, Kawaiula Valley, Keanapuka summit, Kopakaka Ridge, Kuia Valley, Mahanaloa Valley, Makaha Ridge, Makaha Valley, Manono Ridge, Milolii Ridge, Milolii Valley, Moaalele summit, Mukuaiki Point, Na Pali, Nianiau summit, Nualolo Valley, Paaiki Valley, Pihea summit, Pohakea summit, Poopooiki Valley, Punaiea Point, Puu Ki summit, Puu o Kila summit, Waiahuakua summit, and Waiahuakua Stream. This unit contains portions of Haena State Park, Kokee State Park, Na Pali-Kona Forest Reserve, Polihale State

Park, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park and all of the Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali Coast State Park, and the PMRF Makaha Ridge Facility.

Kauai J

The proposed unit Kauai J provides occupied habitat for 14 species: *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, *Isodendrion longifolium*, *Labordia lydgatei*, *Lobelia niihauensis*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Plantago princeps*, and *Schiedea membranacea*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, *Hibiscus waimeae* ssp. *hannerae*, and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendrion longifolium*, *Labordia lydgatei*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Plantago princeps*, and *Schiedea membranacea*, throughout their known

historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for 12 species: *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Delissea rivularis*, *Delissea undulata*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Munroidendron racemosum*, *Phyllostegia wawrana*, *Platanthera holochila*, *Remya montgomeryi*, and *Schiedea kauaiensis*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 100 mature individuals per population for *Alsinidendron lychnoides*, *Brighamia insignis*, and *Munroidendron racemosum*, or 300 mature individuals per population for *Bonamia menziesii*, *Delissea rivularis*, *Delissea undulata*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Phyllostegia wawrana*, *Platanthera holochila*, *Remya montgomeryi*, and *Schiedea kauaiensis*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai J).

Notes	*Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.
15. Hybridization is possible.	
14. Restricted habitat requirements	X*
13. Narrow endemic.	
12. Poss. 1 large pop per island.	X
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction	
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X
Species	<u>Adenophorus periens</u>

Table for Kauai J

<u>Alsinidendron lychnooides</u>	X	X																		X*	*Steep riparian clay or silty soil banks in montane wet forests.
<u>Bonamia menziesii</u>	X*		X																		*Species is wide ranging.†
<u>Brighamia insignis</u>	X		X																	X*	*Rocky ledges and cliffs.
<u>Cyanea recta</u>	X	X																			
<u>Cyanea remyi</u>	X	X																		X*	*Tight drainages and wet stream banks in lowland wet forest or shrubland.
<u>Cyrtandra cyaneoides</u>	X	X																		X*	*Tallus rubble on steep slopes or cliff with water seeps running below, near streams or waterfalls.
<u>Cyrtandra limahuliensis</u>	X	X																		X*	*Stream banks in lowland wet forest.

<u>Delissea rivularis</u>	<p>*Not enough suitable habitat exists for 8 to 10 populations at this time.</p> <p>**Steep slopes near streams in wet or mesic forest.</p>	X	X**				X				
<u>Delissea undulata</u>	<p>*Not enough suitable habitat exists for 8 to 10 populations at this time.</p> <p>**Dry or open <u>Metrosideros polymorpha</u>-<u>Acacia koa</u> forest or <u>Alphitonia ponderosa</u> forest.</p>	X	X**				X				
<u>Euphorbia haeleleana</u>		X*		X	X	X	X	X	X	X	X
<u>Exocarpos luteolus</u>		X		X	X	X	X	X	X	X	X
<u>Hesperomannia lydgatei</u>		X		X	X	X	X	X	X	X	X

This unit (Kauai J) contains a total of 5,536 ha (13,681 ac) on State and privately owned lands. It is bordered by the Limahuli watershed in the north, the Wainiha watershed in the south and contains a portion of the Manoa watershed. The natural features include: Hinalele Falls, Hono o Na Pali, Kilohana summit, Kulanaaililia summit, Limahuli Falls, Mahinakehau Ridge, Makana summit, Maunahina Stream, Maunapuluo summit, Pali Eleele summit, Pohakukane cliff, Puu Iliahi, Puwainui Falls, Waikanaloa Wet Cave, Waikapalae Wet Cave, and Wainiha Pali. It contains portions of the Halelea Forest Reserve.

Kauai K

The proposed unit Kauai K provides occupied habitat for ten species: *Adenophorus periens*, *Cyanea recta*,

Cyanea remyi, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Isodendron longifolium*, *Labordia lydgatei*, *Myrsine linearifolia*, and *Plantago princeps*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendron longifolium*, *Labordia lydgatei*, and *Plantago princeps*, throughout their known historical range considered by the recovery plans to be necessary for

the conservation of each species. This unit also provides unoccupied habitat for three species: *Alsinidendron lychnoides*, *Bonamia menziesii*, and *Schiedea membranacea*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alsinidendron lychnoides*, or 300 mature individuals per population for *Bonamia menziesii*, and *Schiedea membranacea*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai K).

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.
14. Hybridization is possible.	
13. Restricted habitat requirements.	X**
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to	
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8–10 pop. guidelines.	X*
Species	<u>Adenophorus periens</u>

Table for Kauai K

<u>Alsinidendron lychnoides</u>	X	X						X					X*	*Steep riparian clay or silty soil banks in montane wet forests.
<u>Bonamia menziesii</u>	X*	X	X	X	X	X	X	X	X		X			*Species is wide ranging. †
<u>Cyanea recta</u>	X	X												
<u>Cyanea renyi</u>	X	X	X	X	X	X	X	X	X		X		X*	*Tight drainages and wet stream banks in lowland wet forest or shrubland.
<u>Cyrtandra cyaneoides</u>	X	X											X*	*Tallus on steep slopes or cliffs with water seeps running below, near streams or waterfalls.
<u>Cyrtandra limahuliensis</u>	X	X									X		X*	*Stream banks in lowland wet forest.
<u>Hesperomannia lydgatei</u>	X	X								X				
<u>Isodendron longifolium</u>	X	X		X						X			X*	*Steep slopes and some flats in gulches and stream banks.
<u>Labordia lydgatei</u>	X	X											X*	*Stream banks in <u>Metrosideros polymorpha</u> - <u>Dicranopteris linearis</u> forest.

This unit (Kauai K) contains a total of 1,752 ha (4,330 ac) on State and privately owned lands. It is bordered on the west by the Lumahai watershed and on the east by Waioli watershed and contains a portion of the Waipa watershed. The natural features include: Hihimanu summit, Mamalahoa summit, Namolokama Mountain, and Puu Manu. The westernmost portion of this unit is in the Halelea Forest Reserve.

Kauai L

The proposed unit Kauai L provides occupied habitat for one species: *Plantago princeps*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to

support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species. This unit also provides unoccupied habitat for 12 species: *Adenophorus periens*, *Bonamia menziesii*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Hesperomannia lydgatei*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, *Myrsine linearifolia*, and *Platanthera holochila*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on

Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Bonamia menziesii*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, and *Platanthera holochila*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai L).

Table for Kauai L

Notes	* Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	* Species is wide ranging †	
14. Hybridization is possible.			
13. Restricted habitat requirements.	X*		
12. Narrow endemic.			
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.	X	X	X
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed.		X	X
7. Species with variable habitats.		X	X
6. Several occ. vulnerable to		X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.	X	X	
2. Island endemic.			X
1. 8-10 pop. guidelines.	X*	X*	X
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>	<u>Cyanea recta</u>

This unit (Kauai L) contains a total of 3,407 ha (8,418 ac) on State and privately owned lands. It is within the Hanalei watershed. The natural features include: Kaliko summit, Kaumanalehua summit, Kawailewa summit, Keanaawi Ridge, Kiloa summit, Maheo summit, and Pohakupele summit. This unit is within a portion of the Halelea Forest Reserve.

Kauai M

The proposed unit Kauai M provides occupied habitat for eight species: *Adenophorus periens*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*,

Cyrtandra cyaneoides, *Cyrtandra limahuliensis*, *Labordia lydgatei*, and *Phyllostegia wawrana*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species:

Bonamia menziesii. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai M).

Table for Kauai M

Notes	*Species is wide ranging. † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	X
9. Long-lived perennial–100/pop.		
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>

This unit (Kauai M) contains a total of 3,302 ha (8,160 ac) on State and privately owned lands. It contains portions of the Anahola, Kalihiwai, Kapaa, and Kilauea watersheds. The natural features include: Haleone summit, Kahili summit, Kamahuna summit, Kamalii Ridge, Keahua summit, Kekoiki summit, Leleiwi summit, Makaleha summit, Makaleha Mountains, Malamalamaiki summit, Namahana Mount, Pohakupili summit, Puu Awa, Puu Eu, Uluwaa summit, and Waihunehune Falls. It contains portions of Kealia Forest Reserve and Moloaa Forest Reserve.

Kauai N

The proposed unit Kauai N provides occupied habitat for 16 species: *Adenophorus periens*, *Bonamia menziesii*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Dubautia pauciflora*, *Exocarpos luteolus*, *Isodendron longifolium*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lysimachia*

filifolia, *Myrsine linearifolia*, *Plantago princeps*, *Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Labordia tinifolia* var. *wahiawaensis* and *Myrsine linearifolia*, or 300 mature individuals per population for *Adenophorus periens*, *Bonamia menziesii*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra limahuliensis*, *Dubautia pauciflora*, *Exocarpos luteolus*, *Isodendron longifolium*, *Labordia lydgatei*, *Lysimachia filifolia*, *Plantago princeps*, *Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for

seven species: *Cyanea undulata*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Hesperomannia lydgatei*, *Phlegmariurus nutans*, *Phyllostegia wawrana*, and *Platanthera holochila*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Hesperomannia lydgatei*, or 300 mature individuals per population for *Cyanea undulata*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Phlegmariurus nutans*, *Phyllostegia wawrana*, and *Platanthera holochila*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai N).

Table for Kauai N

Notes	*Species is wide ranging † **Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.	X	X
9. Long-lived perennial–100/pop.		
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>

<u>Cyrtandra cyaneoides</u>	X	X			X				X										X*	*Tallus on steep slopes or cliffs with water seeps running below, near streams or waterfalls.
<u>Cyrtandra limahuliensis</u>	X	X			X				X										X*	*Stream banks in lowland wet forest.
<u>Delissea rivularis</u>	X*	X			X				X										X**	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Steep slopes near streams in wet or mesic forest.
<u>Dubautia pauciflora</u>	X	X			X				X										X*	*Stream drainages.
<u>Exocarpos luteolus</u>	X	X			X				X											
<u>Hesperomannia lydgatei</u>	X	X			X				X											
<u>Isodendron longifolium</u>	X				X				X										X*	*Steep slopes and some flats in gulches and stream banks.

Kapehuaala summit, Kaulu Stream, Kawaikini summit, Kualapa summit, Kuilau Ridge, Palikea summit, and Wekiu summit. Includes a portion of the Lihue-Koloa Forest Reserve.

Kauai O

The proposed unit Kauai O provides occupied habitat for 41 species:

Alectryon macrococcus, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Chamaesyce halemanui*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Isodendron laurifolium*, *Kokia kauaiensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Platanthera holochila*, *Poa sandvicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*,

Solanum sandwicense, *Spermolepis hawaiiensis*, *Xylosma crenatum*, *Zanthoxylum hawaiiense*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Flueggea neowawraea*, *Kokia kauaiensis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*, or 300 mature individuals per population for *Alsinidendron viscosum*, *Bonamia menziesii*, *Chamaesyce halemanui*, *Diellia erecta*, *Diellia pallida*, *Dubautia latifolia*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Gouania meyenii*, *Isodendron laurifolium*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Platanthera holochila*, *Poa sandvicensis*, *Poa siphonoglossa*, *Remya*

kauaiensis, *Remya montgomeryi*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, and *Solanum sandwicense*, or 500 mature individuals per population for *Spermolepis hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Adenophorus periens*, *Cyanea recta*, *Delissea rivularis*, *Diplazium molokaiensis*, *Isodendron longifolium*, *Mariscus pennatifolius*, *Plantago princeps*, *Poa mannii*, *Schiedea kauense*, and *Stenogyne campanulata*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Kauai, and provides habitat to support one or more additional populations necessary to meet the recovery objective of 8 to 10 populations and 300 mature individuals per population for each species, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Kauai O).

Table for Kauai O

Notes	*Species is wide ranging. † ** Epiphyte usually growing on <u>Metrosideros polymorpha</u> trunks, in riparian banks of stream systems in well-developed, closed, shady canopy.	*Species is wide ranging. †
14. Hybridization is possible.		
13. Restricted habitat requirements.	X**	
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	
9. Long-lived perennial-100/pop.		X
8. Not all occupied habitat needed.		X
7. Species with variable habitats.		
6. Several occ. vulnerable to		X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines.	X*	X*
Species	<u>Adenophorus periens</u>	<u>Alectryon macrococcus</u>

<u>Platanthera holochila</u>	X					X			X			X*	*Mixed bogs – mid to high elevation, or montane bog, wet forest, mesic scrub.
<u>Poa mannii</u>	X	X				X	X		X			X*	*Cliff or rock faces.
<u>Poa sandvicensis</u>	X*	X				X	X		X				*Not enough suitable habitat exists for 8 to 10 populations at this time.
<u>Poa siphonoglossa</u>	X	X				X	X		X			X*	*Shady banks on steep slopes.
<u>Pteralyxia kauaiensis</u>	X*	X				X	X	X	X				*Species is wide ranging †
<u>Remya kauaiensis</u>	X*	X				X	X		X			X**	*Species is wide ranging † **Steep north- or northeast-facing slopes.
<u>Remya montgomeryi</u>	X*	X				X	X		X			X**	*Species is wide ranging † **Steep north- or northeast-facing slopes.

<u>Schiedea helleri</u>	X*	X																	X	*Not enough suitable habitat exists for 8 to 10 populations at this time. **Cliff faces.
<u>Schiedea kauaiensis</u>	X*	X							X										X	Not enough suitable habitat exists for 8 to 10 populations at this time.
<u>Schiedea membranacea</u>	X	X							X										X	*Cliff and cliff bases.
<u>Schiedea spergulina</u> var. <u>spergulina</u>	X	X							X										X	*Bare rock outcrops or sparsely vegetated portions of rocky cliffs.
<u>Schiedea stellaroides</u>	X	X							X										X	
<u>Solanum sandwicense</u>	X								X											
<u>Spermolepis hawaiiensis</u>	X*								X											*Species is wide ranging †
<u>Stenogyne campanulata</u>	X*	X							X										X	*Species is wide ranging † **Rock faces of nearly vertical north-facing cliffs.
<u>Xylosma crenatum</u>	X*	X							X											*Species is wide ranging †
<u>Zanthoxylum hawaiiense</u>	X*	X							X											*Species is wide ranging †

This unit (Kauai O) contains a total of 9,462 ha (23,382 ac) on State and privately owned lands. This unit is predominately in the Waimea watershed with a small portion extending into upper reaches of the Haeleele, Hikimoe, Kaaweiki, Kaulaula, and Nahomalu watersheds. The natural features include: the Alakai Swamp, Awini Falls, Awini Stream, Halehaha Stream, Halemanu Stream, Halepaakai Stream, Hipalau Valley, Kaaha summit, Kaluahaulu Ridge, Kaou summit, Kauaikinana Stream, Kawaiiki Ridge, Kawaiiki Valley, Kawaiikoi Stream, Kipalau Valley, Koali summit, Kohua Ridge, Kokee Stream, Kumuwela Ridge,

Loli River, Moeloa Falls, Mohihi Falls, Mohihi Stream, Nawaimaka Stream, Puu Lua summit, Wahane Valley, Waiakoali Stream, Waialae Falls, and Waipoo Falls. This unit contains portions of Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali Natural Area Reserve, Kokee State Park, Kuia Natural Area Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park.

Niihau A

The proposed unit Niihau A provides occupied habitat for two species: *Brighamia insignis*, and *Cyperus*

trachysanthos. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Niihau, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia insignis* or 300 mature individuals per population for *Cyperus trachysanthos*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Niihau A).

Table for Niihau A

Notes	*Rocky ledges and cliffs.	*Species is wide ranging † **Wet sites on seepy flats or tallus slopes.
14. Hybridization is possible.		
13. Restricted habitat requirements.	X*	X**
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.		X
9. Long-lived perennial-100/pop.	X	
8. Not all occupied habitat needed.		
7. Species with variable habitats.		
6. Several occ. vulnerable to	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines.	X	X*
Species	<u>Brighamia insignis</u>	<u>Cyperus trachysanthos</u>

Key for Tables Kauai A–O and Niihau A

‡ Not all suitable habitat is designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self-perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide-ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals needed per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals needed per population.

11. Life history, annual—500 mature, reproducing individuals needed per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

This unit (Niihau A) contains a total of 282 ha (697 ac) on privately owned land. The natural features include Puu Alala, Mokouia Valley, and two unnamed intermittent bodies of water near Puu Alala.

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

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. 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, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) 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. 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 species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would 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 the

Director believes would avoid 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 under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or 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.

Activities on Federal lands that may affect critical habitat of one or more of the 83 plant species will require Section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly

adversely affect critical habitat include, but are not limited to—

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire.

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values.

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps.

(4) Recreational activities that appreciably degrade vegetation.

(5) Mining of sand or other minerals.

(6) Introducing or encouraging the spread of non-native plant species.

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to

encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species. If an HCP that addresses one or more of the 83 plant species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Critical habitat is defined in section 3, paragraph (5)(A) 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 a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of one or more of the 83 plant species and do not require special management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider—(1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides

assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether—(a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether—(a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2)

the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

Two species, *Panicum niihauense* and *Wilkesia hobyi*, occur on the Barking Sands and Makaha Ridge Facility lands, and we believe these lands are needed for the recovery of these species. Management on these lands currently consist of restricting human access and mowing landscaped areas. We do not believe that these measures are sufficient to address the primary threats to these species, nor do we believe that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for these two plant species, and provides for their long-term conservation and assurances that it will be completed and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Economic and Other Relevant Impacts

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 from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat if the exclusion will result in the extinction of the species concerned.

We prepared an analysis of the economic effects of critical habitat designation for 76 Kauai and Niihau plants (Decision Analysts Hawaii, Inc. (DAHI) 2001) and made it available for public review on March 7, 2001 (66 FR 13691). In that document, we concluded

that no significant economic impacts were expected from critical habitat designation above and beyond those already caused by the listing of the 76 plant species because nearly all of the land within the proposed critical habitat unit is unsuitable for development due to their remote locations, lack of access, and rugged terrain; nearly all of this land (98.5 percent) is within the State Conservation District where state land use controls severely limit development and most activities; very few of the current and planned projects, land uses, and activities that could affect the proposed critical habitat units have a Federal involvement requiring section 7 consultations and most of the activities that do have Federal involvement are operations and maintenance of existing facilities and structures, so they would not be impacted by the critical habitat designation. We will conduct a reanalysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits of the critical habitat designation regardless of whether the costs are coextensive with listing, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with critical habitat designation. When completed, we will announce the availability of the revised draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the revised draft economic analysis and re-open the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudence determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for the 83 species, and what habitat is

essential to the conservation of the species and why;

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

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the PMRF at Barking Sands and Makaha Ridge Facility lands, both on the island of Kauai. Whether there will be a significant impact on military readiness or national security if we designate critical habitat on these facilities. Whether these facilities should be excluded from the designation under section 4(b)(2) of the Act.

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, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish 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. To the extent consistent with applicable law, 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 (see **ADDRESSES** section).

The comment period closes on March 29, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **ADDRESSES** section.

Public Hearing

The Act provides for a public hearing on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal in the **Federal Register**. Given the high likelihood of requests and the need to publish the final determination by July 30, 2002, we have scheduled a public hearing to be held 6:00 p.m. to 8:00 p.m., Wednesday, February 13, 2002, at the Radisson Kauai Beach Resort.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service.

The public hearing will be held from 6:00 p.m. to 8:00 p.m. on Tuesday, January 29, 2002, on the island of Kauai, Hawaii. Prior to the public hearing, we will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m. The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai.

Peer Review

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 a review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day

comment period on this revised 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 and 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to the Field Supervisor, Pacific Islands Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a revised economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 83 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal

agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified 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, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 83 PLANTS FROM THE ISLANDS OF KAUAI AND NIIHAU

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation ¹
Federal Activities Potentially Affected ² .	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected ³ .	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

¹ This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

³ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as “jeopardy” under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in

areas currently unoccupied by the listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 83 plant species since their listing between 1991 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7

consultations would not have occurred but for the critical habitat designation 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) We do not expect this proposed rule, if made final, to significantly 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 a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues

and, as a result, this rule has undergone OMB review.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of substantial entities. However, should our revised economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae ssp. hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatiformis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*,

Schiedea apokremnos, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 83 plant species were listed (between 1990 and 1996), there have been no formal consultations, and we have conducted only six informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. On the island of Kauai there have been no formal consultations regarding *Alsinidendron lychnoides*, *Cyrtandra limahuliensis*, *Cyanea recta*, *Diellia erecta*, *Dubautia latifolia*, *Exocarpos luteolus*, *Panicum niihauense*, *Sesbania tomentosa*, and *Wilkesia hobdyi*, with the Corps, Navy, and the U.S. Department of Agriculture. One informal consultation was conducted on behalf of the Corps for the Defense Environmental Restoration Program, who requested a list of endangered species on a site formerly used by the Department of Defense at the Wailua Impact Area. Three of the 83 species, *Cyanea recta*, *Cyrtandra limahuliensis*, and *Exocarpos luteolus* were reported from the project area. Four informal consultations were conducted with the Navy: one for the construction of a missile support facility at the PMRF at Barking Sands regarding several listed birds, a turtle, the Hawaiian monk seal,

Hawaiian hoary bat, and the endangered plant *Sesbania tomentosa*; one on the PMRF's Enhanced Capability regarding several listed birds and turtles, the Hawaiian hoary bat, Hawaiian monk seal, several whale species, and the plants *Panicum niuhauense* and *Sesbania tomentosa*; one for the mountaintop surveillance sensor test integration center facility at PMRF at Barking Sands regarding several listed birds, the Hawaiian hoary bat, and the endangered plants *Panicum niuhauense* and *Sesbania tomentosa*; and, one for the Navy's INRMP for PMRF at Barking Sands regarding several listed birds, a listed turtle, the Hawaiian hoary bat, and *Wilkesia hobyi*. In addition, *Panicum niuhauense* and *Sesbania tomentosa* were identified as occurring in Polihale State Park, adjacent to the Naval facility. The fifth informal consultation was conducted on one listed bird, the Hawaiian hoary bat, and three plants (*Alsinidendron lychnoides*, *Dubautia latifolia*, and *Diellia erecta*) with the NRCS through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinstate consultation for these on-going actions as these actions are not occurring within the areas of proposed critical habitat (Terrell Kelly, NRCS, pers. comm., 2001).

Except for the NRCS project, none of these consultations affected or concerned small entities. In all five consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. None of these consultations affected or concerned small entities, and none of the proposed projects are ongoing. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on Kauai.

There have been no consultations on any of these 83 species on the island of Niihau. Therefore, the requirement to reinstate consultations for ongoing projects will not affect a substantial number of small entities on Niihau.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinstatement of already completed consultations for on-going projects. As mentioned above, we have conducted only five informal

consultations under section 7 involving any of the species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Kauai, approximately 0.5 percent of the designations are on Federal lands, 66.8 percent are on State lands, and 32.7 percent are on private lands. Nearly all of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of the remote locations, lack of access, and rugged terrain of these lands. Also, nearly all of this land (99.2 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 0.7 percent of this land is within the State Agricultural District, and about 0.1 percent is within the State Urban District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and may affect only a small percentage of the small entities within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and

activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would be federally funded, permitted, or authorized in these coastal areas. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (DAHI 2001). The proposed rule would not affect a substantial number of small agricultural entities on the island of Niihau. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require

the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these 83 species from Kauai and Niihau, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because there are not a substantial number of small entities affected.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. In the absence of a revised economic analysis

at this time, we have reviewed our previously available draft economic analysis of the likely economic impacts of designating critical habitat for 76 plants from the islands of Kauai and Niihau (66 FR 13691). In that analysis, which included proposed designations of critical habitat within 23 units on 24,349 ha (60,166 ac) on Kauai and 191 ha (471 ac) on Niihau, we determined that the designations would have modest economic impacts because nearly all of the land within the critical habitat units has limited suitability for development, land uses, and activities because of the remote locations, lack of access, and rugged terrain, of the land, and their inclusion within the State Conservation District where State land-use controls severely limit development and most activities. The proposed critical habitat designations were expected to cause little or no increase in the number of section 7 consultations; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities).

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer “reasonable and prudent alternatives.” Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require

the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 67 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 33 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or

adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, since we are certifying that the proposed designation of critical habitat for the following species: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflora*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeae*, *Lobelia niuhauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoecstrum peltatum*, *Panicum niuhauense*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense* will not have a significant economic impact on a

substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the revised economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is 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 et seq.):

a. We believe this rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the 83 species from Kauai and Niihau in a preliminary takings

implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 83 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all but one of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation 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 does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. 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 83 plant species.

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

This rule does not contain any new collections of information that require

approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined 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 Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

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) E.O. 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 83 plant species. Therefore, designation of critical habitat for these 83 species has not been proposed on Tribal lands.

References Cited

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

Authors

The primary authors of this notice are Marigold Zoll, Gregory Koob, Christa Russell, and Michelle Stephens (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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. In § 17.12(h) revise the entries for "*Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea renyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperra*, *Delissea rivularis*, *Delissea undulata*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*,

Hedyotis st.-johnii, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendron laurifolium*, *Isodendron longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatiformis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothoestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandwicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobydi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*" under "FLOWERING PLANTS" and "Adenophorus periens, *Ctenitis squamigera*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, and *Phlegmariurus nutans*" under "FERNS AND ALLIES" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species—Scientific name	Common name	Historic range	Family	Stat- us	When listed	Critical habitat	Special rules
FLOWERING PLANTS							
* * * * *							
<i>Alectryon macrococcus</i>	Mahoe	U.S.A. (HI)	Sapindaceae	E ...	467	17.96(a)	NA
* * * * *							
<i>Alsinidendron lychnoides</i>	Kuawawaenohu ..	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
* * * * *							
<i>Alsinidendron viscosum</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
* * * * *							
<i>Bonamia menziesii</i>	None	U.S.A. (HI)	Convolvulaceae	E ...	559	17.96(a)	NA
* * * * *							
<i>Brighamia insignis</i>	Olulu	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
* * * * *							
<i>Centaurium sebaeoides</i>	Awiwi	U.S.A. (HI)	Gentianaceae	E ...	448	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Chamaesyce halemanui</i>	None	U.S.A. (HI)	Euphorbiaceae	E ...	464	17.96(a)	NA
<i>Cyanea asarifolia</i>	Haha	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
<i>Cyanea recta</i>	Haha	U.S.A. (HI)	Campanulaceae	T ...	590	17.96(a)	NA
<i>Cyanea remyi</i>	Haha	U.S.A. (HI)	Campanulaceae	E ...	590	17.96(a)	NA
<i>Cyanea undulata</i>	None	U.S.A. (HI)	Campanulaceae	E ...	436	17.96(a)	NA
<i>Cyperus trachysanthos</i>	Puukaa	U.S.A. (HI)	Cyperaceae	E ...	592	17.96(a)	NA
<i>Cyrtandra cyaneoides</i>	Mapele	U.S.A. (HI)	Gesneriaceae	E ...	590	17.96(a)	NA
<i>Cyrtandra limahuliensis</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	T ...	530	17.96(a)	NA
<i>Delissea rhytidosperra</i>	None	U.S.A. (HI)	Campanulaceae	E ...	530	17.96(a)	NA
<i>Delissea rivularis</i>	Oha	U.S.A. (HI)	Campanulaceae	E ...	590	17.96(a)	NA
<i>Delissea undulata</i>	None	U.S.A. (HI)	Campanulaceae	E ...	593	17.96(a)	NA
<i>Dubautia latifolia</i>	Naenae	U.S.A. (HI)	Asteraceae	E ...	464	17.96(a)	NA
<i>Dubautia pauciflora</i>	Naenae	U.S.A. (HI)	Asteraceae	E ...	436	17.96(a)	NA
<i>Euphorbia haeleeleana</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E ...	592	17.96(a)	NA
<i>Exocarpos luteolus</i>	Heau	U.S.A. (HI)	Santalaceae	E ...	530	17.96(a)	NA
<i>Flueggea neowawraea</i>	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E ...	559	17.96(a)	NA
<i>Gouania meyenii</i>	None	U.S.A. (HI)	Rhamnaceae	E ...	448	17.96(a)	NA
<i>Hedyotis cookiana</i>	Awiji	U.S.A. (HI)	Rubiaceae	E ...	530	17.96(a)	NA
<i>Hedyotis st.-johnii</i>	Na Pali beach hedyotis.	U.S.A. (HI)	Rubiaceae	E ...	441	17.96(a)	NA
<i>Hesperomannia lydgatei</i>	None	U.S.A. (HI)	Asteraceae	E ...	436	17.96(a)	NA
<i>Hibiscadelphus woodii</i>	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Hibiscus clayi</i>	Clay's hibiscus	U.S.A. (HI)	Malvaceae	E ...	530	17.96(a)	NA
<i>Hibiscus waimeae hannerae</i> spp.	Kokio keokeo	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Ischaemum byrone</i>	Hilo ischaemum	U.S.A. (HI)	Poaceae	E ...	532	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Isodendron laurifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	E ...	592	17.96(a)	NA
<i>Isodendron longifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	T ...	592	17.96(a)	NA
<i>Kokia kauaiensis</i>	Kokio	U.S.A. (HI)	Malvaceae	E ...	590	17.96(a)	NA
<i>Labordia lydgatei</i>	Kamakahala	U.S.A. (HI)	Loganiaceae	E ...	436	17.96(a)	NA
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> .	Kamakahala	U.S.A. (HI)	Loganiaceae	E ...	590	17.96(a)	NA
<i>Lipochaeta fauriei</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lipochaeta micrantha</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lipochaeta waimeaensis</i>	Nehe	U.S.A. (HI)	Asteraceae	E ...	530	17.96(a)	NA
<i>Lobelia niihauensis</i>	None	U.S.A. (HI)	Campanulaceae	E ...	448	17.96(a)	NA
<i>Lysimachia filifolia</i>	None	U.S.A. (HI)	Primulaceae	E ...	530	17.96(a)	NA
<i>Mariscus pennatiformis</i>	None	U.S.A. (HI)	Cyperaceae	E ...	559	17.96(a)	NA
<i>Melicope haupuensis</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Melicope knudsenii</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Melicope pallida</i>	Alani	U.S.A. (HI)	Rutaceae	E ...	530	17.96(a)	NA
<i>Munroidendron racemosum</i>	None	U.S.A. (HI)	Araliaceae	E ...	530	17.96(a)	NA
<i>Myrsine linearifolia</i>	Kolea	U.S.A. (HI)	Myrsinaceae	T ...	590	17.96(a)	NA
<i>Nothocestrum peltatum</i>	Aiea	U.S.A. (HI)	Solanaceae	E ...	530	17.96(a)	NA
<i>Panicum niihauense</i>	Lau ehu	U.S.A. (HI)	Poaceae	E ...	592	17.96(a)	NA
<i>Peucedanum sandwicense</i>	Makou	U.S.A. (HI)	Apiaceae	T ...	530	17.96(a)	NA
<i>Phyllostegia knudsenii</i>	None	U.S.A. (HI)	Lamiaceae	E ...	590	17.96(a)	NA
<i>Phyllostegia waimeae</i>	None	U.S.A. (HI)	Lamiaceae	E ...	530	17.96(a)	NA
<i>Phyllostegia wawrana</i>	None	U.S.A. (HI)	Lamiaceae	E ...	590	17.96(a)	NA
<i>Plantago princeps</i>	Laukahi kuahiwi ..	U.S.A. (HI)	Plantaginaceae	E ...	559	17.96(a)	NA
<i>Platanthera holochila</i>	None	U.S.A. (HI)	Orchidaceae	E ...	592	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
<i>Poa mannii</i>	Mann's bluegrass	U.S.A. (HI)	Poaceae	E ...	558	17.96(a)	NA
<i>Poa sandvicensis</i>	Hawaiian bluegrass.	U.S.A. (HI)	Poaceae	E ...	464	17.96(a)	NA
<i>Poa siphonoglossa</i>	None	U.S.A. (HI)	Poaceae	E ...	464	17.96(a)	NA
<i>Pteralyxia kauaiensis</i>	Kaulu	U.S.A. (HI)	Apocynaceae	E ...	530	17.96(a)	NA
<i>Remya kauaiensis</i>	None	U.S.A. (HI)	Asteraceae	E ...	413	17.96(a)	NA
<i>Remya montgomeryi</i>	None	U.S.A. (HI)	Asteraceae	E ...	413	17.96(a)	NA
<i>Schiedea apokremnos</i>	Maolioli	U.S.A. (HI)	Caryophyllaceae	E ...	441	17.96(a)	NA
<i>Schiedea helleri</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Schiedea kauaiensis</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	592	17.96(a)	NA
<i>Schiedea membranacea</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Schiedea nuttallii</i>	None	U.S.A. (HI)	Caryophyllaceae	E ...	592	17.96(a)	NA
<i>Schiedea spergulina</i> var. <i>leiopoda</i> .	None	U.S.A. (HI)	Caryophyllaceae	E ...	530	17.96(a)	NA
<i>Schiedea spergulina</i> var. <i>spergulina</i> .	None	U.S.A. (HI)	Caryophyllaceae	T ...	530	17.96(a)	NA
<i>Schiedea stellarioides</i> (=Maolioli).	Laulihilihi	U.S.A. (HI)	Caryophyllaceae	E ...	590	17.96(a)	NA
<i>Sesbania tomentosa</i>	Ohai	U.S.A. (HI)	Fabaceae	E ...	559	17.96(a)	NA
<i>Solanum sandwicense</i>	Aiakeakua, popolo.	U.S.A. (HI)	Solanaceae	E ...	530	17.96(a)	NA
<i>Spermolepis hawaiiensis</i>	None	U.S.A. (HI)	Apiaceae	E ...	559	17.96(a)	NA
<i>Stenogyne campanulata</i>	None	U.S.A. (HI)	Lamiaceae	E ...	464	17.96(a)	NA
<i>Viola helenae</i>	None	U.S.A. (HI)	Violaceae	E ...	436	17.96(a)	NA
<i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	Nani wai ale ale ..	U.S.A. (HI)	Violaceae	E ...	590	17.96(a)	NA
<i>Wilkesia hobdyi</i>	Dwarf iliau	U.S.A. (HI)	Asteraceae	E ...	473	17.96(a)	NA
<i>Xylosma crenatum</i>	None	U.S.A. (HI)	Flacourtiaceae	E ...	464	17.96(a)	NA

Species—Scientific name	Common name	Historic range	Family	Sta-tus	When listed	Critical habitat	Special rules
* <i>Zanthoxylum hawaiiense</i>	* Ae	* U.S.A. (HI)	* Rutaceae	* E ...	* 532	* 17.96(a)	* NA
FERNS AND ALLIES							
* <i>Adenophorus periens</i>	* Pendant kahi fern	* U.S.A. (HI)	* Grammitidaceae	* E ...	* 559	* 17.96(a)	* NA
* <i>Ctenitis squamigera</i>	* Pauoa	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 553	* 17.96(a)	* NA
* <i>Diellia erecta</i>	* Asplenium-leaved diellia.	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 559	* 17.96(a)	* NA
* <i>Diellia pallida</i>	* None	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 530	* 17.96(a)	* NA
* <i>Diplazium molokaiense</i>	* None	* U.S.A. (HI)	* Aspleniaceae	* E ...	* 553	* 17.96(a)	* NA
* <i>Phlegmariurus nutans</i>	* Wawae iole	* U.S.A. (HI)	* Lycopodiaceae	* E ...	* 536	* 17.96(a)	* NA
*	*	*	*	*	*	*	*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), and revise paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections

contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), and other man-made features, do not contain, and are not likely to develop, the constituent




elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not critical habitat.

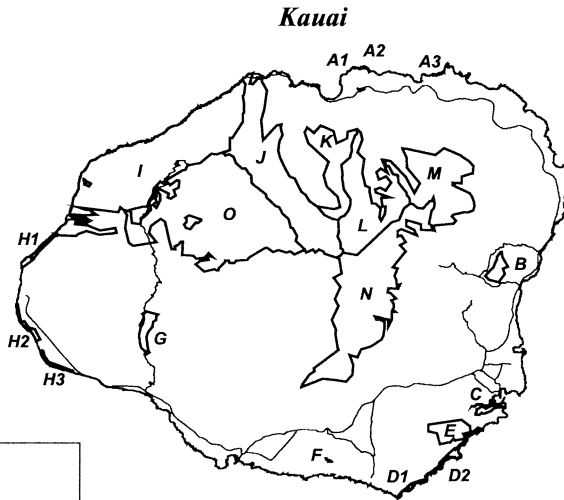
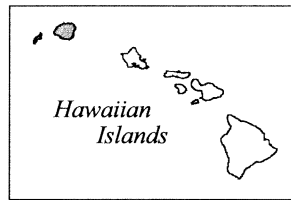
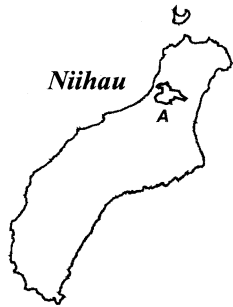
(A) *Kauai.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 15 critical habitats units designated on the island of Kauai.

(1) **Note:** Map 1—Index map follows:

Map 1
General Locations of
Units for 83 Species of Plants

Islands of Kauai and Niihau

-  Proposed Critical Habitat Area
-  Major Roads
-  Coastline



(2) Kauai A1 (2 ha; 6 ac):

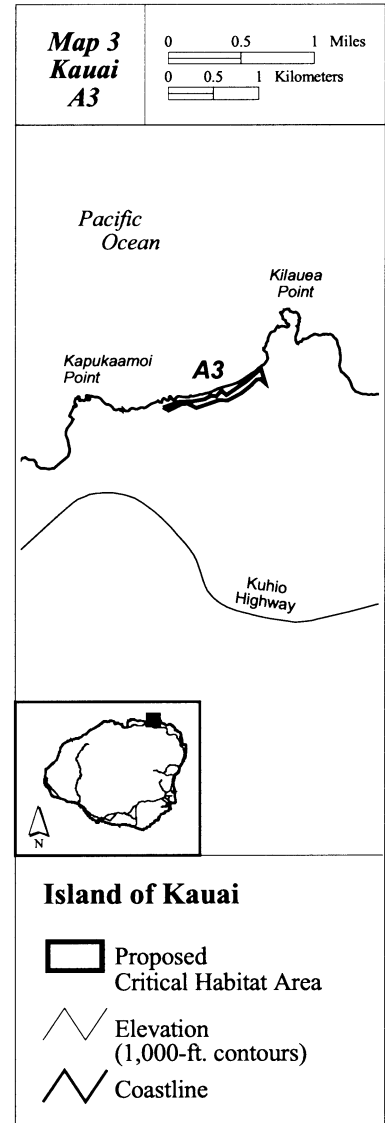
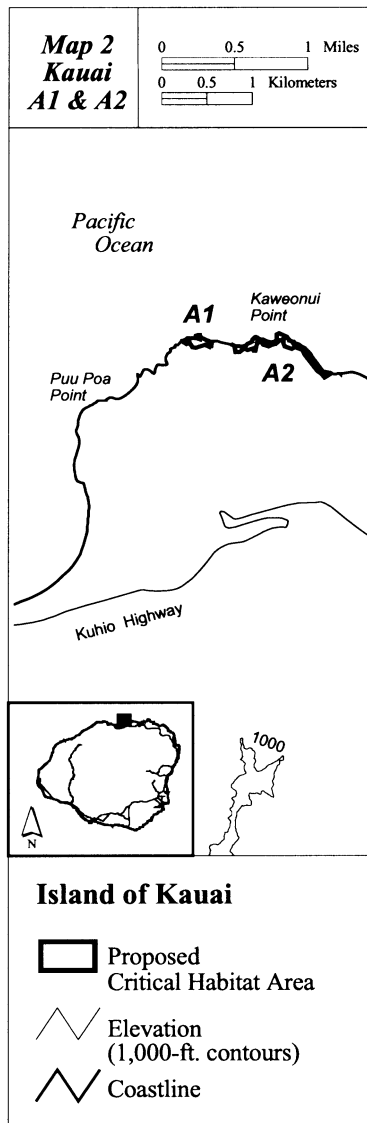
(i) Unit consists of the following 10 boundary points and the intermediate coastline: 450111, 2458178; 450040, 2458211; 449937, 2458177; 449899, 2458187; 449875, 2458235; 449837, 2458220; 449804, 2458237; 449797, 2458256; 450118, 2458243; 450111, 2458178.

(ii) Note: See Map 2.

(3) Kauai A2 (6 ha; 16 ac):

(i) Unit consists of the following 29 boundary points and the intermediate coastline: 451432, 2457896; 451355, 2457848; 451317, 2457895; 451277, 2457919; 451132, 2458101; 451110, 2458153; 451031, 2458185; 450999, 2458165; 450916, 2458191; 450900, 2458226; 450902, 2458273; 450852, 2458252; 450818, 2458217; 450778, 2458211; 450737, 2458190; 450679, 2458208; 450673, 2458233; 450650, 2458236; 450636, 2458255; 450615, 2458247; 450600, 2458145; 450574, 2458143; 450568, 2458168; 450506, 2458152; 450472, 2458173; 450420, 2458129; 450376, 2458129; 450360, 2458202; 451432, 2457896.

(ii) Note: Map 2 follows:



(4) Kauai A3 (6 ha; 16 ac):

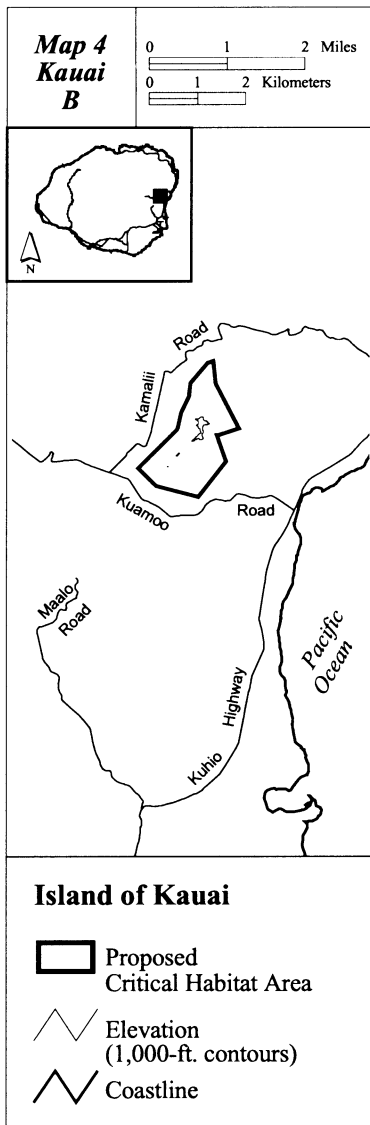
(i) Unit consists of the following 22 boundary points: 457168, 2457531; 457342, 2457591; 457498, 2457593; 457625, 2457613; 457697, 2457660; 457754, 2457649; 457811, 2457710; 457865, 2457661; 458080, 2457809; 458248, 2457952; 458296, 2457792; 458241, 2457839; 458199, 2457830; 458122, 2457761; 458032, 2457682; 457883, 2457600; 457794, 2457610; 457536, 2457524; 457441, 2457569; 457364, 2457561; 457230, 2457492; 457168, 2457531.

(ii) Note: Map 3 follows:

(5) Kauai B (271 ha; 669 ac):

(i) Unit consists of the following 16 boundary points: 462951, 2439791; 463026, 2440139; 463194, 2440476; 463197, 2440513; 463212, 2440748; 463578, 2441162; 463693, 2441201; 463739, 2440731; 464227, 2439803; 463785, 2439663; 463768, 2439658; 463960, 2439113; 463380, 2438382; 462504, 2438614; 462139, 2438979; 462951, 2439791.

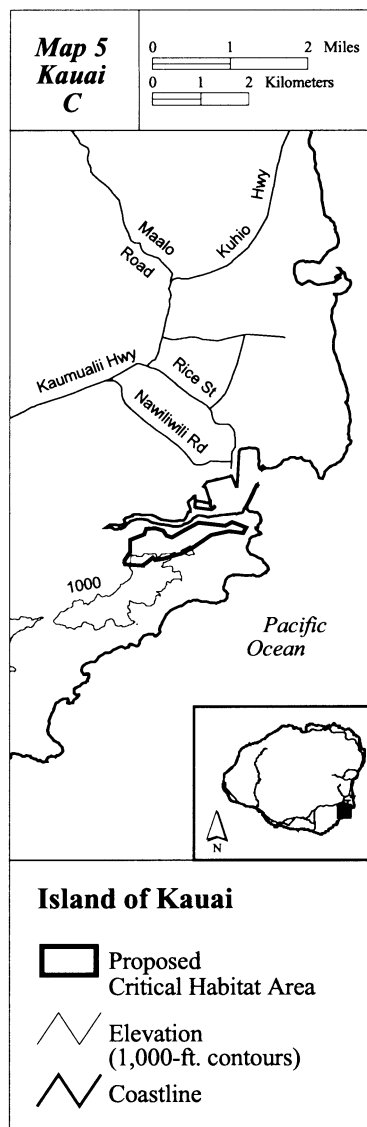
(ii) Note: Map 4 follows:



(6) Kauai C (97 ha; 239 ac):

(i) Unit consists of the following 32 boundary points: 461253, 2426125; 461390, 2426310; 461387, 2426567; 461678, 2426687; 461714, 2426795; 461907, 2426808; 462068, 2426762; 462130, 2426658; 462247, 2426612; 462487, 2426760; 462793, 2426916; 463349, 2426860; 463493, 2426936; 463781, 2426818; 463743, 2426750; 463719, 2426707; 463425, 2426746; 463363, 2426733; 463062, 2426671; 462693, 2426409; 462532, 2426329; 462422, 2426274; 462417, 2426272; 462234, 2426225; 462055, 2426178; 461911, 2426141; 461862, 2426197; 461719, 2426089; 461655, 2426041; 461649, 2426036; 461289, 2426053; 461253, 2426125.

(ii) Note: Map 5 follows:



(7) Kauai D1 (14 ha; 35 ac):

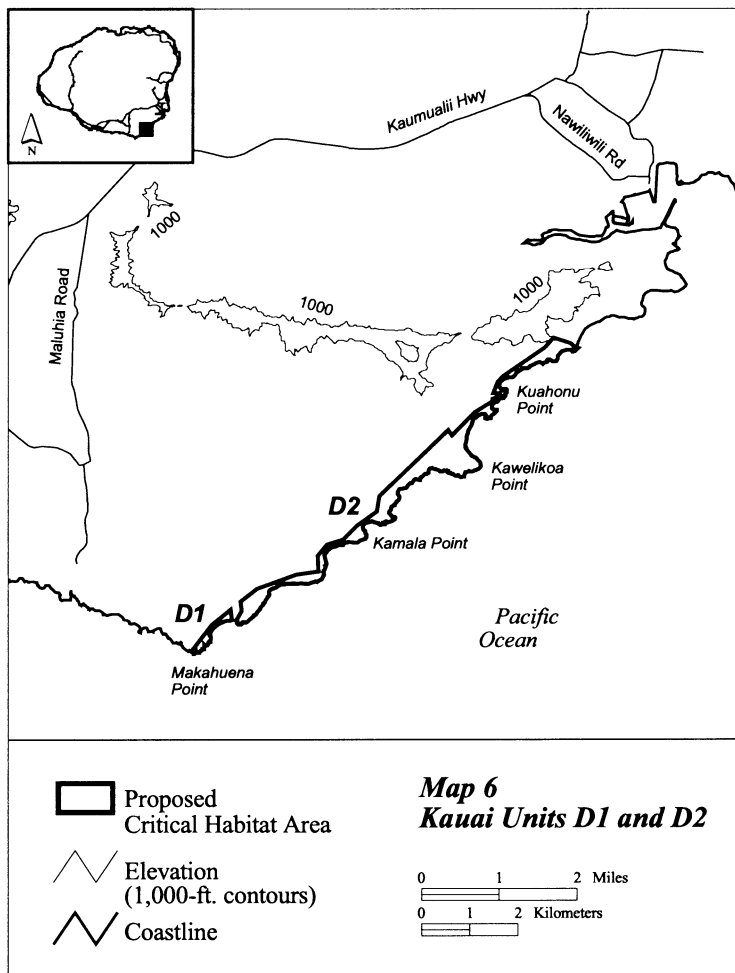
(i) Unit consists of the following 5 boundary points and the intermediate coastline: 454015, 2418349; 454018, 2418363; 454442, 2418909; 454833, 2419220; 454863, 2419007.

(ii) Note: See Map 6.

(8) Kauai D2 (240 ha; 594 ac):

(i) Unit consists of the following 30 boundary points and the intermediate coastline: 455383, 2419661; 456197, 2419949; 456652, 2420011; 456632, 2420344; 456832, 2420571; 457154, 2420676; 457451, 2420968; 457851, 2421259; 457907, 2421577; 458908, 2422538; 459329, 2422943; 459406, 2422835; 459880, 2423311; 460246, 2423542; 460249, 2423591; 460406, 2423648; 460400, 2423702; 460256, 2423702; 460348, 2423941; 460461, 2424061; 461318, 2424658; 461502, 2424866; 461855, 2424745; 461990, 2424632; 454952, 2418994; 455018, 2419106; 455066, 2419201; 455056, 2419302; 455037, 2419384; 455383, 2419661.

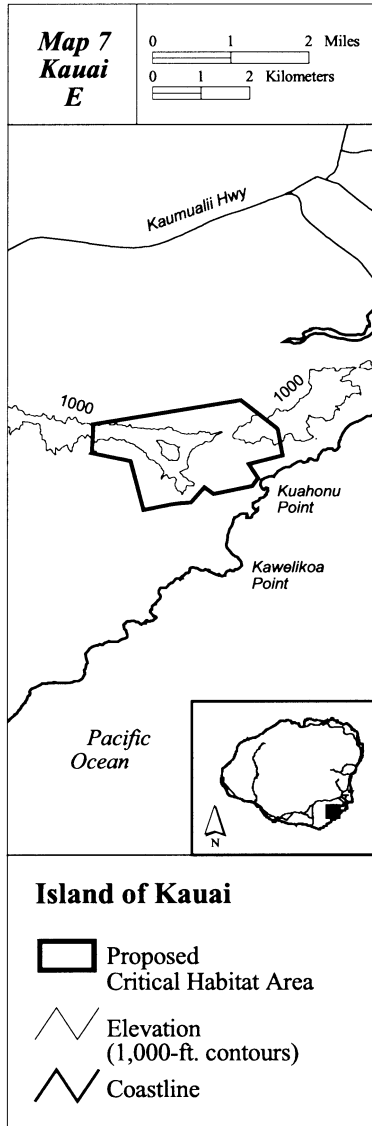
(ii) Note: Map 6 follows:



(9) Kauai E (563 ha; 1,390 ac):

(i) Unit consists of the following 21 boundary points: 456926, 2424980; 456931, 2425122; 459982, 2425617; 460718, 2425043; 460747, 2425021; 460838, 2424471; 460139, 2424297; 460339, 2424005; 460222, 2423839; 459424, 2423673; 459236, 2423816; 458949, 2423502; 458737, 2423478; 458542, 2423456; 458541, 2423457; 457976, 2423340; 457712, 2424357; 456908, 2424519; 456913, 2424541; 456911, 2424542; 456926, 2424980.

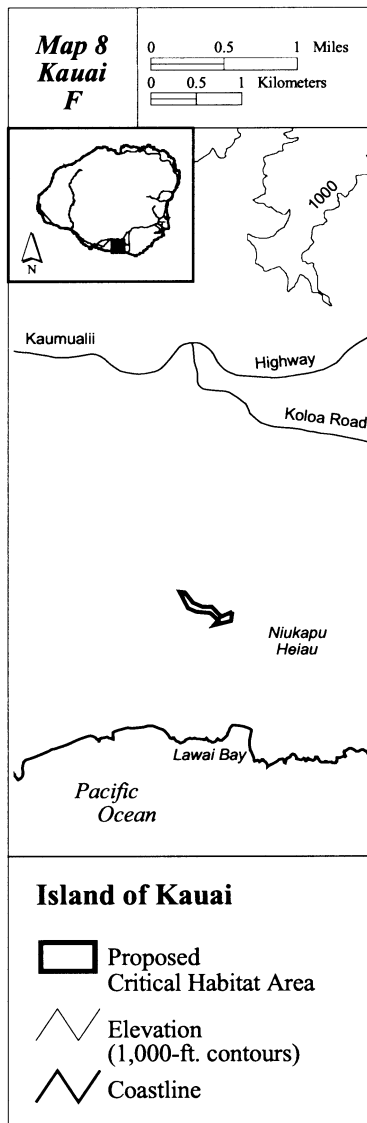
(ii) Note: Map 7 follows:



(10) Kauai F (5 ha; 12 ac):

(i) Unit consists of the following 14 boundary points: 447961, 2421793; 447951, 2421694; 447757, 2421647; 447804, 2421699; 447721, 2421781; 447569, 2421791; 447473, 2421836; 447380, 2422014; 447443, 2422008; 447527, 2421894; 447636, 2421848; 447736, 2421847; 447843, 2421739; 447961, 2421793.

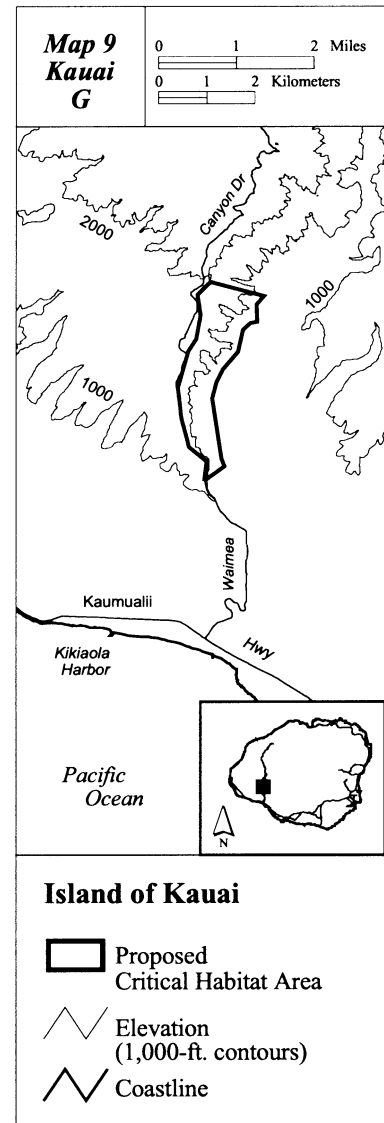
(ii) Note: Map 8 follows:



(11) Kauai G (317 ha; 784 ac):

(i) Unit consists of the following 28 boundary points: 430576, 2431555; 430622, 2431957; 430275, 2432253; 430256, 2432269; 430228, 2432381; 430120, 2432802; 430088, 2432926; 430087, 2432937; 430073, 2433073; 430051, 2433291; 430032, 2433480; 430239, 2434243; 430413, 2434499; 430495, 2434992; 430433, 2435411; 430703, 2435680; 431807, 2435389; 431657, 2435218; 431661, 2434861; 431524, 2434832; 431378, 2434688; 431271, 2434232; 430955, 2433867; 430825, 2433606; 430743, 2433270; 430926, 2432023; 430997, 2431853; 430576, 2431555.

(ii) Note: Map 9 follows:



(12) Kauai H1 (138 ha; 341 ac):

(i) Unit consists of the following 21 boundary points and the intermediate coastline: 422157, 2442895; 422253, 2442799; 422313, 2442829; 422340, 2442802; 422267, 2442675; 420764, 2441227; 420336, 2440626; 420237, 2440644; 420191, 2440681; 420140, 2440696; 420065, 2440682; 420011, 2440623; 420030, 2440550; 420059, 2440472; 420121, 2440503; 420131, 2440566; 420224, 2440562; 420256, 2440546; 420246, 2440519; 419159, 2439682; 422157, 2442895.

(ii) Note: See Map 10.

(13) Kauai H2 (107 ha; 265 ac):

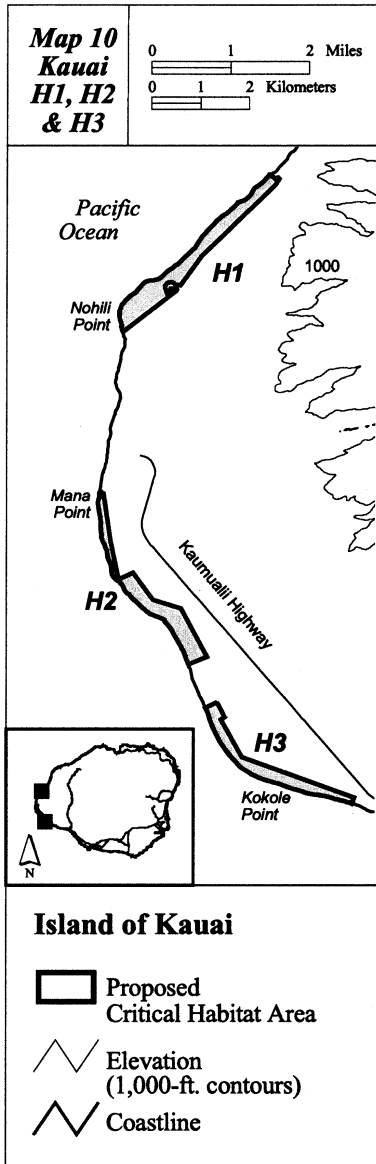
(i) Unit consists of the following 10 boundary points and the intermediate coastline: 418768, 2436406; 418924, 2435411; 419092, 2434621; 419386, 2434766; 419792, 2434204; 420366, 2434018; 420895, 2433034; 420508, 2432883; 418693, 2436403; 418768, 2436406.

(ii) Note: See Map 10.

(14) Kauai H3 (84 ha; 206 ac):

(i) Unit consists of the following 9 boundary points and the intermediate coastline: 421100, 2432099; 421251, 2431804; 421178, 2431753; 421599, 2430981; 423896, 2430158; 423847, 2430037; 423847, 2430037; 420858, 2431995; 421100, 2432099.

(ii) Note: Map 10 follows:



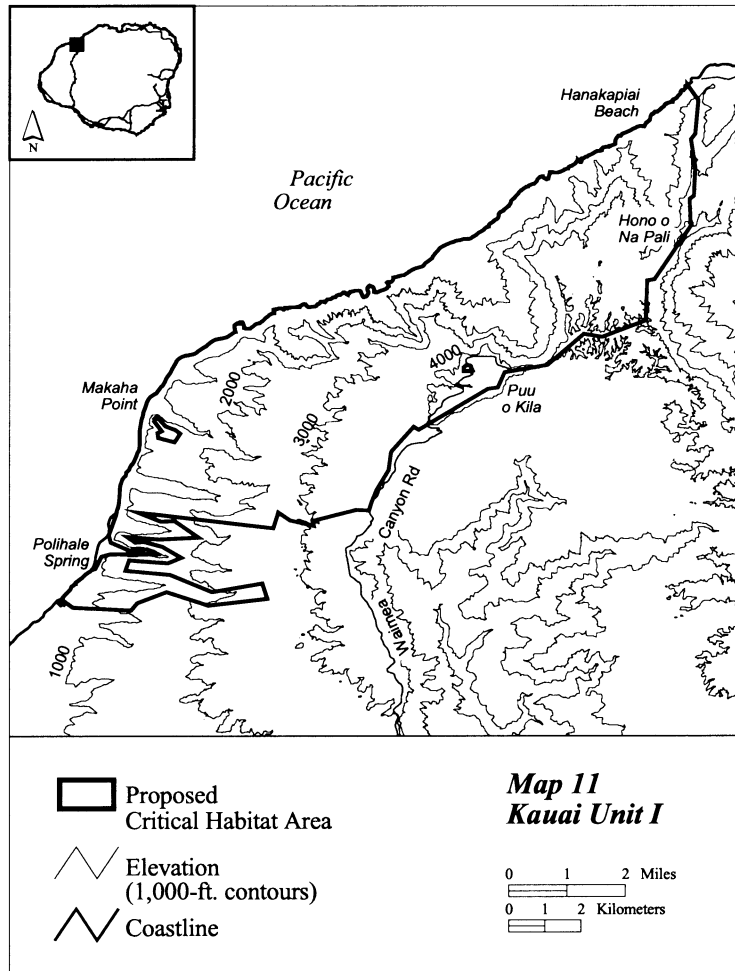
(15) Kauai I (8,237 ha; 20,355 ac):
 (i) Unit consists of the following 69 boundary points: 431369, 2447027; 431298, 2446522; 430955, 2445963; 430827, 2445619; 430759, 2445406; 430405, 2445422; 429208, 2445113; 429227, 2444972; 428580, 2445127; 428254, 2445343; 428120, 2444908; 424377, 2445349; 425013, 2445087; 425384, 2445106; 426057, 2444655; 424969, 2444599; 424087, 2444665; 424298, 2444527; 424541, 2444533; 425048, 2444395; 425576, 2444097; 425196, 2443945; 424131, 2444021; 424042, 2443733; 425270, 2443619; 426430, 2443155; 427818, 2443383; 427950, 2442970; 426322, 2442783; 425169, 2443141; 424357, 2442849; 424194, 2442643; 422571, 2442723; 422383, 2442876; 422340, 2442802; 422313, 2442829; 422253, 2442799; 422157, 2442895; 423103, 2443764; 423201, 2443796; 423371, 2444122; 423625, 2444198; 424851, 2444198; 424627, 2444336; 424140, 2444296; 423626, 2444520; 423573, 2444725; 423777, 2445276; 423805, 2445404; 439536, 2457157; 439833, 2456737; 439743, 2455809; 439623, 2455659; 439743, 2454910; 439713, 2454101; 439593, 2454011; 439623, 2453262; 438633, 2451794; 438423, 2451764; 438393, 2450655; 437193, 2450205; 436683, 2450295; 435693, 2449427; 434493, 2449217; 434313, 2448797; 434043, 2448767; 432136, 2447629; 432001, 2447726; 431369, 2447027.

(ii) Excluding two areas:

(A) Bounded by the following 11 points (22 ha; 55 ac): 424797, 2447905; 424876, 2447985; 424979, 2447908; 425131, 2447737; 425411, 2447634; 425540, 2447530; 425388, 2447289; 424938, 2447423; 424917, 2447544; 425029, 2447600; 424797, 2447905.

(B) Bounded by the following 11 points (3 ha, 8 ac): 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; 433368, 2449292.

(iii) Note: Map 11 follows:



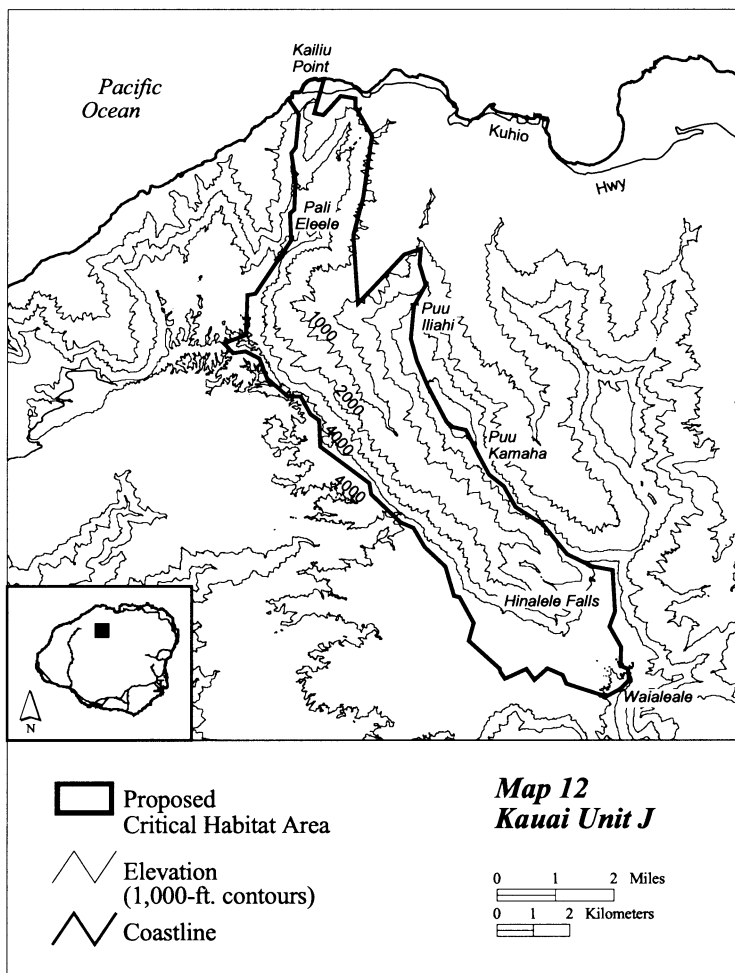
Map 11
Kauai Unit I

(16) Kauai J (5,536 ha; 13,681 ac):
 (i) Unit consists of the following 78
 boundary points: 445389, 2441352;
 445395, 2441421; 444534, 2442190;
 444669, 2442684; 444273, 2443397;
 444123, 2443427; 443883, 2444237;
 443313, 2444777; 443013, 2445316;
 442653, 2445466; 441843, 2446246;
 441783, 2446546; 440433, 2447566;
 440403, 2448286; 440163, 2448466;
 439893, 2448945; 439533, 2448945;
 438963, 2449455; 438753, 2449995;
 438363, 2450205; 438033, 2450145;
 437779, 2450425; 438393, 2450655;
 438423, 2451764; 438633, 2451794;

439623, 2453262; 439593, 2454011;
 439713, 2454101; 439743, 2454910;
 439623, 2455659; 439743, 2455809;
 439833, 2456737; 439536, 2457157;
 440525, 2457717; 440256, 2456761;
 440510, 2456709; 440974, 2457238;
 441381, 2457162; 441384, 2456934;
 441835, 2456137; 441845, 2456118;
 441608, 2454449; 441325, 2453390;
 441466, 2451514; 442740, 2452877;
 443187, 2453024; 443153, 2452602;
 443329, 2452030; 443002, 2451449;
 442929, 2450549; 443097, 2449921;
 443398, 2449211; 443914, 2448260;
 444078, 2448101; 444452, 2448023;

444805, 2447309; 445085, 2446779;
 445494, 2446452; 445812, 2445884;
 446570, 2445402; 447238, 2444584;
 447943, 2444240; 448503, 2444146;
 448563, 2443006; 448413, 2442586;
 448725, 2442030; 448713, 2441507;
 448923, 2441417; 448953, 2441117;
 448694, 2440858; 448333, 2440649;
 447224, 2441008; 447126, 2441246;
 446698, 2441431; 446351, 2441108;
 446122, 2441415; 445539, 2441150;
 445389, 2441352.

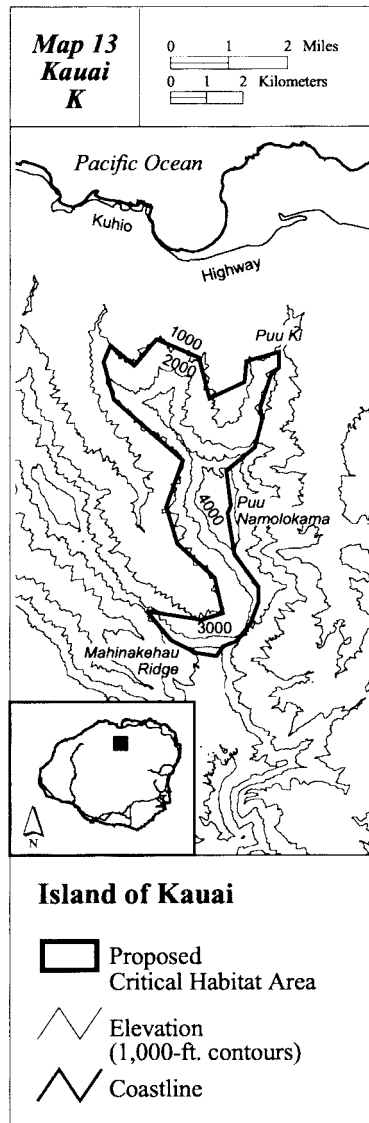
(ii) **Note:** Map 12 follows:



(17) Kauai K (1,752 ha; 4,330 ac):

(i) Unit consists of the following 36 boundary points: 446572, 2445400; 446733, 2445375; 448070, 2445147; 448658, 2445334; 448450, 2446319; 447413, 2447271; 447101, 2448274; 447568, 2449571; 445666, 2451248; 445376, 2452300; 445558, 2452748; 446226, 2452194; 446834, 2452923; 448013, 2452416; 448295, 2451280; 449257, 2451734; 449308, 2452305; 450213, 2452567; 450213, 2452118; 450003, 2451969; 449703, 2451040; 449733, 2450650; 449553, 2449931; 448773, 2449272; 448893, 2448312; 448803, 2448103; 448983, 2446963; 449643, 2446064; 449643, 2445644; 449433, 2445045; 449043, 2444565; 448683, 2444415; 448503, 2444146; 447943, 2444240; 447238, 2444584; 446572, 2445400.

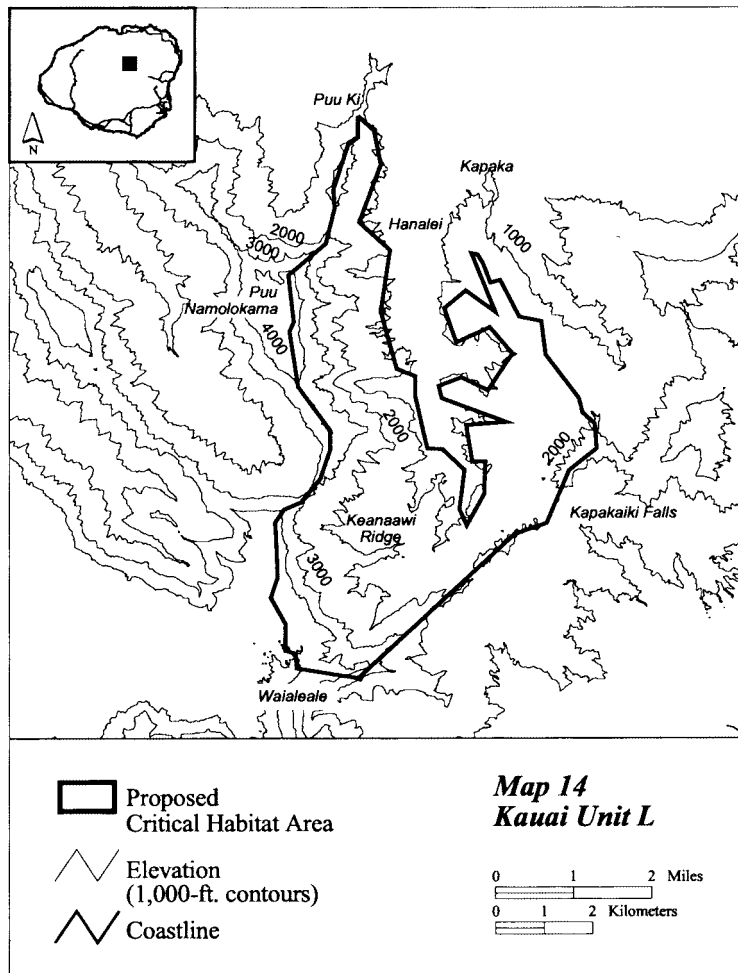
(ii) Note: Map 13 follows:



(18) Kauai L (3,407 ha; 8,418 ac):

(i) Unit consists of the following 67 boundary points: 450213, 2452567; 450542, 2452265; 450684, 2451568; 450241, 2450373; 450869, 2449790; 450678, 2448523; 451007, 2447330; 451389, 2447179; 451389, 2446751; 451639, 2445679; 451955, 2445659; 452403, 2445232; 452304, 2444416; 452455, 2444074; 452811, 2444732; 452837, 2445409; 452567, 2445396; 452446, 2446166; 453271, 2446225; 451942, 2446718; 451876, 2446968; 452347, 2447150; 452890, 2446882; 453396, 2447638; 452923, 2448184; 452240, 2447869; 451990, 2448589; 452433, 2448946; 453048, 2448507; 452547, 2449722; 452673, 2449704; 452793, 2449510; 452943, 2449120; 453147, 2449166; 453543, 2448400; 453993, 2448310; 454083, 2447621; 454773, 2446721; 454844, 2446408; 455103, 2446182; 455133, 2445672; 454563, 2445223; 454106, 2444132; 453446, 2443901; 450222, 2440919; 448953, 2441117; 448923, 2441417; 448713, 2441507; 448725, 2442030; 448413, 2442586; 448563, 2443006; 448503, 2444146; 448683, 2444415; 449043, 2444565; 449433, 2445045; 449643, 2445644; 449643, 2446064; 448983, 2446963; 448803, 2448103; 448893, 2448312; 448773, 2449272; 449553, 2449931; 449733, 2450650; 449703, 2451040; 450003, 2451969; 450213, 2452118; 450213, 2452567.

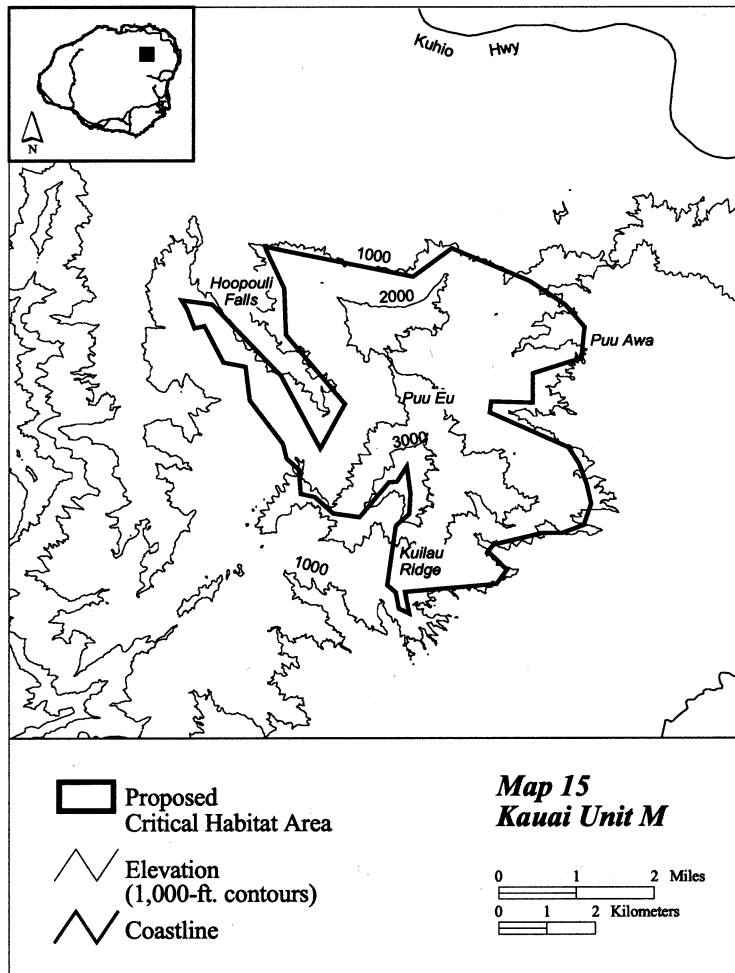
(ii) Note: Map 14 follows:



(19) Kauai M (3,302 ha; 8,160 ac):
 (i) Unit consists of the following 59
 boundary points: 457113, 2445012;
 457383, 2445252; 457413, 2445671;
 457330, 2446252; 457139, 2445925;
 456963, 2445911; 456358, 2445200;
 455806, 2445269; 455433, 2445612;
 455133, 2445672; 455103, 2446182;
 454844, 2446408; 454773, 2446721;
 454083, 2447621; 453993, 2448310;
 453543, 2448400; 453147, 2449166;

452943, 2449120; 452793, 2449510;
 452673, 2449704; 453308, 2449613;
 454728, 2448128; 455547, 2446621;
 456055, 2447542; 454829, 2448978;
 454794, 2449939; 454414, 2450755;
 454419, 2450755; 454397, 2450801;
 454803, 2450718; 457459, 2450181;
 458261, 2450765; 459840, 2450099;
 459883, 2450071; 460618, 2449594;
 461011, 2449133; 460939, 2448483;
 460823, 2448447; 459945, 2448170;

459945, 2447565; 459070, 2447590;
 459050, 2447366; 460682, 2446642;
 460893, 2446313; 461052, 2445865;
 461142, 2445474; 460992, 2445024;
 460551, 2444860; 460143, 2444860;
 459129, 2444624; 459015, 2444484;
 459403, 2444098; 459186, 2443804;
 457304, 2443646; 457391, 2443201;
 457173, 2443303; 457113, 2443633;
 456930, 2443789; 457113, 2445012.
 (ii) Note: Map 15 follows:

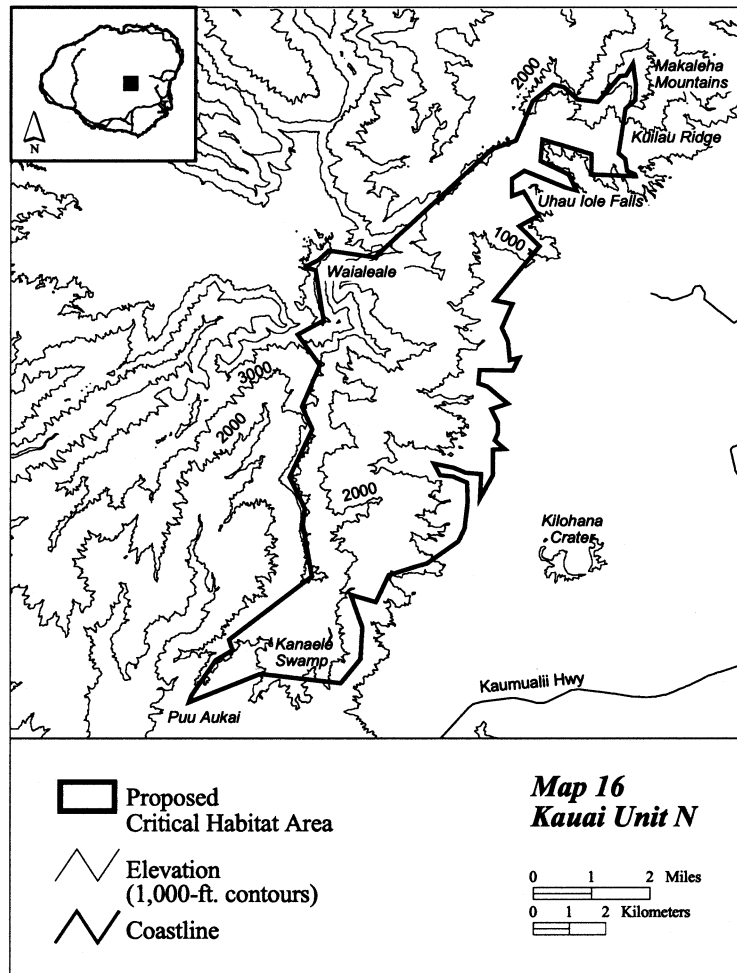


(20) Kauai N (6,599 ha; 16,307 ac):
 (i) Unit consists of the following 93 boundary points: 448304, 2440658; 448694, 2440858; 448953, 2441117; 450222, 2440919; 453446, 2443901; 454106, 2444132; 454563, 2445223; 455133, 2445672; 455433, 2445612; 455806, 2445269; 456358, 2445200; 456963, 2445911; 457139, 2445925; 457330, 2446252; 457413, 2445671; 457383, 2445252; 457113, 2445012; 456930, 2443789; 457113, 2443633; 457173, 2443303; 457391, 2443201; 457391, 2443203; 457413, 2443151; 456187, 2443214; 456187, 2443771; 454827, 2444169; 454776, 2443575; 455563, 2443214; 455793, 2442722;

454346, 2443301; 454007, 2443091; 454007, 2442616; 454324, 2442737; 454726, 2442067; 454213, 2441785; 454761, 2441232; 453538, 2439738; 454020, 2439628; 453739, 2438982; 453910, 2438601; 453949, 2438081; 454213, 2438153; 454040, 2437796; 453121, 2437802; 453094, 2437443; 453351, 2437357; 453904, 2436874; 453443, 2436719; 453634, 2436351; 453634, 2436068; 453541, 2435864; 453817, 2435628; 453495, 2435607; 453498, 2434903; 453140, 2434258; 453166, 2434936; 452758, 2434969; 452436, 2435107; 451870, 2435213; 452047, 2434897; 452403, 2434857; 452791, 2434686; 452804, 2434147;

452722, 2433415; 452542, 2433070; 451682, 2432466; 451433, 2432389; 450631, 2432141; 450283, 2431389; 449586, 2431600; 449899, 2430693; 449848, 2429818; 449308, 2429151; 448109, 2429291; 447532, 2429359; 447101, 2429410; 445132, 2428625; 445203, 2428817; 445869, 2429806; 446327, 2430072; 446237, 2430356; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448319, 2433974; 447886, 2434845; 448515, 2436159; 448226, 2436801; 448728, 2437943; 448103, 2438785; 448819, 2439175; 448608, 2440560; 448304, 2440658.

(ii) Note: Map 16 follows:



Map 16
Kauai Unit N

(21) Kauai O (9,462 ha; 23,382 ac):
(i) Unit consists of the following 112 boundary points: 431732, 2447115; 432759, 2446609; 432659, 2446240; 432948, 2446150; 433397, 2446440; 433257, 2446958; 433706, 2447138; 433746, 2447766; 433527, 2447856; 432918, 2447407; 432609, 2447647; 432320, 2447497; 432136, 2447629; 434043, 2448767; 434313, 2448797; 434493, 2449217; 435693, 2449427; 436683, 2450295; 437193, 2450205; 437779, 2450425; 438033, 2450145; 438363, 2450205; 438753, 2449995; 438963, 2449455; 439533, 2448945; 439893, 2448945; 440163, 2448466; 440403, 2448286; 440433, 2447566; 441783, 2446546; 441843, 2446246; 442653, 2445466; 443013, 2445316; 443313, 2444777; 443883, 2444237; 444123, 2443427; 444273, 2443397; 444669, 2442684; 444534, 2442190; 445395, 2441421; 445394, 2441346;

445365, 2441385; 444417, 2440969; 444062, 2441230; 443700, 2441108; 442976, 2441356; 442451, 2441191; 441892, 2441565; 441645, 2441557; 440236, 2440690; 440053, 2440443; 439019, 2440382; 438851, 2440177; 438403, 2440161; 438371, 2440418; 438028, 2440409; 437996, 2440301; 437460, 2439694; 437359, 2439476; 437201, 2439467; 437026, 2439616; 436101, 2439350; 435269, 2440031; 435665, 2440354; 436455, 2440433; 436408, 2440716; 436547, 2440821; 436843, 2440742; 436494, 2441058; 436158, 2440696; 435346, 2440541; 435078, 2440832; 434002, 2440921; 434077, 2442149; 433931, 2442137; 433683, 2441844; 433347, 2441698; 433378, 2441400; 433086, 2441406; 432762, 2442447; 432421, 2443974; 432044, 2444251; 431123, 2443581; 430966, 2442944; 431612, 2442073; 429503, 2441778; 429077, 2442068;

428753, 2443380; 428890, 2444606; 428578, 2445127; 429227, 2444972; 429378, 2443867; 430155, 2443777; 430205, 2444275; 430564, 2444465; 431153, 2445133; 431083, 2445402; 430991, 2445457; 430977, 2445767; 431060, 2445963; 431278, 2446215; 431483, 2446536; 431491, 2446759; 431622, 2446390; 431522, 2446121; 431622, 2445871; 431312, 2445542; 431632, 2445303; 432001, 2445941; 431961, 2446460; 431624, 2446959; 431732, 2447115.

(ii) Excluding the area bounded by the following 12 points (109 ha; 270 ac): 434647, 2444577; 435769, 2444203; 435794, 2444068; 435447, 2443848; 435263, 2443927; 434786, 2443298; 434344, 2443435; 434216, 2443741; 434411, 2443957; 434416, 2444196; 434314, 2444351; 434647, 2444577.

(iii) Note: Map 17 follows:

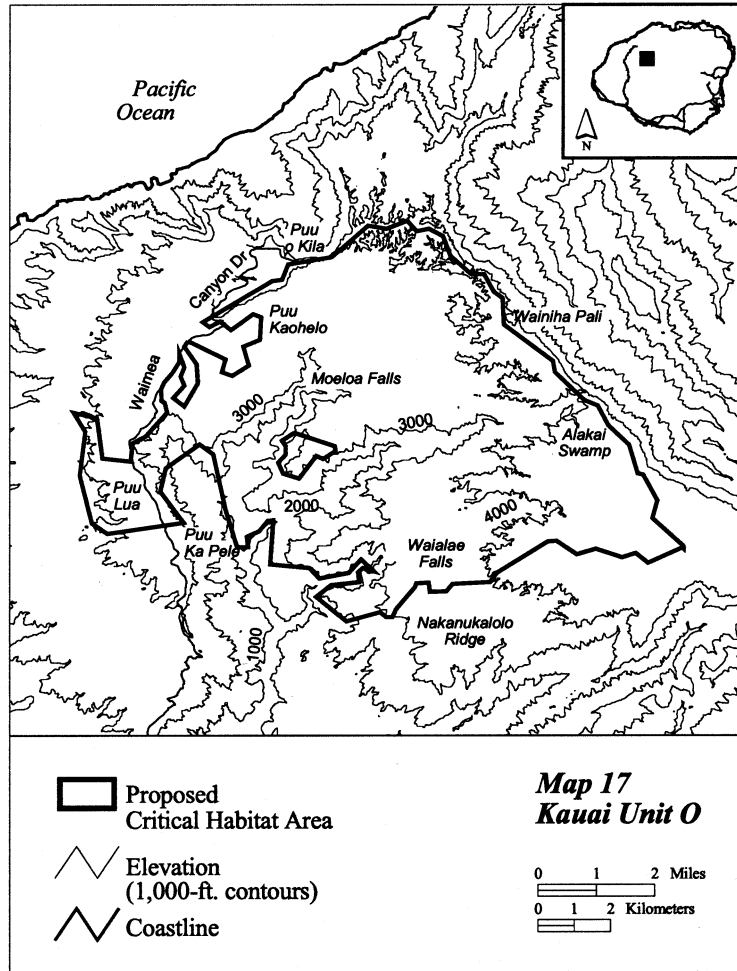


TABLE (A)(1)(I)(A).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI

Unit name	Species occupied	Species unoccupied
Kauai A	<i>Ischaemum byrone</i>	<i>Centaurium sebaeoides</i>
Kauai B	<i>Hibiscus clayi</i> , <i>Munroidendron racemosum</i>	
Kauai C	<i>Brighamia insignis</i> , <i>Lobelia niihauensis</i>	
Kauai D		<i>Sesbania tomentosa</i>
Kauai E	<i>Brighamia insignis</i> , <i>Delissea rhytidosperra</i> , <i>Isodendron longifolium</i> , <i>Lipochaeta micrantha</i> , <i>Munroidendron racemosum</i> , <i>Peucedanum sandwicense</i> , <i>Pteralyxia kauaiensis</i> , <i>Schiedea nuttallii</i> .	<i>Melicope haupeensis</i> , <i>Myrsine linearifolia</i>
Kauai F	<i>Schiedea spergulina</i> var. <i>leiopoda</i>	
Kauai G	<i>Lipochaeta waimeaensis</i> , <i>Spermolepis hawaiiensis</i>	<i>Schiedea spergulina</i> var. <i>spergulina</i>
Kauai H	<i>Panicum niihauense</i> , <i>Sesbania tomentosa</i>	
Kauai I	<i>Adenophorus periens</i> , <i>Alectryon macrococcus</i> , <i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Brighamia insignis</i> , <i>Centaurium sebaeoides</i> , <i>Chamaesyce halemanui</i> , <i>Cyperus trachysanthos</i> , <i>Delissea rhytidosperra</i> , <i>Delissea rivularis</i> , <i>Delissea undulata</i> , <i>Diellia pallida</i> , <i>Dubautia latifolia</i> , <i>Euphorbia haeleeeleana</i> , <i>Exocarpos luteolus</i> , <i>Flueggea neowawraea</i> , <i>Gouania meyenii</i> , <i>Hedyotis cookiana</i> , <i>Hedyotis st.-johnii</i> , <i>Hibiscadelphus woodii</i> , <i>Hibiscus waimeae</i> ssp. <i>hannerae</i> , <i>Isodendron laurifolium</i> , <i>Isodendron longifolium</i> , <i>Kokia kauaiensis</i> , <i>Lipochaeta fauriei</i> , <i>Lobelia niihauensis</i> , <i>Melicope haupeensis</i> , <i>Melicope knudsenii</i> , <i>Melicope pallida</i> , <i>Munroidendron racemosum</i> , <i>Myrsine linearifolia</i> ,.	<i>Ctenitis squamigera</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra limahuliensis</i> , <i>Diplazium molokaiense</i> , <i>Hesperomannia lydgatei</i> , <i>Ischaemum byrone</i> , <i>Labordia lydgatei</i> , <i>Panicum niihauense</i> , <i>Platanthera holochila</i> , <i>Sesbania tomentosa</i>

TABLE (A)(1)(I)(A).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai J	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Hibiscus waimeae</i> ssp. <i>hannerae</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Lobelia niihauensis</i> , <i>Myrsine linearifolia</i> , <i>Peucedanum sandwicense</i> , <i>Plantago princeps</i> , <i>Schiedea membranacea</i> .	<i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Brighamia insignis</i> , <i>Delissea rivularis</i> , <i>Delissea undulata</i> , <i>Euphorbia haeleleana</i> , <i>Exocarpos luteolus</i> , <i>Munroidendron racemosum</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i> , <i>Remya montgomeryi</i> , <i>Schiedea kauaiensis</i>
Kauai K	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Myrsine linearifolia</i> , <i>Plantago princeps</i> .	<i>Alsinidendron lychnoides</i> , <i>Bonamia menziesii</i> , <i>Schiedea membranacea</i>
Kauai L	<i>Plantago princeps</i>	<i>Adenophorus periens</i> , <i>Bonamia menziesii</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Hesperomannia lydgatei</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Lysimachia filifolia</i> , <i>Myrsine linearifolia</i> , <i>Platanthera holochila</i>
Kauai M	<i>Adenophorus periens</i> , <i>Cyanea asarifolia</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra cyaneoides</i> , <i>Cyrtandra limahuliensis</i> , <i>Labordia lydgatei</i> , <i>Phyllostegia wawrana</i> .	<i>Bonamia menziesii</i>
Kauai N	<i>Adenophorus periens</i> , <i>Bonamia menziesii</i> , <i>Cyanea asarifolia</i> , <i>Cyanea recta</i> , <i>Cyanea remyi</i> , <i>Cyrtandra limahuliensis</i> , <i>Dubautia pauciflora</i> , <i>Exocarpos luteolus</i> , <i>Isodendron longifolium</i> , <i>Labordia lydgatei</i> , <i>Labordia tinifolia</i> var. <i>wahiawaensis</i> , <i>Lysimachia filifolia</i> , <i>Myrsine linearifolia</i> , <i>Plantago princeps</i> , <i>Viola helenae</i> , <i>Viola kauaiensis</i> var. <i>wahiawaensis</i> .	<i>Cyanea undulata</i> , <i>Cyrtandra cyaneoides</i> , <i>Delissea rivularis</i> , <i>Hesperomannia lydgatei</i> , <i>Phelgmariurus nutans</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i>
Kauai O	<i>Alectryon macrococcus</i> , <i>Alsinidendron lychnoides</i> , <i>Alsinidendron viscosum</i> , <i>Bonamia menziesii</i> , <i>Chamaesyce halemanui</i> , <i>Diellia erecta</i> , <i>Diellia pallida</i> , <i>Dubautia latifolia</i> , <i>Euphorbia haeleleana</i> , <i>Exocarpos luteolus</i> , <i>Flueggea neowawraea</i> , <i>Gouania meyenii</i> , <i>Isodendron laurifolium</i> , <i>Kokia kauaiensis</i> , <i>Lipochaeta fauriei</i> , <i>Lipochaeta micrantha</i> , <i>Lobelia niihauensis</i> , <i>Melicope haupuensis</i> , <i>Melicope knudsenii</i> , <i>Melicope pallida</i> , <i>Munroidendron racemosum</i> , <i>Myrsine linearifolia</i> , <i>Nothoctrum peltatum</i> , <i>Peucedanum sandwicense</i> , <i>Phyllostegia knudsenii</i> , <i>Phyllostegia waimeae</i> , <i>Phyllostegia wawrana</i> , <i>Platanthera holochila</i> , <i>Poa sandwicensis</i> , <i>Poa siphonoglossa</i> , <i>Pteralyxia</i> .	<i>Adenophorus periens</i> , <i>Cyanea recta</i> , <i>Delissea rivularis</i> , <i>Diplazium molokaiensis</i> , <i>Isodendron longifolium</i> , <i>Mariscus pennatiformis</i> , <i>Plantago princeps</i> , <i>Poa mannii</i> , <i>Schiedea kauense</i> , <i>Stenogyne campanulata</i>

(B) *Niihau*. Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(1) Niihau A (282 ha; 697 ac):

- (i) Unit consists of the following 35 boundary points: 384729, 2427553; 384573, 2427962; 384698, 2428162; 384929, 2428330; 385085, 2428326; 385229, 2428448; 385276, 2428623; 385229, 2428846; 385014, 2428881; 384889, 2428830; 384737, 2428958; 384796, 2429103; 384952, 2429173; 385026, 2429146; 385136, 2429275; 385284, 2429244; 385335, 2429178; 385710, 2429377; 385795, 2429261; 385710, 2429120; 386002, 2428917; 386022, 2428707; 386780, 2428559; 386959, 2428247; 387475, 2427909; 387322, 2427686; 386416, 2427981; 386362, 2427840; 386256, 2427750; 386010, 2427731; 386042, 2427438; 385897, 2427457; 385678, 2427367; 385116, 2427542; 384729, 2427553.

(ii) Note: Map 18 follows:

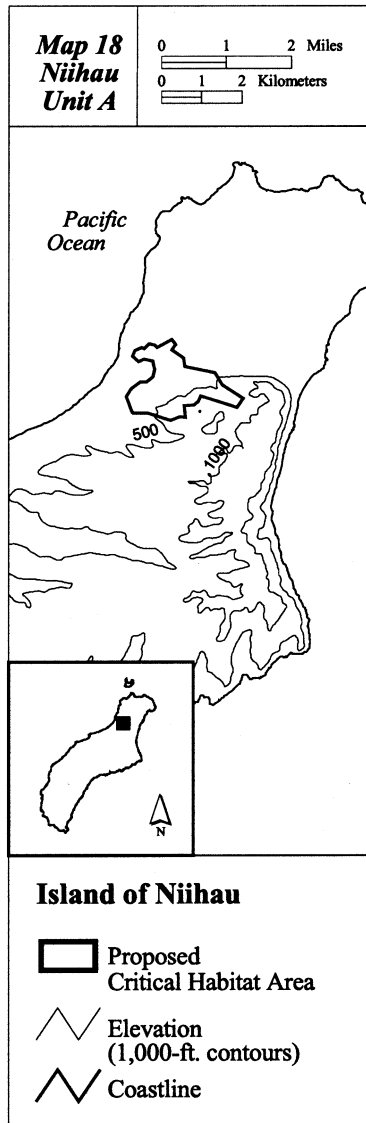


TABLE (A)(1)(i)(B). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR NIIHAU

Unit name	Species occupied	Species unoccupied
Niihau A	<i>Brighamia insignis</i> , <i>Cyperus trachysanthos</i> .	

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kauai E, I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest and containing one or more of the following associated native plant

species: *Acacia koa*, *Artemisia australis*, *Brighamia insignis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio*, *Lobelia niihauensis*, *Metrosideros polymorpha*, *Panicum lineale*, *Psychotria odoratum*, *Psychotria* spp., or *Wilkesia* spp.; and

(2) Elevations between 0 and 1,232 m (0 and 4,041 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Kauai G and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these

units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Bidens sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax*; and

(2) Elevations of about 56 and 725 m (184 and 2,377 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai E, I and O, identified in the legal descriptions in (a)(1)(i)(A),

constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. containing one or more of the following associated plant species: *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Antidesma platyphyllum* var. *hillebrandii*, *Bobea brevipes*, *Carex* spp., *Charpentiera elliptica*, *Claoxylon sandwicense*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Diplazium sandwichianum*, *Euphorbia haeleleana*, *Freycinetia arborea*, *Gahnia* spp., *Gardenia remyi*, *Hedyotis terminalis*, *Hibiscus kokio*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Neraudia* spp., *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Peperomia* spp., *Pleomele aurea*, *Pipturus* spp., *Pisonia sandwicensis*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pritchardia* spp., *Rauvolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Schiedea* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 915 and 1,007 m (3,002 and 3,305 ft).

Family Araliaceae: *Munroidendron racemosum* (NCN)

Kauai B, E, I, and O identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep exposed cliffs or ridge slopes in coastal or lowland mesic forest and containing one or more of the following associated plant species: *Bobea brevipes*, *Brighamia insignis*, *Canavalia napaliensis*, *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Pisonia sandwicensis*, *Pisonia umbellifera*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Schiedea* spp., *Sida fallax*, or *Tetraplasandra* spp.; and

(2) Elevations between 6 and 979 m (19 and 3,213 ft).

Family Asteraceae: *Dubautia latifolia* (naenae)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently

known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Bobea* spp., *Claoxylon sandwicense*, *Coprosma waimeae*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *Nestegis sandwicensis*, *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Scaevola* spp., or *Xylosma* spp.; and

(2) Elevations between 544 and 1,277 m (1,786 and 4,189 ft).

Family Asteraceae: *Dubautia pauciflora* (naenae)

Kauai N, identified in the legal description in (a)(1)(i)(A), description above, constitutes critical habitat for *Dubautia pauciflora* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide:

(1) *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest within stream drainages containing one or more of the following associated native plant species:

Antidesma platyphyllum, *Broussaisia arguta*, *Cheirodendron* spp., *Dubautia laxa*, *Embelia pacifica*, *Hesperomannia lydgatei*, *Labordia waialealae*, *Melicope* spp., *Nothoperanema rubiginosa*, *Pritchardia* spp., *Psychotria* spp., *Sadleria* spp., *Scaevola mollis*, *Syzygium sandwicensis*, or *Tetraplasandra* spp.; and

(2) Elevations between 564 and 1,093 m (1,849 and 3,587 ft).

Family Asteraceae: *Hesperomannia lydgatei* (NCN)

Kauai I, J, K, L, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream banks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest and containing one or more of the following associated native plant species: *Adenophorus periens*, *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii*,

Dubautia laxa, *Dubautia pauciflora*, *Dubautia raillardioidea*, *Elaphoglossum* spp., *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra*, or *Syzygium sandwicensis*; and

(2) Elevations between 405 and 1,570 m (1,329 and 5,151 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate shade to full sun on the sides of steep gulches in diverse lowland mesic forests and containing one or more of the following native species: *Acacia koa*, *Carex meyenii*, *Carex wahuensis*, *Dicranopteris linearis*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pleomele aurea*, *Psychotria greenwelliae*, *Psychotria mariniana*, or *Sapindus oahuensis*; and

(2) Elevations between 437 and 947 m (1,432 and 3,108 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

Kauai E and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* are the habitat components provided by:

(1) Cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities and containing one or more of the following associated native plant species: *Acacia koa*, *Artemisia australis*, *Antidesma* spp., *Bidens sandwicensis*, *Bobea* spp., *Chamaesyce celastroides* var. *hanapepensis*, *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis grandis*, *Eragrostis variabilis*, *Hibiscus kokio*, *Lepidium bidentatum*, *Lobelia niihauensis*, *Melicope* spp., *Metrosideros polymorpha*, *Neraudia kauaiensis*, *Nototrichium* spp., *Plectranthus parviflorus*, *Pleomele aurea*, *Psydrax odoratum*, *Pipturus* spp., *Rumex* spp., *Sida fallax*, or *Xylosma hawaiiense*; and

(2) Elevations between 35 and 1,362 m (115 and 4,468 ft).

Family Asteraceae: *Lipochaeta waimeensis* (nehe)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lipochaeta waimeensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Precipitous, shrub-covered gulches in diverse lowland forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Lipochaeta connata*, *Santalum ellipticum*, *Schiedea spergulina*, or *Panicum* spp.; and

(2) Elevations between 44 and 460 m (145 and 1,509 ft).

Family Asteraceae: *Remya kauaiensis* (NCN)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, north or northeast facing slopes in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest and containing one or more of the following associated native plant species: *Chamaesyce* spp., *Claoxylon sandwicense*, *Dianella sandwicensis*, *Diospyros* spp., *Dodonaea viscosa*, *Hedyotis terminalis*, *Melicope* spp., *Nestegis sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Schiedea* spp., *Tetraplasandra* spp.; and

(2) Elevations between 560 and 1,247 m (1,836 and 4,090 ft).

Family Asteraceae: *Remya montgomeryi* (NCN)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha* dominated mixed mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bohea* spp., *Boehmeria grandis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Cyrtandra* spp., *Dubautia* spp., *Ilex anomala*, *Lepidium serra*, *Lysimachia* spp., *Myrsine linearifolia*, *Nototrichium* spp., *Pleomele aurea*, *Poa mannii*, *Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata*, *Tetraplasandra* spp., or *Zanthoxylum dipetalum*; and

(2) Elevations between 336 and 1,345 m (1,102 and 4,411 ft).

Family Asteraceae: *Wilkesia hobbdi* (dwarf iliau)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitute critical habitat for *Wilkesia hobbdi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species:

Artemisia australis, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint johnianus*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia blanda*, *Peperomia leptostachya*, *Peperomia tetraphylla*, *Peucedanum sandwicense*, *Psydrax odoratum*, *Sida fallax*, *Waltheria indica*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 12 and 685 m (40 and 2,246 ft).

Family Campanulaceae: *Brighamia insignis* (o'lulu)

Kauai C, E, I, and J, identified in the legal descriptions in (a)(1)(i)(A), and Niihau A, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and containing one or more of the following native plant species: *Artemisia australis*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus kokio* ssp. *saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta*, *Munroidendron racemosum*, or *Sida fallax*; and

(2) Elevations between 0 and 748 m (0 and 2,453 ft).

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai M and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests and containing one or more of the following native plant species: ferns, *Bidens* spp., *Dubautia plantaginea*,

Hedyotis centranthoides, *Hedyotis elatior*, *Lysimachia filifolia*, *Machaerina angustifolia*, *Metrosideros polymorpha*, or *Panicum lineale*; and

(2) Elevations between 182 and 1212 m (597 and 3,976 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai I, J, K, L, M, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and containing one or more of the following native plant species: *Dicranopteris linearis*, *Psychotria* spp., *Antidesma* spp., *Cheirodendron platyphyllum*, *Cibotium* spp., or *Diplazium* spp.; and

(2) Elevations between 234 and 1,406 m (768 and 4,613 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tight drainages and seepy stream banks in lowland wet forest or shrubland and containing one or more of the following native plant species: various grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum*, *Eragrostis grandis*, *Bidens* spp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea*, *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, *Thelypteris* spp., *Touchardia* spp., or *Urera glabra*; and

(2) Elevations between 215 and 1,167 m (704 and 3,829 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Cyanea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tight drainages and seepy stream banks in *Metrosideros polymorpha* dry to montane wet forest or shrubland and containing one or more of the following associated native species: various

grammitid and filmy ferns, *Adenophorus* spp., *Antidesma* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Diplazium sandwichianum*, *Dryopteris glabra*, *Eragrostis grandis*, *Bidens* spp., *Freycinetia arborea*, *Machaerina angustifolia*, *Mariscus* spp., *Melicope feddei*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria mariniana*, *Psychotria hexandra*, *Sadleria pallida*, *Sadleria squarrosa*, *Smilax melastomifolia*, *Sphenomeris chinensis*, *Syzygium sandwicensis*, or *Thelypteris* spp.; and

(2) Elevations between 145 and 1,066 m (476 and 3,497 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai E, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha*-*Acacia koa* forests and containing one or more of the following native species: grammitid ferns, *Adenophorus oligadenus*, *Cyanea* spp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Euphorbia haeleleana*, *Hedyotis* spp., *Microlepia strigosa*, *Nestegis sandwicensis*, *Psychotria hobbyi*, *Pisonia* spp., *Pteralyxia* spp., or *Styphelia tameiameia*; and

(2) Elevations between 167 and 895 m (547 and 2,935 ft).

Family Campanulaceae: *Delissea rivularis* (oha)

Kauai I, J, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Delissea rivularis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes near streams in *Metrosideros polymorpha*-*Cheirodendron trigynum* montane wet or mesic forest and containing one or more of the following native plant species: *Boehmeria grandis*, *Broussaisia arguta*, *Carex* spp., *Coprosma* spp., *Dubautia knudsenii*, *Diplazium sandwichianum*, *Hedyotis foggiana*, *Ilex anomala*, *Machaerina angustifolia*, *Melicope clusiifolia*, *Melicope anisata*, *Pipturus* spp., *Psychotria hexandra*, or *Sadleria* spp.; and

(2) Elevations between 722 and 1,306 m (2,370 and 4,286 ft).

Family Campanulaceae: *Delissea undulata* (NCN)

Kauai I and J, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Delissea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry or open *Acacia koa*-*Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest containing one or more of the following native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Doodia kunthiana*, *Eragrostis variabilis*, *Euphorbia haeleleana*, *Kokia kauaiensis*, *Microlepia strigosa*, *Panicum* spp., *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum*; and

(2) Elevations between 139 and 1,006m (456 and 3,299 ft).

Family Campanulaceae: *Lobelia niihauensis* (NCN)

Kauai C, I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis*, *Chamaesyce celastroides*, *Charpentiera* spp., *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint-johnianus*, *Lipochaeta connata* var. *acris*, *Lythrum* spp., *Nototrichium* spp., *Plectranthus parviflorus*, *Schiedea apokremnos*, or *Wilkesia hobbyi*; and

(2) Elevations between 11 and 887 m (37 and 2,911 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenuhu)

Kauai I, J, K and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* and *Cheirodendron* spp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and containing one or more of the following native plant species: *Asplenium* spp., *Astelia* spp., *Broussaisia arguta*, *Carex* spp., *Cyrtandra* spp., *Diplazium*

sandwichianum, *Elaphoglossum* spp., *Hedyotis terminalis*, *Machaerina* spp., *Peperomia* spp., or *Vaccinium* spp.; and
(2) Elevations between 878 and 1,344 m (2,715 and 4,408 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) steep slopes in *Acacia koa*-*Metrosideros polymorpha* lowland, montane mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis*, *Asplenium polydon*, *Bidens cosmoides*, *Bobea* spp., *Carex meyenii*, *Carex wahuensis*, *Coprosma* spp., *Dryopteris unidentata*, *Dryopteris glabra*, *Dodonaea viscosa*, *Dubautia laevigata*, *Dianella sandwicensis*, *Dryopteris wallichiana*, *Doodia kunthiana*, *Gahnia* spp., *Ilex anomala*, *Melicope* spp., *Panicum nephelophilum*, *Pteridium aquilinum* var. *decompositum*, *Pleomele* spp., *Psychotria* spp., *Schiedea stellarioides*, or *Vaccinium dentatum*; and

(2) Elevations between 754 and 1,224 m (2,474 and 4,016 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (maolioli)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitute critical habitat for *Schiedea apokremnos* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens* spp., *Carex meyenii*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Lepidium serra*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia* spp., *Pleomele aurea*, *Psydrax odoratum*, or *Wilkesia* spp.; and

(2) Elevations between 12 and 391 m (40 and 1,283 ft).

Family Caryophyllaceae: *Schiedea helleri* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Broussaisia arguta*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis*, *Dubautia* spp., *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope* spp., *Myrsine* spp., *Poa sandwicensis*, *Scaevola procera*, *Syzygium sandwicensis*, or *Viola wailenaleanae*; and

(2) Elevations between 941 and 1,223 m (3,088 and 4,011 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (NCN)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated plant species: *Alphitonia ponderosa*, *Cryptocarya mannii*, *Diospyros* spp., *Dodonaea viscosa*, *Euphorbia haeleleana*, *Exocarpos luteolus*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Pisonia* spp., *Peucedanum sandwicense*, *Psychotria* spp., *Psydrax odoratum*, or *Styphelia tameiameiae*; and

(2) Elevations between 192 and 4,232 m (631 and 4,232 ft).

Family Caryophyllaceae: *Schiedea membranacea* (NCN)

Kauai I, J, K, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs or cliff bases of mesic or wet habitats, in lowland, or montane shrubland, or forest communities dominated by *Acacia koa*, *Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Alyxia oliviformis*, *Asplenium* spp., *Athyrium sandwicensis*, *Bohea brevipes*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia*

helleri, *Lepidium serra*, *Lysimachia kalalauensis*, *Machaerina angustifolia*, *Mariscus pennatifolius*, *Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis*, *Pisonia* spp., *Pleomele aurea*, *Poa mannii*, *Poa sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Remya kauaiensis*, *Sadleria cyatheoides*, *Scaevola procera*, *Thelypteris cyatheoides*, *Thelypteris sandwicensis*, or *Touchardia latifolia*; and

(2) Elevations between 423 and 1,205 m (1,386 and 3,953 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Kauai E, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens valida*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Hedyotis acuminata*, *Hedyotis fluviatilis*, *Heteropogon contortus*, *Lepidium* spp., *Lobelia niihauensis*, *Psychotria* spp., *Perrottetia sandwicensis*, or *Pisonia* spp.; and

(2) Elevations between 33 and 702 m (120 and 2,303 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (NCN)

Kauai F, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following native plant species: *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Gahnia* spp., *Heliotropium* spp., *Lepidium serra*, *Lipochaeta connata*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Panicum violascens*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 21 and 87 m (69 and 284 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (NCN)

Kauai G, I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following associated plant species: *Acacia koa*, *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides*, *Dianella sandwicensis*, *Doryopteris* spp., *Eragrostis variabilis*, *Erythrina sandwicensis*, *Gahnia* spp., *Heliotropium* spp., *Lepidium serra*, *Lipochaeta connata*, *Microlepia strigosa*, *Nestegis sandwicensis*, *Nototrichium sandwicense*, *Panicum lineale*, *Panicum violascens*, *Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 145 and 829 m (474 and 2,718 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (lauhilihi (=maolioli))

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and containing one or more of the following native plant species: *Alsinidendron viscosum*, *Artemisia australis*, *Bidens cosmoides*, *Chenopodium* spp., *Dianella sandwicensis*, *Dodonaea viscosa*, *Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense*, *Pipturus* spp., *Styphelia tameiameiae*, *Syzygium sandwicensis*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 476 and 1,216 m (1,561 and 3,990 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Kauai I, J, K, L, M, N and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest and containing one

or more of the following native plant species: *Antidesma platyphyllum*, *Alphitonia ponderosa*, *Acacia koa*, *Cyanea* spp., *Cyrtandra pickeringii*, *Cyrtandra limahuliensis*, *Dianella sandwicensis*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Dubautia knudsenii*, *Hedyotis terminalis*, *Isodendron longifolium*, *Labordia hirta*, *Melicope anisata*, *Melicope barbiger*, *Myoporum sandwicense*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Psychotria mariniana*, *Psychotria hexandra*, *Psydrax odoratum*, *Sapindus oahuensis*, *Scaevola procera*, or *Syzygium sandwicensis*; and

(2) Elevations between 351 and 1,416 m (1,151 and 4,644 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Kauai I, identified in the legal description in (a)(1)(i)(A), and Niihau A, identified in the legal description in (a)(1)(i)(B), constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes and containing the native plant species *Hibiscus tiliaceus*; and

(2) Elevations between 0 and 234 m (0 and 767 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Mariscus pennatiformis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open sites in *Metrosideros polymorpha*—*Acacia koa* mixed mesic forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Alsinidendron viscosum*, *Carex alligata*, *Cyperus laevigatus*, *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Myrsine linearifolia*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Poa sandwicensis*, *Psydrax odoratum*, *Schiedea stellarioides*, *Styphelia tameiameia*, or endemic ferns; and

(2) Elevations between 544 and 1,104 m (1,785 and 3,621 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute

critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes of gulches in mesic *Acacia koa* forests and containing one or more of the following native plant species: *Asplenium* spp., *Alphitonia ponderosa*, *Antidesma platyphyllum*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Cheirodendron trigynum*, *Coprosma* spp., *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Metrosideros polymorpha*, *Melicope haupuensis*, *Microlepia strigosa*, *Panicum nephelophilum*, *Pisonia* spp., *Pittosporum* spp., *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Pouteria sandwicensis*, *Santalum freycinetianum*, or *Styphelia tameiameia*; and

(2) Elevations between 556 and 1,202 m (1,825 and 3,944 ft).

Family Euphorbiaceae: *Euphorbia haeleleana* (akoko)

Kauai I, J, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Euphorbia haeleleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa* and containing one or more of the following native plant species: *Acacia koa*, *Antidesma platyphyllum*, *Claoxylon sandwicense*, *Carex meyenii*, *Carex wahuensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauwolfia sandwicensis*, *Reynoldsia sandwicensis*, *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, *Pouteria sandwicensis*, *Pisonia sandwicensis*, or *Xylosma* spp.; and

(2) Elevations between 284 and 1,178 m (931 and 3,866 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mēhamehame)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus*, *Antidesma pulvinatum*, *A.*

platyphyllum, *Bidens sandwicensis*, *Bobea timonioides*, *Caesalpinia kavaiensis*, *Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Hibiscus* spp., *Isodendron laurifolium*, *Kokia kauaiensis*, *Melicope* spp., *Metrosideros polymorpha*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoloma polynesicum*, *Nestegis sandwicensis*, *Tetraplasandra* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauwolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma hawaiiense*, or *Xylosma crenatum*; and

(2) Elevations between 210 and 1,178 m (689 and 3,865 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Kauai D, H, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs, and containing one or more of the following associated native plant species: *Chamaesyce celastroides*, *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, or *Vitex rotundifolia*; and

(2) Elevations between 0 and 212 m (0 and 694 ft).

Family Flacourtiaceae: *Xylosma crenatum* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse *Acacia koa*-*Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest, or *Acacia koa*-*Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Athyrium sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Cyanea hirta*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Hedyotis* spp., *Ilex anomala*, *Lobelia yuccoides*, *Myrsine* spp., *Nestegis sandwicensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Poa sandwicensis*, *Pouteria sandwicensis*,

Psychotria spp., *Scaevola procera*, *Strebilus pendulinus*, *Tetraplasandra* spp., *Touchardia latifolia*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 936 and 1,284 m (3,070 and 4,212 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Kauai A and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Centaurium sebaeoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Volcanic or clay soils or on cliffs in arid coastal areas and containing one or more of the following native plant species: *Artemisia* spp., *Bidens* spp., *Chamaesyce celastroides*, *Dodonaea viscosa*, *Fimbristylis cymosa*, *Heteropogon contortus*, *Jacquemontia ovalifolia*, *Lipochaeta succulenta*, *Lipochaeta heterophylla*, *Lipochaeta integrifolia*, *Lycium sandwicense*, *Lysimachia mauritiana*, *Mariscus phleoides*, *Panicum fauriei*, *P. torridum*, *Scaevola sericea*, *Sida fallax*, or *Wikstroemia uva-ursi*; and

(2) Elevations between 0 and 147 m (0 and 483 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai J, K, L, M and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*, *Cheirodendron* spp., and *Dicranopteris linearis* and containing one or more of the following native species: *Bidens* spp., *Boehmeria grandis*, *Cyanea* spp., *Cyrtandra longifolia*, *Cyrtandra kauaiensis*, *Cyrtandra limahuliensis*, *Coprosma* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis terminalis*, *Hedyotis tryblum*, *Machaerina* spp., *Melicope clusiifolia*, *Melicope puberula*, *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria* spp., *Pritchardia* spp., or *Stenogyne purpurea*; and

(2) Elevations between 157 and 1,406 m (514 and 4,614 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (haiwale)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream banks in lowland wet forests containing one or more of the following native plant species: *Antidesma* spp., *Boehmeria grandis*, *Bidens* spp., *Charpentiera* spp., *Cibotium glaucum*, *Cyanea* spp., *Cyrtandra kealiae*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Eugenia* spp., *Gunnera kauaiensis*, *Hedyotis terminalis*, *Hibiscus waimeae*, *Metrosideros polymorpha*, *Perrottetia sandwicensis*, *Pisonia* spp., *Pipturus* spp., *Pritchardia* spp., *Psychotria* spp., *Touchardia latifolia*, or *Urera glabra*; and

(2) Elevations between 208 and 1,594 m (681 and 5,228 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (NCN)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Bobea timonioides*, *Claoxylon sandwicense*, *Cryptocarya mannii*, *Cyrtandra kauaiensis*, *Cyrtandra paludosa*, *Diospyros sandwicensis*, *Elaeocarpus bifidus*, *Ilex anomala*, *Myrsine linearifolia*, *Perrottetia sandwicensis*, *Pittosporum kauaiense*, *Pouteria sandwicensis*, *Pritchardia minor*, *Selaginella arbuscula*, *Tetraplasandra oahuensis*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 399 and 1,059 m (1,309 and 3,475 ft).

Family Lamiaceae: *Phyllostegia waimeae* (no common name)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia waimeae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa*-*Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants and containing one or more of the following associated native plant

species: *Broussaisia arguta*, *Claoxylon sandwicense*, *Diplazium sandwichianum*, *Dubautia knudsenii*, *Elaphoglossum* spp., *Gunnera* spp., *Hedyotis* spp., *Myrsine lanaiensis*, *Pleomele aurea*, *Psychotria* spp., *Sadleria* spp., *Scaevola procera*, *Syzygium sandwicensis*, or *Vaccinium* spp.; and

(2) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai I, J, M, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa*-*Metrosideros polymorpha*-*Cheirodendron* mixed mesic forest containing one or more of the following associated native plant species: *Alectryon* spp., *Asplenium polypodon*, *Athyrium microphyllum*, *Carex* spp., *Claoxylon sandwicense*, *Cyanea fissa*, *Delissea rivularis*, *Dianella sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Doodia kunthiana*, *Dryopteris wallichiana*, *Dubautia knudsenii*, *Dubautia laevigata*, *Hedyotis tryblum*, *Machaerina angustifolia*, *Panicum nephelophilum*, *Peperomia macraeana*, *Perrottetia sandwicensis*, *Poa sandwicensis*, *Pleomele aurea*, *Pteridium decompositum*, *Sadleria pallida*, *Schiedea stellarioides*, *Scaevola procera*, *Syzygium sandwicensis*, *Touchardia latifolia*, or *Vaccinium dentatum*; and

(2) Elevations between 398 and 1,284 m (1,306 and 4,212 ft).

Family Lamiaceae: *Stenogyne campanulata* (NCN)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Stenogyne campanulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rock faces of nearly vertical, north-facing cliffs in diverse lowland or montane mesic forest and containing one or more of the following associated native plant species: *Lepidium serra*, *Lobelia niihauensis*, *Lysimachia* spp., *Metrosideros polymorpha*, *Melicope pallida*, *Neraudia kauaiensis*, *Nototrichium divaricatum*, *Poa mannii*, *Remya montgomeryi*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 335 and 1,290 m (1,100 and 4,232 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai I, J, K, L, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii*, *Hedyotis terminalis*, *Ilex anomala*, *Labordia hirtella*, *Psychotria* spp., or *Syzygium sandwicensis*; and

(2) Elevations between 182 and 1,140 m (597 and 3,740 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Streambanks in lowland wet forests dominated by *Metrosideros polymorpha* and containing one or more of the following associated species: *Antidesma platyphyllum*, *Athyrium microphyllum*, *Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Hedyotis terminalis*, or *Psychotria* spp.; and

(2) Elevations between 458 and 1,006 m (1,502 and 3,301 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens sandwicensis*, *Carex meyenii*, *Chamaesyce celastroides* var. *hanapeensis*, *Dubautia* spp., *Hedyotis* spp., *Lepidium serra*, *Lipochaeta* spp., *Lobelia niihauensis*, *Lysimachia glutinosa*, *Melicope pallida*, *Myrsine* spp., *Nototrichium* spp., *Panicum lineale*, *Poa mannii*, or *Stenogyne campanulata*; and

(2) Elevations between 219 and 1,197 m (717 and 3,926 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai B, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest and containing one or more of the following associated native plant species: *Artemisia australis*, *Bidens* spp., *Cyanea hardyi*, *Hedyotis acuminata*, *Gahnia* spp., *Munroidendron racemosum*, *Pandanus tectorius*, *Panicum tenuifolium*, *Pleomele aurea*, *Pipturus* spp., *Psychotria* spp., or *Psydrax odoratum*; and

(2) elevations between nine and 380 m (29 and 1,245 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (kokio keokeo)

Kauai I and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* spp., *Psychotria* spp., *Pipturus* spp., *Bidens* spp., *Bobea* spp., *Sadleria* spp., *Cyrtandra* spp., *Cyanea* spp., *Cibotium* spp., *Perrottetia sandwicensis*, or *Syzygium sandwicensis*; and

(2) Elevations between 174 and 1,154 m (570 and 3,787 ft).

Family Malvaceae: *Kokia kauaiensis* (kokio)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides*, *Claoxylon sandwicense*, *Dicranopteris linearis*, *Diellia pallida*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Flueggea neowawraea*, *Hibiscus laurifolium*, *Lipochaeta fauriei*,

Melicope spp., *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Nototrichium* spp., *Pisonia* spp., *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauwolfia sandwicensis*, *Santalum freycinetianum* var. *pyrularium*, *Streblus pendulinus*, *Syzygium sandwicensis*, *Tetraplasandra* spp., or *Xylosma* spp.; and

(2) Elevations between 216 and 1,037 m (707 and 3,402 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kōlea)

Kauai E, I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* spp., or *Dicranopteris linearis* as co-dominant species, and containing one or more of the following associated native plant species: *Bobea brevipes*, *Cryptocarya mannii*, *Dubautia* spp., *Eurya sandwicensis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Lysimachia glutinosa*, *Machaerina angustifolia*, *Melicope* spp., *Myrsine* spp., *Nothoecetrum* spp., *Psychotria* spp., *Sadleria pallida*, *Syzygium sandwicensis*, or native ferns; and

(2) Elevations between 106 and 1,380 m (346 and 4,526 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Kauai I, J, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Platanthera holochila* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Montane *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog and containing one or more of the following associated native plant species: mosses, grammitid ferns, *Carex montis-eeka*, *Cibotium* spp., *Clermontia fauriei*, *Coprosma elliptica*, *Dichantheium* spp., *Lobelia kauaensis*, *Machaerina angustifolia*, *Myrsine denticulata*, *Oreobolus furcatus*, *Rhynchospora laxa*, *Styphelia tameiameia*, or *Vaccinium* spp., or *Viola kauaensis*; and

(2) Elevations between 803 and 1,563 m (2,635 and 5,128 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron montane* wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Bobea elatior*, *Boehmeria grandis*, *Cyrtandra* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera* spp., *Hedyotis elatior*, *Huperzia* spp., *Hedyotis centranthoides*, *Isachne pallens*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Pilea peplodes*, *Pipturus* spp., *Sadleria cyatheoides*, or *Tetraplasandra* spp. or *Bidens sandwicensis*, *Carex meyenii*, *Carex wahuensis*, *Charpentiera elliptica*, *Hedyotis* spp., *Lipochaeta connata*, *Lysimachia glutinosa*, *Lysimachia kalalauensis*, *Melicope* spp., *Myrsine linearifolia*, *Poa mannii*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 347 and 1,598 m (1,139 and 5,244 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Kauai A and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Ischaemum byrone* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Coastal shrubland, occurring near the ocean among rocks and seepy cliffs and containing one or more of the following associated native plant species: *Bidens* spp., *Chamaesyce celastroides*, *Fimbristylis cymosa*, *Lipochaeta succulenta*, *Lysimachia mauritiana*, or *Scaevola sericea*, and

(2) Elevations between 0 and 297 m (0 and 975 ft).

Family Poaceae: *Panicum niihauense* (lau ehū)

Kauai H and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Panicum niihauense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sand dunes in coastal shrubland and containing one or more of the following associated native plant species: *Cassytha filiformis*, *Chamaesyce celastroides*, *Dodonaea viscosa*, *Nama sandwicensis*, *Ophioglossum pendulum* ssp. *falcatum*, *Scaevola sericea*, *Sida fallax*, *Vitex rotundifolia*, or *Sporobolus virginicus*; and

(2) Elevations between 0 and 103 m (0 and 337 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa mannii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by: (1) Cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum*, *Artemisia australis*, *Bidens cosmoides*, *Bidens sandwicensis*, *Carex meyenii*, *C. wahuensis*, *Chamaesyce celastroides* var. *hanapepensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Eragrostis variabilis*, *Hedyotis terminalis*, *Lobelia niihauensis*, *Lobelia yuccoides*, *Luzula hawaiiensis*, *Mariscus phloides*, *Melicope anisata*, *M. barbiger*, *M. pallida*, *Nototrichium* spp., *Panicum lineale*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Schiedea lydgatei* var. *attenuata*, *Schiedea membranacea*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 327 and 1,222 m (1,072 and 4,009 ft).

Family Poaceae: *Poa sandwicensis* (Hawaiian bluegrass)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa sandwicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest and containing one or more of the following associated native species: *Alyxia oliviformis*, *Bidens sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicensis*, *Coprosma* spp., *Dianella sandwicensis*, *Dicranopteris linearis*, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp.,

Scaevola procera, *Schiedea stellarioides*, or *Syzygium sandwicensis*; and

(2) Elevations between 498 and 1,290 m (1,635 and 4,232 ft).

Family Poaceae: *Poa siphonoglossa* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant species: *Acacia koa*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Bobea brevipes*, *Carex meyenii*, *Carex wahuensis*, *Coprosma waimeae*, *Dianella sandwicensis*, *Dodonaea viscosa*, *Dubautia* spp., *Hedyotis* spp., *Lobelia yuccoides*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Panicum nephelophilum*, *Poa sandwicensis*, *Psychotria* spp., *Scaevola procera*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Vaccinium* spp., *Wilkesia gymnoxiphium*, *Xylosma* spp., or *Zanthoxylum dipetalum*; and

(2) Elevations between 498 and 1,290 m (1,635 and 4,232 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai L and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lysimachia filifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Antidesma platyphyllum*, *Bidens valida*, *Bobea elatior*, *Cyanea asarifolia*, *Chamaesyce remyi* var. *kauaiensis*, *Dubautia plantaginea* ssp. *magnifolia*, *Eragrostis variabilis*, *Metrosideros polymorpha*, *Machaerina angustifolia*, *Melicope* spp., or *Panicum lineale*; and

(2) Elevations between 177 and 1,088 m (581 and 3,568 ft).

Family Rhamnaceae: *Gouania meyenii* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of

critical habitat are the habitat components provided by:

(1) Rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest and containing one or more of the following native plant species: *Bidens* spp., *Carex meyenii*, *Chamaesyce* spp., *Dodonaea viscosa*, *Diospyros sandwicensis*, *Diospyros* spp., *Eragrostis variabilis*, *Euphorbia haeleleana*, *Festuca* spp., *Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida*, *Neraudia kauaiensis*, *Nestegis sandwicensis*, *Nototrichium divaricatum*, *Panicum lineale*, *Poa mannii*, *Psychotria* spp., *Senna gaudichaudii*, or *Wilkesia gymnoxiphium*; and

(2) Elevations between 375 and 3,867 m (1,231 and 3,867 ft).

Family Rubiaceae: *Hedyotis cookiana* (awiiwi)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) streambeds or steep cliffs close to water sources in relict *Metrosideros polymorpha* low mesic and low wet forest communities containing one or more of the following associated native plant species: *Boehmeria grandis*, *Chamaesyce celastroides* var. *hanapepensis*, *Hibiscus kokio* ssp. *saintjohnianus*, *Machaerina angustifolia*, *Nototrichium sandwicense*, *Pleomele aurea*, *Pipturus kauaiensis*, *Pouteria sandwicensis*, *Psydrax odoratum*, or *Rauvolfia sandwicensis*; and

(2) Elevations between 120 and 553 m (392 and 1,814 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach hedyotis)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis st.-johnii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone in sparse dry coastal shrubland and containing one or more of the following native plant species: *Artemisia australis*, *Bidens* spp., *Capparis sandwichiana*, *Chamaesyce celastroides*, *Eragrostis variabilis*, *Heteropogon contortus*, *Lipochaeta connata*, *Lycium sandwicense*, *Myoporum sandwicense*, *Nototrichium*

sandwicense, or *Schiedea apokremnos*; and

(2) Elevations between 0 and 187 m (0 and 613 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai E, I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha*-*Acacia koa* montane mesic forest and containing one or more of the following associated native plant species:

Antidesma platyphyllum var. *hillebrandii*, *Bobea brevipes*, *Cheirodendron trigynum*, *Claoxylon sandwicense*, *Cryptocarya mannii*, *Dianella sandwicensis*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Melicope anisata*, *M. barbiger*, *M. ovata*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra waimeae*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 111 and 1,142 m (364 and 3,745 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Forested flats with brown granular soil in lowland dry to montane mesic forests and containing one or more of the following associated native plant species: *Alectryon macrococcus*, *Antidesma platyphylla*, *Bobea brevipes*, *Carex meyenii*, *Cryptocarya mannii*, *Diospyros sandwicensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Euphorbia haeleleana*, *Gahnia beecheyi*, *Hedyotis* spp., *Hibiscus waimeae*, *Isodendron laurifolium*, *Metrosideros polymorpha*, *Melicope* spp., *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Panicum nephelophilum*, *Peucedanum sandwicense*, *Pisonia sandwicensis*, *Pittosporum kauaiensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria hobbyi*, *Psydrax odoratum*, *Rauvolfia sandwicensis*, *Remya kauaiensis*, *Scaevola procera*, *Styphelia tameiameia*, or *Xylosma hawaiiense*; and

(2) Elevations between 344 and 1,064 m (1,128 and 3,492 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep rock faces in lowland to montane mesic to wet forests or shrubland and containing one or more of the following associated native plant species: *Abutilon sandwicense*, *Alyxia oliviformis*, *Artemisia australis*, *Boehmeria grandis*, *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis*, *Coprosma waimeae*, *Coprosma kauaiensis*, *Dodonaea viscosa*, *Dryopteris* spp., *Hedyotis terminalis*, *Lepidium serra*, *Melicope* spp., *Metrosideros polymorpha*, *Nototrichium* spp., *Pipturus albidus*, *Pleomele aurea*, *Poa mannii*, *Psychotria mariniana*, *Pritchardia minor*, *Sapindus oahuensis*, *Schiedea membranacea*, *Tetraplasandra waialealae*, or *Xylosma hawaiiense*; and

(2) Elevations between 359 and 1,081 m (1,179 and 3,546 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry or mesic forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and containing one or more of the following associated plant species: *Antidesma platyphyllum*, *Alectryon macrococcus*, *Charpentiera elliptica*, *Dodonaea viscosa*, *Melicope* spp., *Myrsine lanaiensis*, *Pisonia* spp., *Pleomele aurea*, *Streblus pendulinus*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 464 and 887 m (1,522 and 2,911 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai I, J, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet places bordering swamps or bogs; open, or dry ridges in lowland or montane mesic *Acacia koa*-*Metrosideros polymorpha* dominated forest

communities with *Dicranopteris* and containing one or more of the following native plant species: *Acacia koa*, *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Bobea brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata*, *Dianella sandwicensis*, *Poa sandwicensis*, *Schiedea stellarioides*, *Peperomia macraeana*, *Claoxylon sandwicense*, *Santalum freycinetianum*, *Styphelia tameiameia*, or *Dicranopteris linearis*; and

(2) Elevations between 361 and 1,466 m (1,183 and 4,808 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai I, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) dry slopes or gulches in *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest, containing one or more of the following native plant species: *Acacia koa*, *Alyxia oliviformis*, *Antidesma* spp., *Bobea timonioides*, *Caesalpinia kavaensis*, *Canavalia* spp., *Carex meyenii*, *Carex wahuensis*, *Doodia kunthiana*, *Hibiscus waimeae*, *Kokia kauaiensis*, *Melicope knudsenii*, *Microlepia strigosa*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesianum*, *Nestegis sandwicensis*, *Pisonia* spp., *Pleomele* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Psydrax odoratum*, *Pteralyxia* spp., *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum* spp.; and

(2) Elevations between 341 and 954 m (1,120 and 3,129 ft).

Family Solanaceae: *Nothocestrum peltatum* (aiea)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Bobea brevipes*, *Broussaisia arguta*,

Cheirodendron trigynum, *Claoxylon sandwicense*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *M. barbiger*, *M. haupuensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Tetraplasandra kauaiensis*, or *Xylosma* spp.; and

(2) elevations between 725 and 1,290 m (2,378 and 4,232 ft).

Family Solanaceae: *Solanum sandwicense* (aiakeaakua, ʻōpōlo)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Forest canopies in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic forests or occasionally in wet forests and containing one or more of the following associated plant species: *Alphitonia ponderosa*, *Athyrium sandwicensis*, *Bidens* spp., *Carex meyenii*, *Coprosma* spp., *Cryptocarya mannii*, *Dianella sandwicensis*, *Dicranopteris linearis*, *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Poa* spp., *Pouteria sandwicensis*, *Psychotria* spp., *Syzygium sandwicensis*, or *Xylosma hawaiiense*; and

(2) Elevations between 445 and 1,290 m (1,460 and 4,232 ft).

Family Violaceae: *Isodendron laurifolium* (aupaka)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendron laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Diverse mesic forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. and containing one or more of the following associated native plant species: *Alphitonia ponderosa*, *Antidesma* spp., *Claoxylon sandwicense*, *Dodonaea viscosa*, *Dubautia* spp., *Elaeocarpus bifidus*, *Euphorbia haeleleana*, *Hedyotis terminalis*, *Kokia kauaiensis*, *Melicope anisata*, *Melicope barbiger*, *Melicope ovata*, *Melicope peduncularis*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Pisonia* spp., *Pittosporum glabrum*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odoratum*, *Streblus pendulinus*, or *Xylosma hawaiiense*; and

(2) Elevations between 376 and 1,163 m (1,233 and 3,817 ft).

Family Violaceae: *Isodendron longifolium* (aupaka)

Kauai E, I, J, K, L, N, and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendron longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes and some flats in certain undisturbed areas, gulches, or stream banks in mesic or wet *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following native species: *Antidesma* spp., *Bidens* spp., *Bobea brevipes*, *Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi*, *Cyrtandra* spp., *Dicranopteris linearis*, *Diospyros* spp., *Eugenia* spp., *Hedyotis* spp., *Ilex anomala*, *Melicope* spp., *Nestegis sandwicensis*, *Peperomia* spp., *Perrottetia sandwicensis*, *Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odoratum*, or *Syzygium* spp.; and

(2) Elevations between 38 and 1,541 m (125 and 5,057 ft).

Family Violaceae: *Viola helenae* (NCN)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Stream drainage banks or adjacent valley bottoms in light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha-Cheirodendron* wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Broussaisia arguta*, *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp., *Freycinetia arborea*, *Hesperomannia lydgatei*, *Melicope* spp., or *Pritchardia* spp.; and

(2) Elevations between 522 and 1,006 m (1,712 and 3,301 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani waialeale)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Machaerina angustifolia*-*Rhynchospora rugosa* lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii*, *Chamaesyce remyi*, *Chamaesyce sparsiflora*, *Coprosma grayana*, *Cyanea fissa*, *Dicranopteris linearis*, *Diplopterygium pinnatum*, *Dubautia imbricata*, *Dubautia raillardoides*, *Gahnia vitiensis*, *Lobelia kauaensis*, *Machaerina angustifolia*, *Machaerina mariscoides*, *Melicope* spp., *Psychotria wawrae*, *Sadleria pallida*, *Scaevola gaudichaudii*, *Sphenomeris chinensis*, *Styphelia tameiameia*, *Syzygium sandwicensis*, *Tetraplasandra oahuensis*, or *Vaccinium dentatum*; and

(2) Elevations between 394 and 1,006 (1,291 and 3,301 ft).

(B) *Ferns and allies.*

Family Aspleniaceae: *Diellia erecta* (no common name)

Kauai O, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Diellia erecta* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade, or on steep slopes or gulch bottoms in *Metrosideros polymorpha*-*Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic forest with *Acacia koa* and *Acacia koaia* as codominants and containing one or more of the following native plant species: *Asplenium aethiopicum*, *Asplenium contiguum*, *Asplenium macraei*, *Coprosma* spp., *Dodonaea viscosa*, *Dryopteris fusco-atra*, *Dryopteris unidentata*, *Hedyotis terminalis*, *Melicope* spp., *Microlepia strigosa*, *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., *Styphelia tameiameia*, *Syzygium sandwicensis*, and *Wikstroemia* spp.; and

(2) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare granular soil with dry to mesophytic leaf litter with pH of 6.9 to 7.9. on steep, talus slopes in lowland mesic forests and containing one or more of the following native plant species: *Acacia koa*, *Alectryon macrococcus*, *Alphitonia ponderosa*, *Alyxia oliviformis*, *Antidesma platyphyllum*, *Asplenium* spp., *Carex meyenii*, *Diospyros hillebrandii*, *Diospyros sandwicensis*, *Doodia kunthiana*, *Hedyotis knudsenii*, *Metrosideros polymorpha*, *Microlepia strigosa*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Psychotria mariniana*, *Psydrax odoratum*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Styphelia tameiameia*, *Tetraplasandra kauaiensis*, *Wilkesia gymnoxiphium*, or *Zanthoxylum dipetalum*; and

(2) Elevations between 445 and 1,028 m (1,460 and 3,371 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Kauai I and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diplazium molokaiense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Brown soil with basalt outcrops near water falls in lowland or montane mesic *Metrosideros polymorpha*-*Acacia koa* forest; and

(2) Elevations between 476 and 1,284 m (1,562 and 4,212 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Ctenitis squamigera* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rock faces in gulches in the understory of *Metrosideros polymorpha*-*Diospyros* spp. mesic forest and diverse mesic forest and containing one or more of the following native plant species: *Myrsine* spp., *Psychotria* spp., or *Xylosma* spp.; and

(2) Elevations between 568 and 1,069 m (1,863 and 3,507 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kiki fern)

Kauai I, J, K, L, M, N and O, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Adenophorus periens* on Kauai. Within

these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha*-*Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum*, *Athyrium sandwicensis*, *Broussaisia* spp., *Cheirodendron trigynum*, *Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* spp., *Psychotria hexandra*, *Syzygium sandwicensis*, or *Tetraplasandra oahuensis*; and

(2) Elevations between 107 and 1,594 m (351 and 5,228 ft).

Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phlegmariurus nutans* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha*-*Dicranopteris linearis* wet forests and occasionally mesic forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum*, *Broussaisia arguta*, *Cibotium chamissoi*, *Cheirodendron fauriei*, *Diplopterygium pinnatum*, *Hedyotis terminalis*, *Hibiscus kokio* ssp. *kokio*, *Melicope waialealae*, *Scaevola gaudichaudii*, *Syzygium sandwicensis*, *Perrottetia sandwicensis*, *Psychotria hexandra*, *P. mariniana*, or *P. wawrae*; and

(2) Elevations between 601 and 1,594 m (1,971 and 5,228 ft).

Dated: January 7, 2002.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-687 Filed 1-25-02; 8:45 am]

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Federal Register

**Monday,
January 28, 2002**

Part III

Department of Commerce

**50 CFR Part 679
Fisheries of the Exclusive Economic Zone
Off Alaska; Revisions to Recordkeeping
and Reporting Requirements; Final Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 010313063-1297-02; I.D. 121200A]

RIN 0648-AO20

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Final rule; recordkeeping and reporting.

SUMMARY: NMFS issues a final rule to amend portions of the regulations implementing recordkeeping and reporting (R&R) requirements for groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska. This action is necessary to refine or correct regulations for improved management, to remove obsolete text, and to clarify and simplify existing text. This action is intended to facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the Northern Pacific Halibut Act. This action is intended to further the goals and objectives of the fishery management programs for groundfish fisheries off Alaska and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 25, 2002; except an amendment to § 679.26(c), which will not be effective until approval by OMB under the Paperwork Reduction Act (PRA). A document will be published in the **Federal Register** announcing OMB approval and the effective date.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

NMFS manages the U.S. groundfish fisheries of the EEZ off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This final rule revises several sections of the regulations implementing the FMPs that pertain to permits and R&R. These changes are necessary to promote the ability of fishermen to conduct groundfish fishing operations more efficiently, to enhance NMFS' ability to manage the fisheries through improved quality of data received for management of the fisheries, and to improve the clarity and consistency of R&R regulations.

NMFS published a proposed rule in the **Federal Register** on August 8, 2001 (66 FR 41664), for a 30-day public comment and review period that ended on September 7, 2001. The preamble to the proposed rule contains a full description of the revisions and their justification, which is not repeated here. NMFS invited public comment on the changes contained in this action through September 7, 2001. No comments were received during this time period.

This final rule primarily consists of technical edits and clarifications to existing R&R requirements. These revisions include:

(1) Standardizing several terms and sets of instructions and correcting several terms within the regulatory text for uniformity and improved clarity;

(2) Adding cross references to regulatory text;

(3) Combining similar types of information into relational tables;

(4) Revising Figure 3, adding new Figures 19 and 20;

(5) Revising Tables 1, 2, 3, 7, 8, 9, 10, 11, and 19;

(6) Revising logbooks and forms;

(7) Amending 679.2 Definitions—by revision, additions, and deletions;

(8) Amending 679.4 Permits—by reorganizing, revising, and adding information to the regulatory text and summary tables;

(9) Amending 679.5 Recordkeeping and Reporting—by reorganizing to present common descriptions in one section; eliminating duplication; promoting uniformity; shortening descriptions of mundane tasks; and presenting options in tabular form so that specific requirements may be quickly located. In-text tables are added to display complex relationships and to sort out multiple options, steps, conditions, and choices.

Changes From the Proposed Rule to the Final Rule

This final rule makes certain changes to the regulatory text from the proposed rule. Some changes result from internal review, and are anticipated to improve the efficiency of the data collection system. Some changes correct inadvertent printing errors in the proposed rule published in the **Federal Register**.

The changes are intended to simplify the R&R tasks required by NMFS. Forms for data collection are redesigned to be easier to complete and submit, resulting in improved more accurate data. Regulatory text is amended to be consistent with the format of the forms and logbooks. These changes are as follows:

Tables

In Table 2, the Latin name of two species is added: rougheye rockfish (*S. aleutianus*) and shortraker rockfish (*S. borealis*).

Table 7 is revised by removing the proposed revisions that add eight communities that NMFS determined were eligible for the CDQ Program in 1999. Revisions to Table 7 will be considered by NMFS in a future rulemaking that will address a wider range of CDQ issues.

In Tables 10 and 11, the footnotes are revised. To improve convenience for the user and because the table numbers referenced in the footnotes from the annual Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) groundfish specifications are constantly changing, the footnotes are expanded to contain complete information on species groups without reference to another document.

Tables 16 through 18 are removed because these tables were included in the final rule implementing the Commercial Operators Annual Report (66 FR 43524, August 20, 2001).

New Features

Certain improvements are included in this final rule to make the groundfish and Individual Fishing Quota (IFQ) regulations at 50 CFR part 679 more

efficient and understandable. Electronic options to submit reports are made available without changing the information required.

Buying Station Report (BSR) Scale Weights

This rule adds an option at § 679.5(d)(1)(v) that provides for the operator or manager of a buying station to add groundfish species codes and scale weights (in lb or mt) on the buying station report (BSR) in addition to the required total estimated delivery weight or actual scale weight of a catcher vessel delivery. This is especially helpful when the buying station is delivering groundfish incidental catch harvested in an IFQ fishery, as the information is recorded on Alaska Department of Fish & Game (ADF&G) fish tickets.

IFQ Landing Report Internet Submittal

This rule amends § 679.5(l)(2) by adding a new electronic reporting option available to IFQ registered buyers. Instead of submitting an IFQ landing report by automated transaction terminal (ATM), in 2002 it is possible for participants to use Internet submittal methods to submit the report. This option requires that participants obtain at their own cost, hardware (including a printer), software, and Internet connectivity to support Internet submittals.

IFQ Fees and Buyer Report Electronic Submittal

This rule amends §§ 679.5(l)(7) and 679.45(a)(4)(iii) through (iv) by adding an option for participants to submit annual IFQ fees, fee forms, and IFQ Buyer Reports electronically.

Shoreside Processor Electronic Logbook Report (SPELR)

This rule adds § 679.5(e)(4)(iv) to clarify regulations for shoreside processors and stationary floating processors that are using the NMFS-provided SPELR but are not required by regulation to use it. If a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from one of the AFA-permitted catcher vessels listed on the NMFS Alaska Region web page at <http://www.fakr.noaa.gov/ram>, the SPELR daily report may be transmitted to NMFS on Monday.

American Fisheries Act (AFA) Pollock

This rule adds § 679.5(e)(4)(iv) to state that, if a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from

one of the AFA-permitted catcher vessels, the SPELR daily report may be transmitted on Monday.

This rule adds § 679.5(a)(7)(xv)(E) to clarify the recording of AFA pollock. The AFA check-box and the cooperative account number are to be used ONLY for landings from the directed pollock fishery that are counting against an AFA cooperative quota. Other species delivered at the same time as the AFA pollock can go on the same report.

Editorial Additions and Corrections

This final rule also makes minor editorial revisions to correct errors or clarify the regulatory text as described below:

Global

Changes all reference to catcher vessel blue copy of DFL logsheets to say "blue DFL" at: §§ 679.5(a)(6)(iii)(A)(4)(ii) (twice); (a)(7)(iv)(C)(7); (a)(10)(v); (a)(11)(i); (a)(11)(iii)(C) (twice); (a)(11)(iv)(A); (a)(14)(iii)(C)(2); (d)(1)(iii); and (e)(7)(iii).

Changes the abbreviation for NOAA Fisheries Office for Law Enforcement from NOFE to OLE at: (e)(3)(ii); (g)(2)(ii); (k)(1); (l)(1)(i); (l)(2)(ii)(A); (l)(2)(ii)(C) twice; (l)(2)(ii)(D); (l)(2)(iii)(A) (twice); (l)(3)(iii)(B); (l)(3)(i)(B); (l)(3)(iii) twice; and (l)(3)(xi)(A).

Definitions

Revises paragraph (1) for definition of Agent at § 679.2 to add support vessel, IFQ permit holders, and community development quota (CDQ) halibut permit holders that were inadvertently omitted.

Adds a definition for "Authorized officer" to mean, for purposes of recordkeeping and reporting, a NOAA special agent, a NOAA fishery enforcement officer, or U.S. Coast Guard (USCG) fisheries enforcement personnel.

Revises the definition of "Associated processor" to remove "a contract or agreement" and to replace it with "contractual relationship."

Permits

Revises § 679.4(a)(1)(iv)(A) and (B) by changing the date from "3 years" to "until next renewal cycle" because even though the permits are renewed on a 3-year schedule, each participant may revise the permit during that 3-year cycle thus shortening the time span to less than 3 years;

Revises heading of § 679.4(a)(3) from "how do you obtain a permit" to read "permit application."

Revises § 679.4(d)(2)(iii) by adding "or submits a departure report" after the word "clearance."

Groundfish R&R

Corrects § 679.5(a)(1)(iv)(B) by removing "IFQ, CDQ halibut and" because the paragraph is referring to use of the combined logbook by participants fishing only for groundfish.

Revises paragraph 679.5(a)(2)(i) to read as originally written in the regulations.

Revises § 679.5(a)(2)(ii) to require that SPELR printouts be signed by the owner or manager.

Revises § 679.5(a)(2)(iii) as this text is redundant to information given in § 679.5(d).

Corrects § 679.5(a)(6)(iii)(A) intext table by adding "DCPL" in column 4 in the row entitled "(3) Production".

Clarifies § 679.5(a)(7)(iii)(C)(4) by adding "End date" after last word of the sentence to ensure the location of recording the last day of an inactive period.

Corrects § 679.5(a)(7)(iv)(I)(3) in text table by removing "Enter the cumulative estimated total discards or disposition since last delivery" because it is duplicate text.

Corrects § 679.5(a)(7)(x) introductory text by removing "according to the table in paragraph (a)(7)(xii) of this section" and replacing it with "to record information as described in paragraphs (a)(7)(x)(A) through (a)(7)(x)(E) of this section."

Corrects § 679.5(a)(7)(x)(C) by adding "(see paragraph (a)(7)(xii))" after the words "reporting area" in the first sentence.

Corrects § 679.5(a)(7)(xv)(B) intext table by removing "679.26" from the third column and replacing it with "679.6."

Corrects cross reference in §§ 679.5(a)(10)(iv) and (a)(11)(iv) by removing "(a)(10)(vi)" and replacing it with "(a)(10)(v)".

Revises § 679.5(a)(10)(vi) by adding the words "but not in PSC status" after "directed fishing" in the first sentence.

Corrects § 679.5(a)(11)(i) at the beginning of the second sentence by removing "Discards must also be recorded" and replace it with "Discards and dispositions must also be recorded." It is important that the dispositions be recorded on the blue DFL for quota management.

Corrects § 679.5(a)(11)(ii)(A) by removing "and also when no groundfish are delivered but the blue discard logsheet containing records of discards is submitted by a catcher vessel (e.g., an IFQ fish delivery with no groundfish incidental catch)"; and replacing it with "Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of

groundfish discards or disposition (e.g., an IFQ halibut delivery with groundfish incidental catch).

Corrects § 679.5(a)(11)(ii)(B) by removing “would be incorporated” and replacing it with “must be incorporated”

Corrects § 679.5(a)(11)(iii)(E) by adding “(A.l.t.) After the word “time” in the heading.

Revises § 679.5(a)(12)(i) by adding “all corrections must be made in ink.”

Corrects § 679.5(a)(13) by removing “operator of a buying station” and replacing it with “operator or manager of a buying station.”

Corrects § 679.5(a)(14)(i)(D) by removing “shoreside processor electronic logbook delivery report” and replacing it with “SPELR” because it was defined earlier in the document.

Corrects § 679.5(a)(14)(iv)(B)(1) by adding the data element that appears in the logbooks but was inadvertently omitted from this table: haul number for each haul.

Corrects § 679.5(a)(14)(iv)(B)(2) to add the following data elements that appear in the logbooks but were inadvertently omitted from this table: CDQ group number, halibut CDQ permit number, and IFQ permit number (if applicable)

Revises § 679.5(a)(15) by removing the heading “Transfer document comparison” and by replacing it with the heading “IFQ/groundfish transfer document comparison.”

Revises § 679.5(a)(15) by removing the text and replacing it with: “When the operator or manager is participating in both the groundfish fisheries and the IFQ fisheries, certain exceptions to submittal of product shipment and transfer forms are provided to avoid duplication. In the following table, an “X” indicates submittal requirements under those circumstances.”

Revises § 679.5(a)(15)(ii) column 3, intext table by removing “X” because a PTR is not required under these circumstances.

Revises § 679.5(a)(15)(iv) column 3, intext table by removing “X” because a PTR is not required under these circumstances.

Revises the BSR and paragraph 679.5(d)(1)(i) to record the date and time delivery from a catcher vessel was completed.

IFQ R&R

Revises § 679.5(l)(2)(i)(C) by removing the words “offshore landings” and “(frozen)” to avoid potential confusion with paragraph 679.5(l)(2)(vi)(j)(2).

Revises § 679.5(l)(2)(iii)(A) by removing the local Juneau telephone number and leaving the toll-free telephone number, because NMFS is

relocating the data clerks to Anchorage, and a new local Anchorage number will be issued soon.

Revises § 679.5(l)(2)(iii)(F) by removing “paragraph (l)(7)” and replacing it with “paragraph (l)(6)”;

Revises § 679.5(l)(2)(iv) to clarify the exemptions to the IFQ landing time limits by removing “unless:”

Revises the last word in the sentence of § 679.5(l)(2)(iv)(A) and change the punctuation from a colon to a period.

Adds new paragraph § 679.5(l)(2)(iv)(C) with the heading “Exemptions.”

Redesignates § 679.5(l)(2)(iv)(A)(1) and (2) and changes to read (l)(2)(iv)(C)(1) and (2);

Removes the text of § 679.5(l)(3)(i).

Revises § 679.5(l)(3)(i)(A) by removing the text after “sablefish” and adding “for which the Registered Buyer submitted a landing report before the fish leave the landing site;”

Revises heading of § 679.5(l)(3)(iv) by removing “or outside landing.”

Revises §§ 679.5(l)(5)(i), (ii), (iv) (vessel clearance) and 679.5(l)(5)(xii)(A)(departure report) to clarify that primary ports are in Alaska and in Bellingham, WA, whether landing IFQ species in Alaska, Canada, or any other foreign country;

Revises § 679.5(l)(5)(i) to remove reference to a written clearance. Enforcement does not typically rely on a written record from the IFQ vessel operator to perform the required vessel clearance. The required information instead is obtained through an interview between the vessel operator and the clearing officer.

Removes § 679.5(l)(5)(iii) as this duplicates revised paragraph § 679.5(l)(5)(i);

Redesignates § 679.5(l)(5)(iv) through (xii) as (l)(5)(iii) through (xi).

Revises § 679.5(l)(5)(xi) to reformat the first sentence, to remove “at a port in a state other than Alaska” and to replace it with “outside the State of Alaska”.

Revises § 679.5(b) by adding “or stationary floating processor” after “management of a shoreside processor.”

Removes § 679.5(p) and amend instruction 4 to remove mention of addition of paragraph (p). Paragraph (p) was added by a separate rulemaking for the Commercial Operator’s Annual Report (COAR) (66 FR 43524, August 20, 2001). Instruction paragraphs are renumbered from hereon.

Removes proposed revisions to § 679.22 at paragraphs (a)(11)(iv)(A), (a)(11)(iv)(B), (b)(3)(iii)(A), (b)(3)(iii)(B) because this section is subject to changes in the Steller sea lion emergency revisions being prepared for

implementation on January 1, 2002. The instruction paragraphs are renumbered.

Revises § 679.24(b)(3) by rewriting the paragraph to remove mention of net-sounder devices.

The proposed revision to § 679.31(d) related to crab CDQ reserves is removed because separate rulemaking was proposed on July 25, 2001 (66 FR 38626) that would revise this paragraph. The instruction paragraphs are renumbered starting with 9.

Classification

This final regulatory amendment is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Northern Pacific Halibut Act, 16 U.S.C. 773 *et seq.* The Regional Administrator has determined that the final regulatory amendment published under the authority of the Magnuson-Stevens Act is consistent with the FMPs and that Act, and that the final regulatory amendment is published under the authority of the Northern Pacific Halibut Act and is consistent with that Act.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

Alternatives that addressed modifying reporting requirements for small entities or the use of performance standards rather than design standards for small entities were not included in the analysis, because such alternatives are not relevant to this final action and would not mitigate impacts on small entities. Allowing exemptions for small entities would not be appropriate because the objectives of the proposed actions are to: (a) clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; (b) ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; (c) reduce the costs of enforcing fisheries regulations; (d) enhance the value of the pollock fisheries managed under the AFA; (e) reduce the costs of compliance with pollock reasonable and prudent alternatives (RPAs) for Steller sea lion protection; (f) reduce the costs and increase the effectiveness of regulations to protect migratory birds identified as endangered or threatened under the Endangered Species Act (ESA).

The NMFS Alaska Region prepared a FRFA that analyzes a final rule that implements regulations for the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands and the FMP for Groundfish of the Gulf of Alaska by revising R&R requirements and describes the impact of these regulations

on small entities. The number of small entities to which the proposed rule will apply are identified as: 1,254 catcher vessels; 47 catcher processors; 32 onshore processors, 6 CDQ groups; 268 buying stations; 1,613 halibut fishing operations; and 92 Registered Buyers.

This FRFA analyzes proposed amendments to regulations at 50 CFR part 679 that would revise R&R regulations for the Alaska groundfish fisheries and for the IFQ halibut and sablefish fisheries off of Alaska. The objectives of the proposed actions are: to clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; to ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; to reduce the costs of enforcing fisheries regulations; to enhance the value of the pollock fisheries managed under the AFA; to reduce the costs of compliance with pollock reasonable and prudent alternatives (RPAs) for Steller sea lion protection; and to reduce the costs and increase the effectiveness of regulations protecting migratory birds identified as endangered or threatened under the ESA. It provides the analyses required under Executive Order 12866 and the RFA.

Seven categories of regulatory changes are analyzed. Any one of them may be adopted in combination with any possible grouping of the others. Because of this, the FRFA evaluates each of the seven categories independently. Each of the proposals is evaluated against a "no action" alternative and the costs and benefits relative to the "no action" alternative are identified.

(1) Regulatory Housekeeping. Remove obsolete text, clarify and simplify existing text, and reorganize text to remove duplication. Add, revise, and remove definitions. Because the changes do not impose new responsibilities on small entities, there are no added costs.

(2) Buying Station Daily Cumulative Logbook (DCL) and Buying Station Report (BSR). Remove the requirement to obtain, complete, and submit the DCL. Add a requirement to complete, maintain, and distribute a Buying Station Report (BSR). As with the DCL, the processors who receive fish from buying stations must compile data from the BSRs; unlike the DCL, processors will not be required to file quarterly reports with NMFS. NMFS estimates that the annual costs for this activity for at-sea tenders would be about \$312 per buying station per processor. The cost for 268 at-sea tenders would be about \$83,616. This estimate assumes all

tender permits are active and all at-sea tenders are in complete compliance. Costs for on-shore buying stations cannot be determined since the number of on-shore buying stations cannot be estimated with current data. NMFS' estimated costs would be about \$670 per year for preparation and delivery of the BSR.

Substitution of the BSR for the DCL should benefit operators of buying stations by reducing their paperwork costs. It will benefit processors to the extent that the buying stations are their subsidiaries and they share in the reduced paperwork costs. NMFS estimates a reduction in public and private costs (a benefit) of about \$8,700 per year. This estimate assumes all tender permits are active and in complete compliance with the program and does not take in to account the unknown number of land-based buying stations. No apparent additional costs are anticipated to implement this proposal other than those costs already incurred for the DCL.

(3) Shoreside Processor Electronic Logbook Report (SPELR). Extend the requirement to use the SPELR for processors buying from AFA catcher vessels past January 16, 2001, and require shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery to use the SPELR.

Regulations at § 679.5(f)(3) currently require managers of shoreside processors or stationary floating processors, who receive groundfish deliveries from AFA catcher vessels, to record and submit a SPELR for each catcher vessel delivery and to retain printed reports for the duration of the fishing year. Currently, 19 processors use the SPELR system under the Federal AFA regulations. Two processors that are not currently using the SPELR are making progress in bringing the SPELR system on line. NMFS estimates that adoption of the SPELR requires the use of a personal computer with a value of about \$1,000 and 40–80 hours of staff time. The upper limit of this cost is estimated to be about \$4,000 per entity.

The SPELR brings three classes of benefits: (a) Reduced annual R&R costs for NMFS and for entities adopting the SPELR, (b) enhanced value from the AFA statute, and (c) reduced costs of compliance with pollock RPAs for Steller sea lion protection. The annual R&R costs for firms and NMFS can be estimated. Each firm that adopts the SPELR will have annual SPELR expenses, but will no longer have to file or maintain the WPR or DCPL. The SPELR is expected to cost \$941 per year for each entity while the savings on the

WPR and DCPL is expected to be \$2,508. NMFS will incur an additional \$133 to receive SPELR reports from a new entity, but will save \$627 per year on WPR and DCPL paperwork. The net overall paperwork savings should be about \$2,194 per year for each firm that adopts the SPELR. Since two firms are expected to adopt, the total cost is \$4,388 per year.

The cost of adopting the SPELR system is the cost to each firm of acquiring a computer and converting to the data processing system and software used by the SPELR. These costs are estimated to be \$4,000 per firm. Four firms not using the SPELR would have to begin using it under this regulation, and three of these firms are known to have already made significant progress toward adopting the SPELR. As noted, 19 firms are currently required to use the SPELR because they buy groundfish from AFA catcher vessels. Another two firms would be required to begin using the SPELR under the provisions of the proposed rule requiring that firms accepting deliveries of pollock from fisheries targeting pollock use the SPELR. On the basis of anecdotal information, 13 of these firms are believed to be large firms, employing or affiliated with firms that employ more than 500 persons. The sizes of another eight of these firms are not known. For the purpose of this analysis, these have been treated as small entities, although this may overestimate the numbers of small entities. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities.

(4) Individual Fishing Quota (IFQ) Program. Reporting requirements for data elements are added to the Prior Notice of IFQ Landing Report, the IFQ Landing Report, the IFQ Shipment Report, the IFQ Transshipment Authorization, the IFQ Vessel Clearance Report and the IFQ Departure Report.

Weight prior to offload. Some of the vessels landing IFQ halibut and IFQ sablefish are catcher/processors that freeze and package IFQ halibut and sablefish on board before delivery. In many cases, the vessel operator acts as an IFQ Registered Buyer taking possession of the IFQ fish and making the landing report. These operations often calculate the weight of product that they produce at the time of production. However, current regulations at § 679.5(l)(2)(vi) require that Registered Buyers, taking possession of IFQ fish at landing, record the product code and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained. Frozen product requires a

second weighing of the fish. This regulatory change would redesignate § 679.5(1)(2)(vi)(j) as § 679.5(1)(2)(vi)(j)(1) and add a new paragraph (1)(2)(vi)(j)(2) to allow a vessel operator, if he or she is a Registered Buyer reporting the IFQ landing, to substitute the "accurate weight of IFQ sablefish processed product obtained before the offload" for the "initial accurate weight at time of offload." OLE would still be able to monitor the offload and weigh the product if necessary for the purpose of auditing under other regulations.

Debit all catch to IFQ account; Vessel operator responsible for landing. Regulatory changes would make it clear that fishermen who set aside part of their IFQ catch for home consumption would be required to debit that harvest against their IFQ account; a vessel operator has an obligation to offload all IFQ fish to a Registered Buyer. A new § 679.5(1)(2)(i)(C) would be added to clarify that the weight of any halibut or sablefish offshore landings made by a catcher/processor into product (frozen) prior to offload at the landing site must be properly debited from the IFQ permit holder's account under which the catch was harvested. These regulatory changes would not add new requirements to the IFQ halibut and IFQ sablefish program but would only clarify existing regulations. If this clarification reduced efforts to by-pass the reporting requirements, or made it easier to prosecute those requirements, it would reduce program costs. Because the requirement does not impose new responsibilities on fishermen, it does not add to their costs.

Regulatory area on prior notice of IFQ landing report. This change would amend § 679.5(1)(1)(iii) to add a question to the Prior Notice of IFQ Landing Report; fishermen would be required to report on the IFQ regulatory area within which IFQ halibut or IFQ sablefish were harvested. The benefit of the regulation would be the improved compliance with IFQ regulations. The cost would be the burden of answering the additional question when the prior notice of landing was made. This cost would be very small since the information is already known when the Prior Notice of IFQ Landing is made. In 2000, 10,279 prior notices of landing were submitted. If the answer to the question added 30 seconds to each notice, the total additional time would have been 86 hours. At \$20 per hour (the pay for a Federal GS-7 in Alaska, including COLA), the total cost would have valued at about \$1,700.

IFQ landing report. Additional information would be collected in the

landings reports filled out by Registered Buyers that would reduce the costs of monitoring landings made under the exemption. This information would include the gear type used to harvest the fish and regardless of whether the IFQ fish were landed concurrently with salmon or dinglebar lingcod.

The benefits from these proposed changes would be increased flexibility and consequent reduced operating costs for dinglebar lingcod fishermen who hold halibut QS, and in addition, an improved ability by NMFS to target its enforcement assets. The cost to registered buyers of collecting and reporting the additional information would be small.

Registered buyers complete landings reports using automated terminals. These terminals lead the buyers through a series of question prompts. The change would require the addition to prompts for the gear type used in the landing and for information on whether or not salmon or lingcod taken with dinglebar gear was landed concurrently with the IFQ fish. This information should be known to or readily available to the registered buyer. In 2000, about 10,057 landings reports were submitted. At 1 minute for the two additional questions, the total additional time required would have been about 168 hours. At \$20 per hour (the pay for a Federal GS-7 in Alaska, including COLA), the total cost would have valued at about \$3,400.

IFQ shipment report. Regulations at § 679.5(1)(3) would be amended to add a requirement to the IFQ Shipment Report to allow short-distance movement of IFQ fish accompanied by an ATM landing receipt by a Registered Buyer to his or her processing plant. Currently Registered Buyers are required to complete and file an IFQ shipment report before they move fish away from the place where they are landed. Many firms, whose plants are located away from landing places, are inconvenienced by the need to complete the form before moving the fish from the place where they were landed to the place where they will be processed. This regulatory change would reduce the costs for this class of Registered Buyer. OLE would still receive a landing report from the landing place; the IFQ shipment report would still be required from the Registered Buyer before the buyer disposed of the fish to other parties. The most important use for Shipment Reports is to provide the ability to audit Registered Buyers' landings by monitoring movements of fish being moved in the chain of possession from the Registered Buyer. There are no costs associated with this

regulatory change and there will be cost savings to Registered Buyers whose plants are located at a distance from landings places.

IFQ transshipment authorization. Regulations at § 679.5(1)(4) would be amended to revise the regulatory text describing the IFQ Transshipment Authorization by adding a list of required information to obtain a transshipment authorization. Vessel operators transshipping (from one vessel to another) IFQ halibut and IFQ sablefish are required to obtain a Transshipment Authorization at least 24 hours before the transshipment. This gives OLE time to decide whether or not to monitor the transshipments, plan resources, and arrange the logistics for monitoring the transshipment. This change is principally needed to monitor the offloading of freezer longliners to tramp freighters. OLE routinely collects certain information from persons requesting the authorization to find out when and where the transshipment will occur and how long it might take. This change will provide a basis in regulation for the specific information collected when an authorization is requested. This should not increase the costs for fishing operations or for the operations taking possession of the fish at sea since it would not affect the requirement for authorizations. It may reduce enforcement costs by clarifying the types of information that are required when an authorization is requested.

IFQ vessel clearance report and the IFQ departure report. This proposed change will make the vessel clearance and departure report regulations clearer and may reduce the amount of time it takes to find, read and interpret them. The substantive part of the change involves the revision of the departure report requirement to prevent IFQ fishing after the report is filed. This change clarifies the intent of the regulation that departure reports be filed after IFQ fishing has finished. While almost all departure reports are believed to have been filed after fishing has been concluded, at least one in the last 2 years was not. The intent is to close this loophole. The benefit will be an enhanced ability to enforce the IFQ program. There is no cost to fishermen from this change because a departure report can be filed as easily after fishing is concluded as before it is concluded.

(5) Product Transfer Report (PTR). Regulations at § 679.5(g) currently require the operators of motherships, catcher/processors, or managers of shoreside processors or stationary floating processors to record each transfer of groundfish product (including unprocessed fish) or donated

prohibited species, on a PTR. An important enforcement document, the PTR provides the principal information for the movement of volumes of groundfish into and out of the facilities of a processor and provides a check on buyer purchase reports. Because of its importance, the PTR is used with audits and by physical inspection of product.

This change would provide processors more flexibility in adapting their responses to their working procedures and may result in some private sector time savings. If the regulation change reduces the time taken to fill out the PTRs by 10 percent, it would produce a private sector cost savings of about \$1,568 per year. There are no implementation or other costs.

NMFS estimates that 171 processors (110 catcher/processors, 3 motherships, and 58 shoreside processors or stationary floating processors) must currently file a PTR for each transfer of product an average of 25 times a year generating 4,275 PTRs per year. The estimated time requirement for a PTR is 11 minutes. Total time devoted to PTRs is estimated to be 784 hours a year. NMFS estimates that the total cost of PTR preparation is \$15,675 (this does not include costs of submittal to NMFS by FAX).

Forty-seven catcher/processors and 32 shoreside processors are assumed to be small entities. The remaining operations are assumed to be large entities. Six CDQ groups would also be impacted. CDQ groups are considered to be small non-profit entities. The new PTR format would reduce the costs to NOAA and USCG enforcement efforts and would allow for more effective enforcement of product transfer rules.

(6) Marking of gear. The rule would increase the financial costs to a few small entities by extending requirements to mark identification information on marker buoys that currently apply only to longline gear to include also hook-and-line, longline pot, and pot-and-line gear. Most fishermen have their marker buoys properly identified and would not be adversely affected by this regulation. Fishermen affected by this regulation would incur the costs of marking their own marker buoys and legally would not be able to use another fisherman's marker buoys. State regulations (5 AAC 28.050) currently require crab and groundfish pots to carry the ADF&G registration number of the vessel operating the gear. Since many Pacific cod fishermen already participate in State groundfish and crab fisheries, they would already be subject to this requirement.

The regulation extends the marker buoy requirement to vessels using pot gear to fish for groundfish. In 1999, 254 catcher-vessels caught groundfish with pot gear off of Alaska; 13 catcher-processors also used pot gear. In 1999, no pot vessels had Alaska groundfish landings with ex-vessel or product value over \$3,000,000. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities. Marking of marker buoys reduces the costs to NOAA and USCG enforcement efforts and allows for more effective enforcement of gear rules.

(7) Seabird avoidance gear. The rule would add a requirement for operators of catcher vessels over 60 ft (18.3 m) LOA and catcher/processors using hook-and-line gear to record in the logbook the type of bird avoidance gear used on the vessel. A regulation currently exists at § 679.24(e) that requires bird avoidance gear be used. This rule merely makes it a requirement to record the code in the logbook that describes the type of gear used. NMFS estimates that it would take approximately 1 minute per haul for a vessel operator to collect information on what type of avoidance gear is being used and to enter the information into the log. Based on 19,245 hauls, the cost in time to the entire hook-and-line fleet would be approximately 321 hours per year. Evaluating this time at a cost of \$20/hour (the average wages and benefits for a Federal GS-7 employee in Alaska, including COLA), the cost imposed would be \$6,415 per year.

A copy of this analysis is available from NMFS (see *ADDRESSES*).

This rule contains several collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB. Public reporting burden for these collections of information is given below by collection-of-information number and is estimated to average the time given per individual response for each requirement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see *ADDRESSES*)."

0648-0206: 5 hours for an exempted fishery progress report; 5 hours for an exempted fishery permit application; and 30 minutes for a High Seas Power Troller Salmon Permit; 20 minutes for the Federal Fisheries Permit/Federal Processor Permit Application.

0648-0213: 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; 17 minutes for Catcher Vessel trawl gear DFL; 28 minutes for Catcher Vessel longline and pot gear DFL; 31 minutes for Catcher/processor trawl gear DCPL; 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product transfer report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the weekly production report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 23 minutes for buying station report.

0648-0269: 1 hour for CDQ Delivery Report; and 15 minutes for CDQ catch report.

0648-0353: 15 minutes to paint each buoy with the vessel name and Federal permit number, or ADF&G registration number.

0648-0401: 30 minutes for daily completion of the Shoreside Processor Electronic Logbook (SPELR) and the estimated time to electronically submit the SPELR (30 min./day); and 5 minutes for estimated time to print the SPELR reports.

0648-0272: 12 minutes for IFQ Prior notice of landing; 12 minutes for IFQ Landing report; 18 minutes for IFQ Shipment report; 12 minutes for IFQ Transshipment authorization; 12 minutes for IFQ Vessel clearance; 6 minutes for IFQ Departure report; 6 minutes for IFQ Dockside sale; 6 minutes for Administrative waiver.

This rule also contains the following requirements that will be submitted to OMB for approval.

Forty hours for a distributor application; 6 minutes for product tracking of a shipment by a vessel or processor; and 15 minutes to provide documentation on a vessel or processor.

Public comment is sought regarding: whether these three collection of information requirements are necessary for the proper functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology. Send comments on these requirements to NMFS (see *ADDRESSES*) and to OMB (see

ADDRESSES). NMFS will publish a notice announcing the effectiveness of these requirements if and when they have been approved by OMB.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The Assistant Administrator for Fisheries, (AA) NOAA, under 5 U.S.C. 553(d)(3), finds that the need to provide for consistent recordkeeping and reporting for the 2002 groundfish fishing year would be contrary to the public interest to delay the effective date of this action for 30 days.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 18, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., and 3631 et seq.

2. In § 679.2 the definitions for "Bycatch species," "CDQ delivery number," "Gear deployment," and "Gear retrieval" are removed; the definitions for "Active/inactive periods," "Ancillary product," the introductory text of "Area/species endorsement," paragraph (1)(v) of "Fishing trip," "Forage fish," "Groundfish," "Logbook," "Person," "Primary product," "Reprocessed or rehandled product," "Sablefish (black cod)," and "Set" are revised; the definitions for "Agent," "Associated processor," "Authorized officer," "Bycatch or bycatch species," "Endorsement," "Experimental fishery," "Gear," "Gear deployment (or to set gear)," "Gear retrieval (or to haul gear)," "Harvest zone codes," "Incidental catch or incidental species," "Product transfer report (PTR)," "Prohibited species," "Representative," "Seabird avoidance gear," "Shoreside processor electronic logbook report (SPELR)," "Tagged halibut or sablefish," and "Weekly production report (WPR)" are added to read as follows:

§ 679.2 Definitions.

* * * * *

Active/inactive periods (see § 679.5(a)(7)(i)).

* * * * *

Agent (1) For purposes of permits issued under § 679.4, means a person appointed and residing within the United States who may apply for permits and may otherwise act on behalf of the owner, operator, or manager of a catcher vessel, catcher/processor, mothership, shoreside processor, stationary floating processor, buying station, support vessel, or on behalf of the IFQ permit holders, IFQ registered buyers, or CDQ halibut permit holders.

(2) For purposes of groundfish product distribution under § 679.5(g), means a buyer, distributor, or shipper but not a buying station, who may receive and distribute groundfish on behalf of the owner, operator, and manager of a catcher/processor, mothership, shoreside processor, or stationary floating processor.

(3) For purposes of IFQ recordkeeping and reporting under § 679.5(l), means a person who on behalf of the Registered Buyer may submit IFQ reports.

* * * * *

Ancillary product (see Table 1 to this part).

* * * * *

Area/species endorsement means (for purposes of LLP) a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area (see Figures 16 and 17 to this part). Area/species endorsements for crab species licenses are as follows:

* * * * *

Associated processor means, a federally permitted mothership, shoreside processor, or stationary floating processor that has a contractual relationship with a buying station to conduct groundfish buying station activities for that processor.

* * * * *

Authorized officer means, for purposes of recordkeeping and reporting, a NOAA special agent, a NOAA fishery enforcement officer, or USCG fisheries enforcement personnel.

* * * * *

Bycatch or bycatch species means fish caught and released while targeting another species or caught and released while targeting the same species.

* * * * *

Endorsement. (1) (See area endorsement for purposes of the groundfish LLP permits);

(2) (See area/species endorsement for purposes of the crab LLP permits);

(3) (See § 679.4(g)(3)(ii) area endorsements for purposes of the scallop permit).

Experimental fishery (see Exempted fishery, § 679.6).

* * * * *

Fishing trip means:

(1) * * *

(v) The end of a weekly reporting period (except a catcher vessel); whichever comes first.

* * * * *

Forage fish (see Table 2 to this part).

* * * * *

Gear (see the definition for Authorized fishing gear of this section).

Gear deployment (or to set gear) means:

(1) Position of gear deployment (lat. and long.):

(i) For trawl gear. The position where the trawl gear reaches the fishing level and begins to fish.

(ii) For hook-and-line gear. The beginning position of a set of hook-and-line gear.

(iii) For jig or troll gear. The position where the jig or troll gear enters the water.

(iv) For pot gear. The position of the first pot in a string of pots.

(2) Time of gear deployment (A.l.t.):

(i) For trawl gear. The time when the trawl gear reaches the fishing level and begins to fish.

(ii) For hook-and-line gear. The time when the first hook-and-line gear of a set is deployed.

(iii) For jig or troll gear. The time when jig or troll gear enters the water.

(iv) For pot gear. The time when the first pot in a string of pots is deployed.

Gear retrieval (or to haul gear) means:

(1) Position of gear retrieval (lat. and long. to the nearest minute):

(i) For trawl gear. The position where retrieval of trawl gear cable commences.

(ii) For hook-and-line gear. The position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.

(iii) For jig or troll gear. The position where the jig or troll gear leaves the water.

(iv) For pot gear. The position where the last pot of a set is retrieved, regardless of where the majority of the set took place.

(2) Time of gear retrieval (A.l.t.):

(i) For trawl gear. The time when retrieval of trawl gear cable commences.

(ii) For hook-and-line gear. The time when the last hook-and-line gear of a set leaves the water.

(iii) For jig or troll gear. The time when the jig or troll gear leaves the water.

(iv) *For pot gear.* The time when the last pot of a set is retrieved.
Groundfish means (1) FMP species as listed in Table 2 to this part.

(2) Target species and the "other species" category, specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish*; *CDQ species*; and *IR/IU species* of this section).

Harvest zone codes (see Table 8 to this part).

Incidental catch or incidental species means fish caught and retained while targeting on some other species, but does not include discard of fish that were returned to the sea.

Logbook means Daily Cumulative Production Logbook (DCPL) or Daily Fishing Logbook (DFL) required by § 679.5.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

Primary product (see Table 1 to this part).

Product transfer report (PTR) (see § 679.5(g)).

Prohibited species means any of the species of Pacific salmon

(*Oncorhynchus spp.*), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasii*), king crab, and Tanner crab, caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

Representative (see § 679.5(b)).
Reprocessed or rehandled product (see Table 1 to this part).

Sablefish (black cod) means *Anoplopoma fimbria*. (See also *IFQ sablefish*; *fixed gear sablefish* at § 679.31(b); and *sablefish as a prohibited species* at § 679.24(c)(2)(ii)).

Seabird avoidance gear (see §§ 679.24(e), 679.42(b)(2), and Table 19 to this part).

Set means a string of longline gear, a string of pots, or a group of pots with individual pots deployed and retrieved in the water in a similar location with similar soak time. In the case of pot gear, when the pots in a string are hauled more than once in the same position, a new set is created each time the string is retrieved and re-deployed. A set includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested.

Shoreside processor electronic logbook report (SPELR) (see § 679.5(d)).

Tagged halibut or sablefish (see § 679.40(g)).

Weekly production report (WPR) (see § 679.5(i)).

3. In § 679.4 paragraphs (a)(1) through (a)(6) are redesignated as paragraphs (a)(3) through (a)(8), respectively; paragraph (a) introductory text, paragraphs (a)(1), (a)(2), and (a)(3)(v) are added; and paragraph (a) heading, newly redesignated (a)(3) heading and paragraphs (b)(3), (b)(4)(ii), (b)(5), paragraph (d) heading, (d)(2), the heading of paragraph (d)(3), and paragraphs (d)(3)(i)(A), (f)(2), and (f)(4)(ii) are revised to read as follows:

§ 679.4 Permits.

(a) *Requirements.* Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ card issued to an individual person designated by a QS or IFQ permit holder as a master employed to fish his/her IFQ need not be held by a U.S. citizen.

(1) *What permits are available?* Various types of permits are issued for programs codified at 50 CFR part 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see ..
(i) IFQ		
(A) Registered Buyer	Specified fishing year	Paragraph 679.4(d)(2) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph 679.4(d)(3)(i)(B) of this section
(C) Halibut & sablefish cards	Specified fishing year	Paragraph 679.4(d)(3)(i)(C) of this section
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	679.32(f)
(B) Halibut card	Specified fishing year	679.32(f)
(iii) AFA		
(A) Catcher/processor	12/31/04	Paragraph (f) of this section
(B) Catcher vessel	12/31/04	Paragraph (f) of this section
(C) Mothership	12/31/04	Paragraph (f) of this section
(D) Inshore processor	12/31/04	Paragraph (f) of this section
(E) Inshore cooperative	Calendar year	Paragraph (f) of this section
(F) Replacement vessel	Takes dates of replaced vessel's permit	Paragraph (f) of this section
(iv) Groundfish		
(A) Federal fisheries	Until next renewal cycle	Paragraph (b) of this section
(B) Federal processor	Until next renewal cycle	Paragraph (f) of this section
(v) High seas salmon permit	Indefinite	Paragraph (h) of this section
(vi) High Seas Fishing Compliance Act (HSFCA)	5 years	§ 300.10 of this title
(vii) License Limitation Program (LLP)		
(A) Groundfish license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(B) Crab license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(viii) Exempted fisheries	1 year or less	§ 679.6
(ix) Research	1 year or less	§ 600.745(a) of this chapter

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see ..
(x) Prohibited species donation program (A) Salmon (B) Halibut	3 years 3 years	§ 679.26 § 679.26

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements.

(3) *Permit application.* * * *

(v) All permits are issued free of charge.

* * * * *

(b) * * *

(3) *Vessel operations categories.*

(i) A Federal fisheries permit authorizes a vessel to conduct operations in the GOA or BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel.

(ii) A Federal fisheries permit is issued to a vessel to function as a support vessel or as any combination of the other four categories (catcher vessel, catcher/processor, mothership, tender vessel).

(iii) A vessel permitted as a catcher/processor, catcher vessel, mothership, or tender vessel also may conduct all operations authorized for a support vessel.

(iv) A vessel permitted as a support vessel may not conduct activities as a catcher vessel, catcher/processor, mothership, and/or tender vessel.

(4) * * *

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.

* * * * *

(5) *How do I obtain a Federal fisheries permit?* To obtain a Federal fisheries permit, the owner must complete a Federal fisheries permit application and provide the following information for each vessel to be permitted:

(i) *New or amended application?*

Indicate whether application is for a new or amended Federal fisheries permit and if revision, enter the current Federal fisheries permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) that manages the operations of the vessel.

(iii) *Vessel information.* Indicate the vessel name and homeport (city and

state); U.S. Coast Guard (USCG) documentation number; ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage, and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Area and gear information.* Indicate requested/elected area(s) of operation. If a catcher/processor and/or a catcher vessel, the gear types used for groundfish fishing. If a mothership or catcher/processor operating in the GOA, choose inshore or offshore component.

* * * * *

(d) *IFQ permits.* * * *

(2) *Registered buyer permit.* A

Registered buyer permit is required of:

(i) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(ii) Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(A) In a dockside sale;

(B) Outside of an IFQ regulatory area;

or

(C) Outside the State of Alaska.

(iii) A vessel operator who obtains a vessel clearance or submits a departure report (see § 679.5(l)(5)(iv)).

(3) *How do I obtain an IFQ permit, IFQ card, or Registered Buyer Permit?*

(i) *IFQ permits and cards—(A) Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

* * * * *

(f) * * *

(2) *How do I obtain a Federal processor permit?* To obtain a Federal processor permit, the owner must complete a Federal processor permit application and provide the following information for each shoreside processor facility or plant and stationary floating processor to be permitted:

(i) *Permit application information.* Indicate whether application is for a new or amended Federal processor permit and if a revision, the current Federal processor permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing

address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) who manages the operations of the shoreside processor or stationary floating processor.

(iii) *Stationary floating processor information.* Indicate the vessel name and homeport (city and state); USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; name and physical location of facility or plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility; and if yes, name of previous processor; whether there are multiple processors at this facility; whether the owner named in paragraph (f)(2)(ii) of this section owns this facility; shoreside processor ADF&G processor code, business telephone number, business FAX number, and business e-mail address.

(v) *Signature.* The owner or agent of the owner of the shoreside processor or stationary floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(4) * * *

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.

* * * * *

4. Section 679.5 is amended by revising paragraphs (a) through (k), (l)(1) through (6), (l)(7)(i)(C)(3)(ii), (l)(7)(i)(D), (l)(7)(i)(C)(4)(f), and (m) through (o) to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements—(1) Applicability—(i) Who must comply with recordkeeping and reporting requirements?* Except as provided in paragraphs (a)(1)(iii) and (iv) of this

section, the owner, operator, or manager of the following participants must comply with the recordkeeping and reporting requirements of this section:

(A) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(B) Any shoreside processor, stationary floating processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(C) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or stationary floating processor issued a Federal processor permit under § 679.4(f).

(D) Any shoreside processor or stationary floating processor that is required to have a Federal processor permit under § 679.4.

(E) For purposes of this section, “operator or manager” means “the operator of a catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station.”

(ii) *What fish need to be recorded and reported?* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

(iii) *Who is exempt from recordkeeping and reporting requirements?* (A) *Catcher vessels less than 60 ft (18.3 m) LOA.* A catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with recordkeeping and reporting requirements contained in paragraphs (a) through (k) of this section.

(B) *Catcher vessels that take groundfish in crab pot gear for use as crab bait on that vessel.* (1) Owners or operators of catcher vessels who, during open crab season, take groundfish in crab pot gear for use as crab bait on board their vessels, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section. This exemption does not apply to fishermen who:

(i) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(ii) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(2) No groundfish species listed by NMFS as “prohibited” in a management or regulatory area may be taken in that area for use as bait.

(iv) *Who needs to use the combined groundfish/IFQ logbook?* (A) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor, that participates in an IFQ sablefish fishery, IFQ halibut fishery, or CDQ halibut fishery and that retains any groundfish from the GOA or BSAI, must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all IFQ halibut and sablefish, CDQ halibut, and groundfish.

(B) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor that is using longline or pot gear in the groundfish fisheries of the GOA or BSAI must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all groundfish.

(2) *Responsibility*—(i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(ii) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the requirements given in paragraph (a)(3)(i).

(iii) The owner or manager must sign the SPELR printed pages or the owner, operator, or manager must sign the DFL or DCPL as verification of acceptance of the responsibility required in paragraph (a)(2)(i) of this section.

(3) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section for a catcher vessel 60 ft (18.3 m) or greater LOA, a catcher/processor, a mothership, a shoreside processor, a

stationary floating processor, and a buying station (see Table 9 to this part).

(ii) The operator or manager must use the current edition of the logbooks and forms or obtain approval from the Regional Administrator to use current electronic versions of the logbooks and forms. Upon notification by the Regional Administrator, logbooks or forms may be used from the previous year.

(4) *Shoreside processor electronic logbook report (SPELR).* The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels or receiving pollock harvested in a directed pollock fishery is required to use SPELR or NMFS-approved software described at paragraph (e) of this section to report every delivery from all catcher vessels and is required to maintain the SPELR and printed reports as described at paragraph (f) of this section. The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks, as appropriate:

(i) *Name and signature.* Name and signature of operator or manager.

(ii) *Catcher vessel.* If a catcher vessel, the name as displayed in official documentation, Federal fisheries permit number and ADF&G vessel registration number.

(iii) *Shoreside processor or stationary floating processor.* If a shoreside processor or stationary floating processor, the processor name as displayed in official documentation, ADF&G processor code, and Federal processor permit number. If a shoreside processor, the geographic location of plant.

(iv) *Mothership or catcher/processor.* If a mothership or catcher/processor, the name as displayed in official documentation, ADF&G processor code and Federal fisheries permit number.

(v) *Buying station.* If a buying station, the name as displayed in official documentation; ADF&G vessel registration number (if a vessel) or vehicle registration number (if a vehicle); name, ADF&G processor code, and Federal fisheries permit number of the associated mothership, or name, geographic location of plant, ADF&G processor code, and Federal processor permit number of the associated shoreside processor or stationary

floating processor to which groundfish deliveries were made.

(6) *Maintenance of records.* The operator or manager must:

(i) Maintain in English all records, reports, and logbooks in a legible, timely, and accurate manner; if handwritten, in indelible ink; if computer-generated, in a printed paper copy; and based on A.I.t.

(ii) Account for each day of the fishing year, January 1 through December 31, in the DFL or DCPL. Unless the appropriate box is checked to indicate an inactive period, records are assumed to be for an active period. Record the first day of the fishing year,

January 1, on the first page of the DFL or DCPL. Record time periods consecutively in the logbook.

(A) If a vessel owner or operator is granted reinstatement of a Federal fisheries permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(B) If a shoreside processor owner or manager is granted reinstatement of a Federal processor permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section

must be continuous throughout that year, without interruption of records.

(C) If inactive due to surrender of a Federal fisheries or processor permit, the operator or manager must mark the inactive box, write "surrender of permit," and follow complete instructions for recording an inactive period.

(iii) Record in the appropriate report, form, and logbook, when applicable, the date of activity and type of participant as presented in the following table:

(A) *Date of activity*, as month-day-year.

Date of	If a ¹	Means the date when	In the
(1) Delivery	(i) CV	Delivery of harvest was completed	DFL
	(ii) SS, SFP, MS	Delivery of harvest was completed	DCPL
	(iii) BS	Delivery of harvest was completed	BSR
(2) Landing	SS, SFP	Sorting and weighing of a delivery by species was completed	DCPL
(3) Production	SS, SFP	Production was completed	DCPL
(4) Discard or disposition	(i) CV using longline or pot gear	Discard or disposition occurred	DFL
	(ii) SS, SFP, MS	Discard or disposition occurred at the facility; or Received blue DFL from a catcher vessel (not the actual date of discard or disposition indicated on the blue DFL); or Received BSR from a buying station (not the actual date of discard or disposition indicated on the BSR).	DCPL

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(B) *Week-ending date.* The last day of the weekly reporting period: 2400 hours, A.I.t., Saturday night (except during the last week of each year, when it ends on December 31).

(C) *Time*, in military format, A.I.t.

(D) *Page numbering.* (1) Number the pages in each logbook and BSR consecutively, beginning with page 1 and continuing for the remainder of the fishing year.

(2) If a shoreside processor or stationary floating processor, number the DCPL pages within Part I and Part II separately, beginning with page 1. If

in an inactive period, the manager needs only to record in Part I.

(E) *Logbook numbering—(1) Two logbooks of same gear type.* If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

(2) *Two logbooks of different gear types.* If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page 1.

(3) *Two logbooks for pair trawl.* If two catcher vessels are dragging a trawl between them (pair trawl), two logbooks

must be maintained, a separate DFL by each vessel to record the amount of the catch retained and fish discarded by that vessel, each separately paginated.

(F) *Original/revised report.* Except for a DFL or DCPL, if a report is the first one submitted to the Regional Administrator for a given date, gear type, and reporting area, indicate ORIGINAL REPORT. If a report is a correction to a previously submitted report for a given date, gear type, and reporting area, indicate REVISED REPORT.

(G) *Position coordinates*, position in lat. and long.

(7) How do you record active/inactive periods and fishing activity? (i) The operator or manager daily must record in the appropriate logbook or SPELR the status of fishing activity as active or inactive according to the following table:

If participant is a ...	Fishing activity is ...	An active period is ...	An inactive period is ...
(A) CV ¹	Harvest or discard of groundfish ..	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.	When no gear remains on the grounds in a reporting area
(B) SS, SFP, MS	Receipt, discard, or processing of groundfish.	When checked in or processing ...	When not checked in or not processing
(C) C/P	Harvest, discard, or processing of groundfish.	When checked in or processing ...	When not checked in or not processing
(D) BS	Receipt, discard, or delivery of groundfish.	When conducting fishing activity for an associated processor.	When not conducting fishing activity for an associated processor

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(ii) The operator or manager daily must record in the appropriate logbook or SPELR if no activity occurred according to the following table:

The operator or manager must enter:	In the ...	If ...
(A) No receipt	(1)DCPL	No deliveries received for a day
(B) No landings	(2)DCPL, WPR	No deliveries received during a weekly reporting period
(C) No production	(1)DCPL, DPR	No landings occurred for a day
(D) No discard or Disposition	(2) DCPL, WPR	No landings occurred during a weekly reporting period
	(1) DCPL, DPR	No production occurred for a day
	(2) DCPL, WPR	No production occurred for a weekly reporting period
	(1)DCPL, DFL, BSR or DPR.	No discards or dispositions occurred for a day
	(2) DCPL, WPR	No discards or dispositions occurred for a weekly reporting period

(iii) The operator or manager daily must record whether active or inactive in the appropriate logbook or SPELR according to the following table:

(A) *Active*. If active, complete a separate logsheet for each day (except a shoreside processor, stationary floating processor, catcher vessel longline or pot gear, or catcher/processor longline or pot gear).

(B) *Inactive*. If inactive, complete on one logsheet:

- (1) Check "inactive."
- (2) Record the date of the first day when inactive under "Start date"
- (3) Indicate brief explanation that you are inactive.

(4) Record the date of the last day when inactive under "End date."

(C) *Inactive two or more quarters*. If the inactive time period extends across two or more successive quarters, the operator or manager must complete two logsheets: the first logsheet to indicate the first and last day of the first inactive

quarter and the second logsheet to indicate the first and last day of the second inactive quarter.

(D) *Participant information if inactive*. On each logsheet used to record an inactive period, the operator or manager must record the participant information as described at paragraph (a)(8) of this section.

(iv) *Weight of fish*. When recording weight in a logbook or form, the operator or manager must follow the guidelines in the tables in paragraphs (a)(7)(iv)(C) and (D) and (a)(7)(iv)(F)through (I) of this section and must:

(A) Indicate whether records of weight are in pounds or metric tons.

(1) If using a DFL, DCPL, BSR, or shoreside processor check-in report or check-out report, record weight in pounds or in metric tons to the nearest 0.001 mt, but be consistent throughout the year.

(2) If using a WPR or DPR, record weight in metric tons to the nearest 0.001.

(B) Record the weight of groundfish landings, groundfish product, and groundfish or prohibited species Pacific herring discard or disposition weight by species codes as defined in Table 2 to this part and product codes and product designations as defined in Table 1 to this part. Except for product information provided by shoreside processors or stationary floating processors [which is the sum of product weight separately by BSAI or GOA management area], the operator or manager must summarize groundfish weights separately by reporting area, management program information, gear type, and if trawl gear used, whether harvest was caught in the CVOA or the COBLZ.

(C) *Daily catch weight*. The operator or manager must enter daily catch weight per the following table:

Enter ...	In a ...	If a ...
(1) Estimated total round catch weight of groundfish, listed by CV or BS	DCPL	SS, SFP
(2) Estimated total round catch weight of groundfish by haul	Trawl DFL	CV
(3) Estimated total round catch weight of groundfish by haul, excluding pollock and Pacific cod	Trawl DCPL ...	C/P
(4) Estimated total round catch weight of groundfish listed by CV or BS, excluding pollock and Pacific cod	DCPL	MS
(5) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut and IFQ sablefish	Longline or pot DFL.	CV

Enter ...	In a ...	If a ...
(6) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut, IFQ sablefish, pollock and Pacific cod	Longline or pot DCPL.	C/P
(7) If a CV reported discards on a blue DFL but did not deliver groundfish, enter "0" in this column.	(i) DCPL (ii) BSR	MS, SS, SFP BS

(D) *Daily landings weight.* The operator or manager must enter daily landings weight per the following table:

Enter...	In a ...	If a ...
(1) Obtain actual weights for each groundfish species received and retained by: Sorting according to species codes and direct weighing of that species, or weighing the entire delivery and then sorting and weighing some or all of the groundfish species individually to determine their weight.	DCPL, DPR.	SS, SFP
(2) Record daily combined scale weights of landings by species and product codes.	DCPL, DPR.	SS, SFP

(E) *Daily product weight.* The operator or manager of a SS, SFP, MS, or C/P must enter total daily fish product weight or actual scale weight of fish product by species and product codes in the DCPL and DPR. must enter daily discard or disposition weight and number per the following table:

(F) *Daily discard or disposition weight and number.* The operator or manager

Enter ...	In a ...	If a ...
(1) The daily estimated total weight of discards or disposition for Pacific herring and each groundfish species or species group	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P
(2) The daily estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs.	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P

(G) *Balance brought forward.* The operator or manager must enter the balance brought forward per the following table:

Enter ...	In a ...	If a ...
(1) The total product balance brought forward from the previous day	DCPL	MS, C/P
(2) The total estimated discards or disposition balance brought forward from the previous day	DFL, DCPL	CV, MS, C/P

(H) *Zero balance.* The operator or manager must enter zero balance per the following table:

Record weights as zero ...	In a ...	If a ...
(1) After the offload or transfer of all fish or fish product onboard and prior to the beginning of each fishing trip.	DFL	CV
(2) After the offload or transfer of all fish or fish product onboard, if such offload occurs prior to the end of a weekly reporting period. Nothing shall be carried forward.	DCPL	MS, C/P
(3) At the beginning of each weekly reporting period. Nothing shall be carried forward from the previous weekly reporting period.	DCPL	MS, C/P

(I) *Cumulative totals.* The operator or manager must enter cumulative totals per the following table:

Enter ...	In a ...	If a ...
(1) Weekly cumulative totals, calculated by adding the daily totals and balance carried forward	DCPL, WPR.	MS, C/P
(2) Weekly cumulative totals, calculated by adding the daily totals	DCPL, WPR.	SS, SFP
(3) Cumulative total discards or disposition since last delivery, calculated by adding the daily totals and balance carried forward from the day before.	DFL	CV

(v) *Numbers of fish.* The operator or manager must record the estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs.

(vi) *Species codes.* To record species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes.

(vii) *Product codes and product designations.* To record product

information for federally managed groundfish, the operator or manager must use Table 1 to this part to determine product codes and product designations.

(viii) *Target codes.* To record target species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes. Target species may be recorded as primary and secondary.

(ix) *Gear type information.* If a catcher vessel or catcher/processor using longline or pot gear, the operator must enter:

(A) The gear type used used to harvest the fish and appropriate "gear ID".

(B) If gear information is the same on subsequent pages, check the appropriate box instead of re-entering the information.

(C) A description of the gear per the following table:

If gear type is ...	Then enter ...
(1) Pot (2) Hook-and-line	Number of pots set (i) Check the appropriate box to indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations). (ii) Length of skate to the nearest foot (optional, but may be required by IPHC regulations). (iii) Size of hooks, hook spacing in feet, and number of hooks per skate (optional, but may be required by IPHC regulations). (iv) Number of skates set (v) Number of skates lost (if applicable) (optional, but may be required by IPHC regulations). Bird avoidance gear code (see Table 19 to this part)
(3) Longline	

(x) *Separate logsheet, WPR, check-in/check-out report.* The operator or manager must use a separate page (logsheet, WPR, check-in/check-out report) to record information as described in paragraphs (x)(A) through (E) of this section:

(A) For each day of an active period, except shoreside processor or stationary floating processors may use one logsheet for each day of an active period or use one logsheet for up to 7 days.

(B) If harvest from more than one reporting area.

(C) If harvest from COBLZ or RKCSA within a reporting area (see paragraph (a)(7)(xii)). Use two separate logsheets, the first to record the information from the reporting area that includes COBLZ or RKCSA, and the second to record the information from the reporting area that does not include COBLZ or RKCSA.

(D) If harvest with more than one gear type.

(E) If harvest under a separate management program. If harvest for more than one CDQ group, use a

separate logsheet for each CDQ group number.

(xi) *Reporting area.* The operator or manager must record the reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Record in the DFL, BSR, DCPL, SPELR, WPR, DPR, and mothership or catcher/processor check-in/check-out report.

(xii) *Areas within a reporting area.* If harvest was caught using trawl gear, the operator or manager must indicate whether fishing occurred in the COBLZ or RKCSA:

	Area	Reference
(A) COBLZ	BSAI <i>C. opilio</i> Bairdi By-catch Limitation Zone.	Figure 13 to this part
(B) RKCSA	Red King Crab Savings Area.	Figure 11 to this part

(xiii) *Observer information.* Record the number of observers aboard or on site, the name of the observer(s), and the observer cruise number(s) in the DFL and DCPL. If a shoreside processor or stationary floating processor, record also the dates present for each observer.

(xiv) *Number of crew or crew size.* Record the number of crew, excluding certified observer(s), on a mothership or catcher/processor WPR and in the BSR; on the last day of the weekly reporting period in a mothership or catcher/processor DCPL; and in the DFL on the last day of a trip for a catcher vessel.

(xv) *Management program.* Indicate whether harvest occurred under one of the listed management programs in a DFL, BSR, DCPL, SPELR, WPR, DPR, or check-in/check-out report. If harvest is not under one of these management programs, leave blank.

If harvest made under ... program	Indicate yes and record the...	Reference
(A) CDQ	CDQ group number	Subpart C to part 679
(B) Exempted Fishery	Exempted fishery permit number	§ 679.6
(C) Research	Research program permit number	§ 600.745(a) of this chapter
(D) IFQ	IFQ permit number(s)	Subpart D to part 679
(E) AFA	AFA Cooperative account number ONLY for landings from the directed pollock fishery that are counting against the coop quota. (Other species delivered at the same time can go on the same report.).	§ 679.5(e)

(8) *Landings information*—(i) *Requirement.* The manager of a shoreside processor or stationary floating processor must record landings information for all retained species from groundfish deliveries.

(A) If recording in DCPL, or DPR, enter date of landing and daily weight and weekly cumulative weight by species code and product code.

(B) If recording in WPR, enter weekly cumulative weight by species code and product code.

(ii) *Landings as product.* If a shoreside processor or stationary floating processor receives groundfish, records them as landings in Part IB of the DCPL, and transfers these fish to another processor without further processing, the manager must also record the species code, product code, and weight of these fish in Part II of the DCPL prior to transfer.

(9) *Product information*—(i) *Requirement.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record groundfish product information for all retained species from groundfish deliveries.

(A) If recording in DCPL or DPR, enter date of production (shoreside processor or stationary floating processor only); daily weight, balance forward (except shoreside processor or stationary floating processor), and weekly cumulative weight by species code, product code, and product designation.

(B) If recording in WPR, enter weekly cumulative weight by species code, product code, and product designation.

(ii) *Custom processing.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record products that result from custom processing by you for another processor. If you receive unprocessed or processed groundfish to be handled or processed for another processor or business entity, enter these groundfish in a DCPL and a WPR consistently throughout a fishing year using one of the following two methods:

(A) *Combined records.* Record landings (if applicable), discards or

dispositions, and products of contract-processed groundfish routinely in the DCPL, SPELR, WPR, and DPR without separate identification; or

(B) *Separate records.* Record landings (if applicable), discards or dispositions, and products of custom-processed groundfish in a separate DCPL, WPR, and DPR identified by the name, Federal processor permit number or Federal fisheries permit number, and ADF&G processor code of the associated business entity.

(10) *Discard or disposition information*—(i) *Shoreside processor, stationary floating processor, mothership*—(A) *DCPL or DPR.* (1) Except as described in paragraph (a)(10)(v) of this section, the manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a DCPL and DPR, discard or disposition information that occurred on and was reported by a catcher vessel, that occurred on and was reported by a buying station, and that occurred prior to, during, and after production of groundfish.

(2) Discard or disposition information must include: Date of discard or disposition (only shoreside processor or stationary floating processor); daily weight of groundfish; daily weight of Pacific herring PSC; daily number of PSC animals; balance forward (except shoreside processor or stationary floating processor); and weekly cumulative weight of groundfish and herring PSC; weekly cumulative number of PSC animals; species codes and product codes.

(B) *WPR.* The manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a WPR, discard or disposition information to include: week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(ii) *Catcher/processor*—(A) *DCPL or DPR.* (1) The operator of a catcher/processor must record in a DCPL and DPR, discard or disposition information

that occurred prior to, during, and after production of groundfish.

(2) Discard or disposition information must include: Daily weight of groundfish; daily weight of herring PSC; daily number of PSC animals, balance forward, and weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(B) *WPR.* The operator of a catcher/processor must record in a WPR, discard or disposition information to include: Week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(iii) *Buying station.* The operator or manager of a buying station must record in a BSR discard or disposition information that occurred on and was reported by a catcher vessel and that occurred on and prior to delivery to an associated processor. Discard or disposition information must include: daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(iv) *Catcher vessel.* Except as described in paragraph (a)(10)(v) of this section, the operator of a catcher vessel must record in a DFL discard or disposition information that occurred on and prior to delivery to a buying station, mothership, shoreside processor, or stationary floating processor. Discard or disposition information must include daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(v) *Exemption: Catcher vessel unsorted codends.* If a catcher vessel is using trawl gear and deliveries to a mothership, shoreside processor, stationary floating processor, or buying station are of unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue DFL for that delivery.

(vi) *Discard quantities over maximum retainable amount.* When fishing in an IFQ fishery and the fishery for Pacific

cod or rockfish is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount for Pacific cod or

rockfish as defined in Table 10 or 11 to this part; quantities over this amount must be discarded and recorded as discard in the logbook.

(vii) *Discard or disposition logbook recording time limits.* The operator or

manager must record discards and disposition information in the logbook within the time limits given in the following table:

If participant type is a ¹ ...	Record information ...
(A) MS,SS,SFP	By noon each day to record the previous day's discard/disposition that: (1) Occurs on site after receipt of groundfish from a CV or BS; (2) Occurs during processing of groundfish received from a CV or BS. (3) Was reported on a blue DFL received from a CV delivering groundfish; (4) Was reported on a BSR received from a BS delivering groundfish, if different from blue DFL
(B) CV, C/P (C) BS	By noon each day to record the previous day's discard/disposition that: (1) Was reported on a blue DFL received from a CV delivering groundfish. (2) Occurs on BS after receipt of harvest from a CV. (3) Occurs prior to delivery of harvest to a MS, SS, or SFP.

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = Stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(11) *Delivery information—(i) Mothership, shoreside processor or stationary floating processor.* The operator of a mothership or manager of a shoreside processor or stationary floating processor must record delivery information in a DCPL or SPELR when unprocessed groundfish deliveries are received from a buying station or a catcher vessel. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of groundfish discards or disposition (e.g., an IFQ fish delivery with groundfish incidental catch).

(ii) *Buying station.* (A) The operator or manager of a buying station must record delivery information in a BSR when unprocessed groundfish deliveries are received from a catcher vessel. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of groundfish discards or disposition (e.g., an IFQ fish delivery with groundfish incidental catch).

(B) In addition, a catcher vessel operator by prior arrangement with a processor may function as a buying station for his own catch by: Shipping his groundfish catch with a copy of the BSR directly to that processor via truck or airline in the event that the processor is not located where the harvest is offloaded; or by driving a truck that contains his catch and a copy of the BSR to the processor. When the shipment arrives at the processor, the information

from the BSR must be incorporated by the manager of the shoreside processor or stationary floating processor into the DCPL.

(iii) *Required delivery information, Mothership, shoreside processor, stationary floating processor, or buying station—(A) Date of delivery.* Enter date of delivery.

(B) *CV or BS.* If a mothership, shoreside processor, or stationary floating processor, the manager or operator must:

(1) Enter CV or BS to indicate delivery from catcher vessel or buying station, respectively.

(2) If delivery is from a buying station, keep the BSR for each delivery on file throughout the fishing year and for 3 years after the end of the fishing year.

(C) *Receive discard report.* Indicate whether the blue DFL was received from the catcher vessel at the time of catch delivery. If delivery from a buying station, leave this column blank. If the blue DFL is not received from the catcher vessel, enter NO and the response code (example: NO-L) to describe the reason for non-submittal as follows:

If blue DFL not submitted by catcher vessel, record number followed by ...	To indicate the catcher vessel
(1) P	Does not have a Federal fisheries permit

If blue DFL not submitted by catcher vessel, record number followed by ...	To indicate the catcher vessel
(2) P	Is under 60 ft (18.3 m) LOA and does not have a Federal fisheries permit
(3) L	Is under 60 ft (18.3 m) LOA and has a Federal fisheries permit
(4) U	Delivered an unsorted codend
(5) O	Other. Describe.

(D) *Name and ADF&G vessel registration number* (if applicable) of the catcher vessel or buying station delivering the groundfish;

(E) *Time (A.l.t.) when receipt of groundfish delivery was completed;*

(F) *Mothership begin position.* If a mothership, the mothership's begin position coordinates when receiving the groundfish delivery;

(G) *ADF&G fish ticket numbers.* (1) If a mothership, shoreside processor, or stationary floating processor and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the ADF&G fish ticket number issued to each catcher vessel; if receiving unprocessed groundfish from an associated buying station, record in the DCPL and WPR the ADF&G fish ticket numbers issued by the buying station to the catcher vessel.

(2) If a buying station and receiving unprocessed groundfish from a catcher vessel, record in the BSR the ADF&G

fish ticket numbers issued to each catcher vessel.

(H) *Fish ticket numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the fish ticket numbers issued for that non-Alaska state along with the two-character abbreviation for that state.

(I) *Catch receipt numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska where no fish ticket system is available and receiving unprocessed groundfish from a catcher vessel, record in the DCPL the catch receipt number issued to the catcher vessel.

(iv) *Catcher vessel using trawl gear.* If a catcher vessel using trawl gear, indicate whether sorting of codend onboard or bleeding from a codend occurred prior to delivery to a mothership, shoreside processor, stationary floating processor, or buying station. If delivery is an unsorted codend, see paragraph (a)(10)(v) of this section. Delivery information required: The delivery date; the ADF&G fish ticket number(s) received for delivery; and recipient's name and ADF&G processor code.

(v) *Catcher vessel using longline or pot gear.* If IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of IFQ Registered Buyer receiving harvest; name of unloading

port (see paragraph (l)(5)(vii) of this section and Table 14 to this part) or landing location. If non-IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of recipient receiving harvest; name of unloading port (see Table 14 to this part) or landing location.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible. All corrections must be made in ink.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection and retention of records—(i) Inspection.* The operator of a catcher vessel, catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station must make all logbooks, reports, forms, and mothership-issued fish tickets required under this section available for inspection upon the request of an authorized officer for the time periods indicated in paragraph (a)(13)(ii) of this section.

(ii) *Retention of records.* The operator or manager must retain logbooks and forms as follows:

(A) *On site.* On site at the shoreside facility or onboard the vessel until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbooks and forms are retained.

(B) *For 3 years.* Make them available upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(14) *Submittal and distribution of logbooks and forms—(i) Submittal of forms.* The operator or manager must submit to NMFS the check-in report, check-out report, VAR, WPR, DPR, and PTR (see Table 9 to this part), as applicable, by:

(A) Faxing the NMFS printed form to the FAX number on the form; or

(B) Telexing a data file to the telex number on the form.

(C) Transmitting a data file with required information and forms to NMFS by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C).

(D) With the approval of the Regional Administrator, using the voluntary electronic reporting format for the check-in report, check-out report, WPR, and SPELR.

(ii) *Logbook copy sets.* (A) The copy sets of each logbook are described in the following table:

Type of logbook	Copy sets
(1) Catcher vessel longline and pot gear DFL	White, blue, green, yellow, goldenrod
(2) Catcher vessel trawl gear DFL	White, blue, yellow, goldenrod
(3) Catcher/processor longline and pot gear DCPL	White, green, yellow, goldenrod
(4) Catcher/processor trawl gear DCPL	White, yellow, goldenrod
(5) Mothership DCPL	White, yellow, goldenrod
(6) Shoreside processor DCPL	White, yellow, goldenrod

(B) [Reserved]

(iii) *Logsheet distribution.* The logsheet distribution is described in the following table:

If logsheet is ...	Then, the operator or manager must...
(A) White (B) Yellow	Retain, permanently bound in the logbook. Submit quarterly to: NOAA Office of Enforcement, Alaska Region Logbook Program, P.O.Box 21767 Juneau, AK 99802-1767 on the following schedule: 1st quarter by May 1 of that fishing year 2nd quarter by August 1 of that fishing year 3rd quarter by November 1 of that fishing year 4th quarter by February 1 of the following fishing year
(C) Blue	(1) <i>Catcher vessel.</i> Except when delivering an unsorted codend (see paragraph (a)(10)(vi) of this section), submit to the buying station, mothership, shoreside processor or stationary floating processor that receives the harvest. (2) <i>Buying station.</i> Submit upon delivery of catch to an associated mothership, shoreside processor, or stationary floating processor any blue DFL received from catcher vessels delivering groundfish to the buying station.

If logsheet is ...	Then, the operator or manager must...
(D) Green	<i>Longline and pot gear DFL and DCPL.</i> To support a separate IFQ data collection by the IPHC under the joint NMFS/IPHC logbook program; check with the IPHC for submittal and retention requirements.
(E) Goldenrod	Submit to the observer onboard or onsite after the logsheet is signed by the operator or manager.

(iv) *Logbook time limits.* The following table displays the responsibilities of the operator or

manager to submit the identified logsheet within a specified time limit:
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If a ...	The operator or manager must ...	Time limit
(A) CV	Submit the blue DFL to the MS, SS, SFP, or BS receiving the catch.	Within 2 hours after completion of catch delivery
(B) CV or C/P	(1) DFL, DCPL using trawl gear: record haul number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable) and estimated total round weight by species for each haul	Within 2 hours after completion of gear retrieval
	(2) DFL, DCPL using longline or pot gear: record set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, and IFQ permit number (if applicable) number of pots set, and estimated total round weight of species for each set	Within 2 hours after completion of gear retrieval
	(3) DFL, DCPL: notwithstanding other time limits, record all information required in the DFL or DCPL	Within 2 hours after the vessel's catch is off-loaded
(C) CV, C/P, MS, SS or SFP	(1) DFL, DCPL: record discard or disposition information	By noon each day to record the previous day's discard/disposition
	(2) DFL, DCPL: sign the completed logsheets	By noon of the day following the week-ending date of the weekly reporting period
	(3) DFL, DCPL: submit the goldenrod logsheet to the observer	After signature of operator or manager
(D) C/P, MS, SS, or SFP	(1) DFL, DCPL: record all other required information	By noon of the day following completion of production.
	(2) DFL, DCPL: record product information	By noon each day for the previous day's production
(E) MS, SS or SFP	(1) DFL, DCPL: record delivery information	Within 2 hours after completion of receipt of each groundfish delivery
	(2) DFL, DCPL: record all other information required in the logbook	By noon of the day following the day the receipt of groundfish was completed.
(F) SS or SFP	DCPL: record landings information	By noon each day to record the previous day's landings

Note: SS = shoreside processor; SFP = stationary floating processor; C/P = catcher/processor; CV = catcher vessel; MS = mothership; BS = buying station

(15) IFQ/groundfish transfer document comparison. When the

operator or manager is participating in both the groundfish fisheries and the

IFQ fisheries, certain exceptions to submittal of product shipment and

transfer forms are provided to avoid duplication. In the following table, an

“X” indicates submittal requirements under those circumstances.

	VAR	PTR	IFQ trans shipment authorization	IFQ Vessel Clearance	IFQ Departure Report	IFQ dockside sale Receipt	IFQ Shipment Report
	§679. 5(k)	§679. 5(g)	§679. 5(1)(4)	§679. 5(1)(5)	§679. 5(1)(5)	§679. 5(1)(3)(iv)	§679. 5(1)(3)
(i) If a catcher vessel leaving or entering Alaska with groundfish but no IFQ product onboard	X						
(ii) If a mothership or catcher/processor leaving Alaska with groundfish but no IFQ product onboard	X						
(iii) If a vessel leaving Alaska with IFQ sablefish or halibut but no other groundfish onboard				X	X		
(iv) If a vessel leaving Alaska with IFQ sablefish or halibut and other groundfish onboard	X			X	X		
(v) Transfer of groundfish		X					
(vi) Transfer of CDQ sablefish							X
(vii) Transfer of IFQ fish						X	X
(viii) Transfer of IFQ between vessels			X				

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(b) *Representative.* (1) The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or stationary floating processor or buying station delivering to a shoreside processor or stationary floating processor may identify one contact person to complete the logbook and forms and to respond to inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(2) of this section.

(2) Except for a DFL, BSR, PTR, or DCPL, the operator or manager must provide the following representative identification information: The representative's name; daytime business telephone number (including area code); and FAX or telex number. In addition, if completing a DPR, a VAR, or a mothership or catcher/processor check-in/check-out report, the representative's COMSAT number.

(c) *Catcher vessel DFL and catcher/processor DCPL—(1) Longline and pot DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest groundfish or the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest IFQ sablefish or IFQ halibut must record in the DFL or DCPL:

- (i) Gear type;
- (ii) IFQ permit number of the operator, if any, and of each IFQ holder aboard the vessel;
- (iii) Groundfish CDQ group number;
- (iv) Halibut CDQ permit number;
- (v) The set number, sequentially by year;
- (vi) Date, time, and begin position coordinates of gear deployment;
- (vii) Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations);
- (viii) Date, time, and end position coordinates of gear retrieval;
- (ix) Begin and end gear depths, recorded to the nearest fathom (optional, but may be required by IPHC regulations);
- (x) Number of skates or pots set;
- (xi) Number of skates or pots lost (optional, but may be required by IPHC regulations);
- (xii) Target species code;
- (xiii) Estimated catch weight of IFQ halibut and CDQ halibut to the nearest pound, indicate "CDQ" above the amount of CDQ halibut;
- (xiv) Estimated weight of IFQ sablefish to the nearest pound;

(xv) Indicate whether IFQ sablefish product is Western cut, Eastern cut, or round weight;

(xvi) Number of sablefish;

(xvii) The bird avoidance gear code;

(xviii) If a catcher/processor, enter separately the round catch weight of pollock and Pacific cod to the nearest pound or metric ton and the estimated total round catch weight of all retained species combined, except sablefish, halibut, pollock and Pacific cod to at least the nearest 0.001 mt; and

(ix) If a catcher vessel, the estimated total round catch weight of all species combined, except sablefish and halibut.

(2) *Trawl gear DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using trawl gear to harvest groundfish must record in the DFL or DCPL:

- (i) Whether nonpelagic trawl or pelagic trawl;
- (ii) Haul number, sequentially by year;
- (iii) Time and begin position coordinates of gear deployment;
- (iv) Date, time, and end position coordinates of gear retrieval;
- (v) Average sea depth and average gear depth, recorded to the nearest meter or fathom and whether depth recorded in meters or fathoms;
- (vi) Target species code;
- (vii) If a catcher/processor, enter separately the round catch weight of pollock, Pacific cod, and the estimated total round catch weight of all retained species, except Pacific cod and pollock, and indicate whether weight is recorded to the nearest pound or metric ton;
- (viii) If a catcher vessel, enter the estimated total round catch weight of all retained species.

(d) *Buying station report (BSR)—(1)* In addition to information required at paragraphs (a) and (b) of this section, the operator or manager of a buying station must:

- (i) Enter on each BSR the name, ADF&G processor code, and Federal fisheries or processor permit number of its associated processor, date delivery completed, and time delivery completed;
- (ii) Record each delivery of unprocessed groundfish or donated prohibited species to an associated processor on a separate BSR.
- (iii) Ensure that a BSR, along with any blue DFLs received from a catcher vessel, accompanies each groundfish delivery from the landing site to the associated processor.
- (iv) Retain a copy of each BSR.
- (v) In addition to recording the total estimated delivery weight or actual

scale weight of a catcher vessel delivery, the operator or manager of a buying station may enter specific species codes and weights (in lb or mt) to the BSR.

(2) The operator or manager must record all information required and sign the BSR within 2 hours of completion of delivery from catcher vessel.

(e) *Shoreside processor electronic logbook report (SPELR).* (1) The owner or manager must use SPELR or NMFS-approved software for the duration of the fishing year to report every delivery, including but not limited to groundfish from AFA catcher vessels and pollock from a directed pollock fishery participant, from all catcher vessels and maintain the SPELR and printed reports as described at paragraph (f) of this section, if a shoreside processor or stationary floating processor:

- (i) Receives groundfish from AFA catcher vessels; or
 - (ii) Receives pollock harvested in a directed pollock fishery.
- (2) The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e)(1) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR. Processors using the SPELR must maintain the SPELR and printed reports as described in this paragraph (e) and at paragraph (f) of this section.

(3) *Exemptions.* The owner or manager who uses the SPELR per paragraphs (e)(1) and (2) of this section is exempt from the following requirements:

- (i) Maintain shoreside processor DCPL.
- (ii) Submit quarterly DCPL logsheets to NOAA Fisheries, Office for Law Enforcement (OLE), Juneau, as described at paragraph (a)(14)(iii) of this section.

(iii) Maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(iv) If receiving deliveries of fish under a CDQ program, submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(4) *Time limit and submittal.* (i) The SPELR must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. The owner or manager must retain the return receipt as proof of report submittal. If an owner or manager does not receive a return receipt from NMFS, the owner or manager must contact

NMFS within 24 hours for further instruction on submittal of SPELRs.

(ii) Daily information described at paragraph (e)(6) of this section must be entered into the SPELR each day on the day they occur.

(iii) Except as indicated in paragraph (e)(4)(iv) of this section, information for each delivery described at paragraph (e)(7) of this section must be submitted to the Regional Administrator by noon of the following day for each delivery of groundfish.

(iv) If a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from one of the AFA-permitted catcher vessels listed on NMFS Alaska Region web page at <http://www.fakr.noaa.gov/rwm> the SPELR daily report may be transmitted on Monday.

(5) *Information entered once (at software installation) or whenever it changes.* The owner or manager must enter the following information into the SPELR when software is installed or whenever any of the information changes:

(i) Shoreside processor or stationary floating processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(ii) State port code as described in Table 14 to this part;

(iii) Name, telephone and FAX numbers of representative.

(6) *Information entered daily.* The owner or manager must daily enter the following information into the SPELR:

(i) Whether no deliveries or no production;

(ii) Number of observers on site;

(iii) Whether harvested in BSAI or GOA;

(iv) Product by species code, product code, and product designation;

(v) Product weight (in lb or mt).

(7) *Information entered for each delivery.* The owner or manager must enter for each delivery the following information into the SPELR:

(i) Date fishing began; delivery date; vessel name and ADF&G vessel registration number; ADF&G fish ticket number of delivery; management program name and identifying number (if any); gear type of harvester; landed species of each delivery by species code, product code, and weight (in pounds or mt); ADF&G statistical area(s) where fishing occurred and estimated percentage of total delivered weight corresponding to each area; and whether delivery is from a buying station.

(ii) If delivery received from a buying station, indicate name and type of buying station (vessel, vehicle, or other);

date harvest received by buying station; if a vessel, ADF&G vessel registration number; if a vehicle, license plate number; if other than a vessel or vehicle, description.

(iii) Whether a blue DFL was received from catcher vessel; if not received, reason given; discard or disposition species; if groundfish or PSC herring, enter species code, product code, and weight (in pounds or mt); if PSC halibut, salmon, or crab, enter species code, product code, and count (in numbers of animals).

(iv) If a CDQ delivery, enter species code, product code, weight (in pounds or mt) and count of PSQ halibut.

(f) *SPELR printed reports*—(1) *Requirement*—(i) *Daily printouts.* The manager daily must print onsite at the shoreside processor or stationary floating processor two reports: a shoreside logbook daily production report and a delivery worksheet using pre-determined formats generated by the SPELR or NMFS-approved software.

(ii) *Signature.* The owner or manager of the shoreside processor or stationary floating processor must sign and enter date of signature onto each SPELR printed report. The signature of the owner or manager on SPELR printed reports is verification of acceptance of the responsibility required in paragraphs (e) and (f) of this section.

(iii) *Delivery worksheet.* The Delivery Worksheet results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily landings and discards.

(iv) *Shoreside logbook daily production report.* The Shoreside Logbook Daily Production Report results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily production.

(2) *Retention.* The manager must retain the paper copies of the reports described in paragraph (f)(1) of this section as follows:

(i) *Onsite.* Onsite at the shoreside processor or stationary floating processor until the end of the fishing year during which the reports were made and for as long thereafter as fish or fish products recorded in the reports are retained.

(ii) *For 3 years.* For 3 years after the end of the fishing year during which the reports were made.

(3) *Inspection.* The owner or manager must make available the reports described in paragraph (f)(1) of this section upon request of observers, NMFS personnel, and authorized officers.

(g) *Groundfish Product Transfer Report (PTR).* (1) Except as provided in paragraphs (g)(1)(i) through (iv) of this

section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record on a separate PTR each transfer of groundfish product (including unprocessed fish) or donated prohibited species.

(i) *Exemption: Bait sales.* The operator or manager may aggregate individual sales or transfers of groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day. If transfer is a daily aggregation of bait sales, enter "BAIT SALES" in the "RECEIVER" box and enter the time of the first sale of the day and the time of the last sale of the day.

(ii) *Exemption: Over-the-counter groundfish sales.* (A) The operator or manager daily may aggregate and record on one PTR, individual over-the-counter sales of groundfish for human consumption, where each sale weighs less than 10 lb (0.0045 mt), when recording the amount of such over-the-counter product leaving a facility that day.

(B) If a PTR records a daily aggregation of over-the-counter product sales, enter "OVER-THE-COUNTER SALES" in the "RECEIVER" box. Enter the time of the first sale of the day and the time of the last sale of the day.

(iii) *Exemption: Wholesale sales.* (A) The operator or manager may aggregate and record on one PTR, wholesale sales of groundfish by species when recording the amount of such wholesale product leaving a facility that day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(B) If a PTR records a daily aggregation of wholesale product sales, enter "WHOLESALE SALES" in the "RECEIVER" box. Enter the time of the first sale of the day and enter the time of the last sale of the day.

(iv) *Exemption: IFQ Registered Buyer permit and IFQ or CDQ sablefish product.* If the operator or the manager possesses a Registered Buyer permit issued per § 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor or stationary floating processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by FAX or electronic file a copy of each PTR to OLE, Juneau, by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) A PTR is not required to accompany a shipment or offload.

(3) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section the operator or manager must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether receipt or shipment. "RECEIPT" if product is received; "SHIPMENT" if transferring product off

your site or transferring product off your vessel;

(iii) Your processor type;

(iv) Whether you are the shipper or the receiver.

(4) *Transfer Information—(i) Shipper.*

(A) Enter information about your company: If you are shipping groundfish or groundfish product, enter your company name, address, FAX number, and ADF&G processor code.

(B) *Enter information about the other company:* If you are receiving groundfish or groundfish product from another company, enter name of the other company and ADF&G processor code (if applicable).

(ii) *Receiver.* (A) *Enter information about your company:* If you are receiving groundfish or groundfish product, enter your company name and ADF&G processor code.

(B) *Enter information about the other company:* If you are shipping groundfish or groundfish product to another company on land, enter name of the receiver and ADF&G processor code (if applicable).

(C) If you are the shipper, enter appropriate information about the other company as provided in the following table:

BILLING CODE 3510-22-S

If you are the shipper and ...	Then enter ...	
(1) Receiver is on land	Receiver name and ADF&G processor code (if applicable)	(i) If transfer involves one van or truck, enter the Date and time when shipment leaves the plant; Name of the shipping company; and Location of van or truck destination
		(ii) If transfer involves multiple vans or trucks; enter the Date and time when loading of vans or trucks is completed each day; Name of the shipping company; and Location of van or truck destination
		(iii) If transfer involves one airline flight; enter the Date and time when shipment leaves the plant; Name of the airline; and Location of destination airport
		(iv) If transfer involves multiple airline flights; enter the Date and time of shipment when the last airline flight of the day leaves; Name of the airline; and Location of destination airport
(2) Receiver is a vessel	Vessel name and call sign	If transfer occurs at sea (i) Transfer position coordinates in latitude and longitude, in degrees and minutes. (ii) The first destination of the vessel. If a mothership or catcher/processor and transfer takes place in port (iii) Name of the port and country (if other than USA) (iv) Start and finish dates and times of transfer
(3) Receiver is an agent (buyer, distributor, or shipping agent)	Agent name and location (city, state)	If a containerized van (i) Name of the vessel transporting the van (ii) Destination port (iii) Transfer start and finish dates and times

<p>(4) If aggregating individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR</p>	<p>(i) "OVER-THE-COUNTER SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day</p>
<p>(5) If aggregating individual bait sales of groundfish during a day onto one PTR</p>	<p>(i) "BAIT SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day "BAIT SALES"</p>
<p>(6) If aggregating wholesale product sales of groundfish by species during a single day onto one PTR and maintaining for inspection by an authorized officer, invoices detailing destinations for all of the product</p>	<p>(i) "WHOLESALE SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day</p>

(5) *Products shipped or received.*
 Enter information for each transfer:

(i) The species code and product code for each product transferred (Tables 1 and 2 to this part).

(ii) The number of cartons or production units transferred.

(iii) The average weight of one carton or production unit for each species and product code in kilograms or pounds (indicate which).

(iv) The total net weight (to the nearest 0.001 mt) of the products transferred.

(v) In addition to paragraphs (g)(5)(i) through (iv) of this section, if recording two or more species with one or more product types of fish in the same carton, enter the actual scale weight of each

product of each species to the nearest 0.001 mt. If not applicable, enter "n/a" in the species weight column. If you use more than one line to record species in one carton, use a bracket to tie the carton information together.

(6) *Total or partial offload.* (i) If a mothership or catcher/processor, indicate whether the transfer is a total or partial offload.

(ii) If a partial offload, for the products remaining on board, enter: species code, product code, and total product weight to the nearest 0.001 mt for each product.

(h) *Check-in/check-out report*—(1) *Time limits and submittal.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or

stationary floating processor must submit a check-in report prior to becoming active (see paragraph 679.5(a)(7)(i) of this section) and a check-out report for every check-in report submitted. Check-in and check-out reports must be submitted within the appropriate time limits to the Regional Administrator by FAX or Telex; or transmit a data file by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C); or transmit by voluntary electronic check-in and check-out reports.

(i) *Check-in report (BEGIN message).* Except as indicated in paragraph (h)(1)(iii) of this section the operator or manager must submit a check-in report according to the following table:

Submit a separate BEGIN message for ...	If you are a ...	Within this time limit
(A) Each reporting area of groundfish harvest, except 300, 400, 550, or 690	(1) C/P using trawl gear	Before gear deployment
	(2) C/P using longline or pot gear	Before gear deployment. May be checked in to more than one area simultaneously.
	(3) MS, SS, SFP	Before receiving groundfish. May be checked in to more than one area simultaneously.
	(4) MS	Must check-in to reporting area(s) where groundfish were harvested
(B) COBLZ or RKCSA	(1) C/P using trawl gear	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA
	(2) MS, SS, SFP	Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA
(C) Gear Type	(1) C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	(2) MS, SS, SFP	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
(D) CDQ	(1) C/P	Prior to groundfish CDQ fishing under each CDQ program
	(2) MS, SS, SFP	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.
(E) Exempted or Research Fishery	(1) C/P	If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.
	(2) MS, SS, SFP	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
(F) Processor type	C/P, MS	If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.
(G) Change of fishing year	C/P, MS, SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.

check-out report according to the following table:

Submit a separate CEASE message for ...	If you are a ...	Within this time limit
(A) COBLZ or RKCSA	(1) C/P using trawl gear. (2) MS, SS, SFP	Upon completion of gear retrieval for groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA. If receiving groundfish harvested with trawl gear, upon completion of receipt of groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
(B) Processor type	C/P, MS	Upon completion of simultaneous activity as both catcher/ processor and mothership, a separate check-out, one for catcher/processor and one for mothership.
(C) Gear Type	(1) C/P	Upon completion of gear retrieval for groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
	(2) MS, SS, SFP	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
(D) CDQ	(1) C/P	Within 24 hours after groundfish CDQ fishing for each CDQ group has ceased.
	(2) MS, SS, SFP	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ group.
(E) Exempted or Research Fishery	(1) C/P	If groundfish are caught during an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
	(2) MS, SS, SFP	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
(F) Reporting Area	(1) C/P using longline or pot gear. (2) C/P using trawl gear. (3) SS, SFP	Upon completion of gear retrieval and within 24 hours after departing each reporting area Within 24 hours after departing a reporting area but prior to checking-in another reporting area Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or stationary floating processor ceases to receive or process groundfish from that reporting area for the fishing year.
	(4) MS, SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, may submit a check-out report for that reporting area
	(5) MS	Within 24 hours after receipt of fish is complete from that reporting area.
(G) Change of fishing year	C/P, MS, SS, SFP ...	If a check-out report was not previously submitted during a fishing year for a reporting area, submit on December 31, a check-out report for each reporting area.
(H) Interruption of production	SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, the manager may choose to submit a check-out report for that reporting area.

(iii) *Exception, two adjacent reporting areas.* If on the same day a catcher/processor intends to fish in two adjacent reporting areas (an action which would require submittal of check-out reports and check-in reports multiple times a day when crossing back and forth across a reporting area boundary), and the two reporting areas have on that day and time an identical fishing status for every species, the operator must:

(A) Submit to NMFS a check-in report to the first area prior to entering the first reporting area, and

(B) Submit to NMFS a check-in report to the second area prior to entering the second reporting area.

(C) Remain within 10 nautical miles (18.5 km) of the boundary described in paragraph (h)(1)(iii) of this section.

(D) If the catcher/processor proceeds in the second reporting area beyond 10 nautical miles (18.5 km) of the boundary between the two areas, the operator must submit a check-out report from the first reporting area. The operator must submit a check-out report from the second area upon exiting that reporting area (see paragraph (h)(1)(ii) of this section).

(2) *Transit through reporting areas.*

The operator of a catcher/processor or mothership is not required to submit a check-in or check-out report if the vessel is transiting through a reporting area and is not fishing or receiving fish.

(3) *Required information.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record the following information.

(i) *For each check-in and check-out report.* (A) Whether an original or revised report;

(B) Participant identification information (see paragraph (a)(5) of this section);

(C) Representative information (see paragraph (b)(2) of this section);

(D) Management program name and identifying number (if any);

(E) If a mothership or catcher/processor, processor type and gear type.

(ii) *For each check-in report, mothership.* (A) Date and time when receipt of groundfish will begin;

(B) Position coordinates where groundfish receipt begins;

(C) Reporting area code where gear deployment begins;

(D) Primary and secondary target species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iii) *For each check-in report, catcher/processor.* (A) Date and time when gear deployment will begin;

(B) Position coordinates where gear is deployed;

(C) Reporting area code of groundfish harvest;

(D) Primary and secondary target species expected to be harvested the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iv) *For each check-in report, shoreside processor or stationary floating processor:* (A) Indicate check-in report;

(B) Date facility will begin to receive groundfish;

(C) Whether checking in for the first time this fishing year or checking in to restart receipt and processing of

groundfish after filing a check-out report;

(D) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(E) Whether pounds or 0.001 mt.

(v) *For each check-out report, mothership:* Date, time, reporting area code, and position coordinates where the last receipt of groundfish was completed.

(vi) *For each check-out report, catcher/processor:* date, time, reporting area code, and position coordinates where the vessel departed the reporting area.

(vii) *For each check-out report, shoreside processor or stationary floating processor:* (A) Indicate check-out report;

(B) Date facility ceased to receive or process groundfish;

(C) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(D) Whether pounds or 0.001 mt.

(i) *Weekly Production Report (WPR)*—(1) *Who needs to submit a weekly production report?* (i) Except as indicated in paragraph (i)(1)(iii) of this section, the operator or manager must submit a WPR for any week the mothership, catcher/processor, shoreside processor, or stationary floating processor is checked-in pursuant to paragraph (h)(2) of this section.

(ii) If a vessel is operating simultaneously during a weekly reporting period as both a catcher/processor and a mothership, the operator must submit two separate WPRs for that week, one for catcher/processor fishing activity and one for mothership fishing activity.

(iii) *Exemption.* If using SPELOR or software approved by the Regional Administrator as described in § 679.5(e), a shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

(2) *Time limit and submittal.* The operator or manager must submit a separate WPR by FAX or electronic file to the Regional Administrator by 1200 hours, A.l.t. on Tuesday following the end of the applicable weekly reporting period.

(3) *Submit separate WPR.* The operator or manager must submit a separate WPR if:

(i) *Processor type.* For each processor type if a catcher/processor is functioning simultaneously as a Mothership in the same reporting area.

(ii) *Gear type.* For each gear type of harvester if groundfish are caught in the same reporting area using more than one gear type.

(iii) *COBLZ or RKCSA.* If groundfish are caught with trawl gear, submit one report for fish harvested in the COBLZ or RKCSA and another report for fish harvested outside the COBLZ or RKCSA.

(iv) *Management Program.* If groundfish are caught under a specific management program, submit a separate report for each program.

(v) *Reporting area.* For each reporting area, except 300, 400, 550, or 690.

(vi) *Change of fishing year.* If continually active through the end of one fishing year and at the beginning of a second fishing year, the operator or manager must submit a WPR for each reporting area:

(A) To complete the year at midnight, December 31, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(B) To start the year on January 1, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(4) *Required information.* The operator or manager must record:

(i) Whether original or revised WPR;

(ii) Week-ending date;

(iii) Participant identification information (see paragraph (a)(5) of this section);

(iv) Representative information (see paragraph (b)(2) of this section);

(v) Date (month-day-year) WPR completed;

(vi) Management program name and identifying number (if any);

(vii) Gear type of harvester;

(viii) If a mothership or catcher/processor, processor type and crew size;

(ix) Reporting area of harvest;

(x) If a shoreside processor or stationary floating processor, landings scale weights of groundfish by species and product codes and product designations; scale weights or fish product weights of groundfish by species and product codes and product designations;

(xi) Discard or disposition weights or numbers by species and product codes;

(xii) ADF&G fish ticket numbers issued to catcher vessels at delivery (except catcher/processors).

(j) *Daily Production Report (DPR)*—(1) *Notification.* If the Regional Administrator determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submittal of DPRs from motherships, catcher/processors, shoreside processors and stationary floating processors for

reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the **Federal Register** specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

(2) *Applicability.* (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR, when required.

(ii) If a shoreside processor or stationary floating processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR when required.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by FAX to the Regional Administrator by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or the manager of a shoreside processor or stationary floating processor must record the processor type.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?* Except as noted in paragraphs (k)(1)(iii) and (iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership holding a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.—Canadian international boundary between Alaska and British Columbia.

(i) *Both groundfish and IFQ fish.* If a vessel is carrying both groundfish and IFQ halibut or IFQ sablefish, the operator must submit a VAR in addition to a Vessel Departure Report (VDR) or a Vessel Clearance (VC).

(ii) *Revised VAR.* If groundfish are landed at a port other than the one specified, submit a revised VAR showing the actual port of landing.

(iii) *Exemption: Vessel clearance.* If a vessel is carrying only IFQ halibut or

IFQ sablefish onboard and the operator has received a Vessel Clearance per paragraph (l)(5)(iii) of this section, a VAR is not required.

(iv) *Exemption: IFQ departure report.* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has submitted a Departure Report per paragraph (l)(5)(iii)(B) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher vessel, catcher/processor, or mothership); and representative information (see paragraph (b)(2) of this section).

(i) *Return report.* "Return," for purposes of this paragraph, means coming back to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(l) *IFQ and CDQ halibut recordkeeping and reporting.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following IFQ reports are required, when applicable: prior notices

of landing, landing report, shipment report, transshipment authorization, vessel clearance, and IFQ departure report.

(1) *Prior notice of IFQ landing—(i) Applicability.* Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(ii) *Time limits.* A prior notice of landing must be made to the toll-free telephone number 800-304-4846 OR TO 907-586-7202 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(iii) *Information required.* A prior notice of landing must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Name and permit number of the Registered Buyer who will be responsible for completion and submittal of the IFQ Landing Report(s);

(C) The location of the landing (port name or code);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Landing directions;

(F) Species and estimated weight (in pounds) of the IFQ halibut or IFQ sablefish that will be landed;

(G) IFQ regulatory area(s) in which the IFQ halibut or IFQ sablefish were harvested;

(H) IFQ permit number(s) that will be used to land the IFQ halibut or IFQ sablefish.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb (0.23 mt) or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the prior notice of landing required by this section.

(v) *Revision to prior notice of landing.* The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time (A.l.t.) reported in the prior notice of landing or later than 2 hours after the date and time (A.l.t.) reported in the prior notice of landing must submit a new prior notice of IFQ landing as described in paragraphs (l)(1)(i) through (iii) of this section.

(2) *Landing report—(i) Applicability.*

(A) A Registered Buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment of said fish or departure of the delivery vessel from the landing site.

(B) All IFQ catch retained onboard a vessel at commencement of a landing

must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.

(ii) *Electronic landing report.* (A) Except as indicated in paragraphs (l)(2)(ii)(D) and (E) of this section, electronic landing reports must be submitted to OLE, Juneau, AK using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to locate or procure a transaction terminal and report as required.

(B) The IFQ cardholder must initiate a landing report by using his or her own magnetic card and personal identification number (PIN).

(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by OLE, Juneau, AK and the IFQ cardholder's account is properly debited. A properly concluded transaction terminal receipt, printed Internet submission receipt, or manual landing report receipt received by FAX from OLE, Juneau, AK constitutes confirmation that OLE received the landing report and that the cardholder's account was properly debited. After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and a receipt is printed, the IFQ cardholder must sign the receipt to acknowledge the accuracy of the landing report. Legible copies of the receipt must be retained by both the Registered Buyer and the IFQ cardholder pursuant to paragraph (l)(6) of this section.

(D) Electronic landing reports may be submitted to OLE, Juneau, AK using Internet submission methods as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to obtain at his or her own expense, hardware, software and Internet connectivity to support Internet submissions and report as required.

(E) Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer.

(iii) *Manual landing report.* (A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from OLE, Juneau, AK at (800)304-4846. Completed manual landing reports must be submitted by

FAX to OLE, Juneau, AK at (907)586-7313.

(B) The manual landing report must be signed by the Registered Buyer or his/her representative, and the IFQ cardholder to acknowledge the accuracy of the landing report, and by the OLE representative to show that the IFQ cardholder's account was debited consistent with the landing report.

(iv) *Time limits and submittals.* (A) An IFQ landing may commence only between 0600 hours, A.L.t., and 1800 hours, A.L.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

(B) An IFQ landing report must be completed and the IFQ account(s) properly debited, as defined in paragraph (1)(2)(ii)(C) of this section, within 6 hours after the completion of the IFQ landing.

(v) *Landing verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(vi) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ landing report as follows:

(A) Date and time (A.L.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ card holder;

(D) Name and permit number of Registered Buyer receiving the IFQ species;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear type used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J)(1) Except as indicated in paragraph (1)(2)(vi)(j)(2) of this section, for each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds) made at the time of offloading for IFQ species sold and retained;

(2) If the vessel operator is a Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for

the initial accurate scale weight at time of offload.

(K) Whether ice and slime is present on the fish as offloaded from the vessel (YES or NO). Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2 percent deduction for ice and slime and must indicate NO SLIME & ICE.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear;

(M) Signature of Registered Buyer representative;

(N) Signature of IFQ/CDQ card holder.

(vii) *Manual landing report.* When a waiver is issued pursuant to paragraph (1)(2)(ii)(A) of this section, additional information is required. In addition to the information required in paragraph (1)(2)(vi) of this section, the following information is required to complete a landing report using a manual landing report:

(A) Whether the manual landing report is an original or revised;

(B) Name, telephone number, and FAX number of individual submitting the manual landing report.

(3) *Shipment report—(i) Requirement.*

(A) Except as provided in paragraph (1)(3)(i)(D) of this section, complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

(B) Assure that a shipment report is submitted to, and received by, OLE, Juneau, AK by FAX to (907) 586-7313 or mail to P.O. Box 21767, Juneau, AK 99802-1767, within 7 days of the date shipment commenced.

(C) Ensure that a copy of the shipment report or a bill of lading containing the same information accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing.

(D) A shipment report is not required for transportation of IFQ species directly from the landing site to a processing facility owned by the Registered Buyer submitting the IFQ landing report.

When transporting the fish in this manner, the landing report receipt from the IFQ terminal documenting the IFQ landing must accompany the offloaded IFQ species. For IFQ species transported in this manner, the Registered Buyer must complete a shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from the Registered Buyer's processing facility.

(ii) *Information required.* A shipment report must specify the following:

(A) Whether revised or original report;

(B) Shipment date;

(C) Registered Buyer name, address, FAX number, and permit number;

(D) Signature of Registered Buyer or Registered Buyer's representative;

(E) Receiver name (this is the first receiver; the purchaser, wholesaler, or retailer who will receive the shipment from the Registered Buyer) and address;

(F) Mode of transportation and intended route;

(G) Name of the shipping company or entity that is transporting the shipment.

(1) If by air, enter the name of the airline, flight number, departure and arrival airport locations.

(2) If by containerized van, enter the name of the shipping company, vessel transporting the van, and departure and arrival ports.

(3) If by vessel, enter the name of the shipping company if applicable, name of the vessel transporting, and the departure and arrival ports.

(4) If by ground transportation, enter the name of the shipping or trucking company, and departure and arrival locations.

(H) Species codes and product codes of IFQ species;

(I) Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(J) Unit weight (weight of single production unit as listed in "No. of Units"); indicate whether metric tons or pounds;

(K) Total fish product weight of shipment less packing materials; indicate whether metric tons or pounds.

(iii) *Revision to shipment report.* Each Registered Buyer must ensure that, if any information on the original Shipment Report changes prior to the first destination of the shipment, a revised shipment report is submitted to OLE, Juneau, clearly labeled "Revised Report" and that the revised shipment report be received by OLE, Juneau, AK within 7 days of the change.

(iv) *Dockside sale.* A Registered Buyer conducting dockside sales must issue a receipt in lieu of a shipment report, that includes the date of sale or transfer, the Registered Buyer permit number, and the fish product weight of the IFQ sablefish or halibut transferred to each individual receiving IFQ halibut or IFQ sablefish.

(4) *Transshipment authorization.* (i) No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a transshipment authorization, the vessel operator must provide the following information to the clearing officer:

- (A) Date and time (A.l.t.) of transshipment;
- (B) Location of transshipment;
- (C) Name and ADF&G vessel registration number of vessel offloading transshipment;
- (D) Name of vessel receiving the transshipment;
- (E) Product destination;
- (F) Species and product type codes;
- (G) Total product weight;
- (H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(5) *Vessel clearance*—(i) *Requirement.* A vessel operator who intends to make an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must first obtain a vessel clearance at a primary port from a clearing officer.

(ii) *Canadian ports.* A vessel operator who intends to land IFQ species in Canada must first obtain a vessel clearance from a clearing officer at a primary port and must make the landing only at the British Columbia ports of Port Hardy, Prince Rupert, or Vancouver.

(iii) *Registered Buyer permit.* A vessel operator obtaining an IFQ vessel clearance or submitting a departure report must have a Registered Buyer permit.

(iv) *IFQ permits on board.* A vessel operator obtaining an IFQ vessel clearance must ensure that one or more IFQ cardholders is on board with enough remaining IFQ balance to harvest amounts of IFQ fish equal to or greater than all IFQ halibut and IFQ sablefish on board.

(v) *Inspection.* A vessel for which a vessel operator is seeking an IFQ vessel clearance is subject to inspection of all fish, logbooks, permits, and other documents on board the vessel at the discretion of the clearing officer.

(vi) *Primary ports.* Unless specifically authorized on a case-by-case basis by a clearing officer, IFQ vessel clearances will be issued only at the primary ports listed in Table 14 to this part.

(vii) *Completion of fishing.* An IFQ vessel operator who obtains an IFQ vessel clearance may only obtain that IFQ vessel clearance after completion of all fishing. If any fishing takes place after issuance of an IFQ vessel clearance, the vessel operator must obtain a new IFQ vessel clearance.

(viii) *Required information.* To obtain an IFQ vessel clearance, the vessel

operator must provide the following information to the clearing officer:

- (A) Date, time (A.l.t.), and location of requested IFQ vessel clearance;
- (B) Vessel name and ADF&G vessel registration number;
- (C) Name and permit numbers of IFQ permits used to harvest IFQ species on board;
- (D) Vessel operator's IFQ Registered Buyer permit number;
- (E) Estimated total weight of IFQ halibut on board (lb/kg/mt);
- (F) Estimated total weight of IFQ sablefish on board;
- (G) IFQ areas of harvest;
- (H) Intended date, time (A.l.t.) and location of landing;
- (I) Signature of vessel operator.

(ix) *First landing of any species.* A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.

(x) *IFQ landing after vessel clearance.* A vessel operator having been granted an IFQ vessel clearance must be the Registered Buyer responsible for the IFQ landing and must submit the IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(xi) *IFQ departure report.* (A) A vessel operator who intends to obtain a vessel clearance outside the State of Alaska must submit an IFQ departure report, by telephone, to OLE, Juneau, AK at 907-586-7225 or 800-304-4846. The IFQ departure report may only be submitted after completion of all IFQ fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. The vessel operator must provide the following information:

- (B) Vessel name and ADF&G registration number;
- (C) Name of vessel operator submitting the IFQ departure report;
- (D) Total weight on board of IFQ halibut and total weight of IFQ sablefish;
- (E) Intended date, time (A.l.t.), and location for obtaining an IFQ vessel clearance.

(6) *Record retention.* A copy of all reports and receipts required by this section must be retained by Registered Buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(7) * * *

(i) * * *

(C) * * *

(3) * * *

(ii) *Certification,* including the signature or electronic PIN of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature or date of electronic submittal.

(D) *Submission address.* The registered buyer must complete an IFQ Buyer Report and submit by mail or FAX to:

Administrator, Alaska Region, NMFS,
Attn: RAM Program,
P.O. Box 21668,
Juneau, AK 99802 1668,
FAX: (907) 586-7354

or electronically to NMFS via forms available from

RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

* * * * *

(ii) * * *

(C) * * *

(4) *Fee payment and certification section*—(i) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number, signature, and date of signature on the Fee Payment section of the form or provide the electronic equivalent and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

* * * * *

(m) *Consolidated weekly ADF&G fish tickets from motherships*—(1)

Requirement. (i) The operator of a mothership must ensure that any groundfish catch received by a mothership from a catcher vessel that is issued a Federal fisheries permit under § 679.4 is recorded for each weekly reporting period on a minimum of one ADF&G groundfish fish ticket. The operator of a mothership may create a fish ticket for each delivery of catch. (An ADF&G fish ticket is further described at Alaska Administrative Code, 5 AAC Chapter 39.130.) A copy of the Alaska Administrative Code can be obtained from the Alaska Regional Office, see § 600.502 of this chapter, Table 1.

(ii) The operator of a mothership must ensure that the information listed in paragraph (m)(2)(iii) of this section is written legibly or imprinted from the catcher vessel operator's State of Alaska, Commercial Fisheries Entry Commission (CFEC) permit card on the consolidated weekly ADF&G fish ticket.

(2) *Information required from the catcher vessel.* (i) The operator of a catcher vessel delivering groundfish to a mothership must complete the parts of the fish ticket listed in paragraph (m)(2)(iii) of this section, sign the fish ticket, and provide it to the operator of the mothership receiving groundfish harvest for submittal to ADF&G.

(ii) If there is a change in the operator of the same catcher vessel during the same weekly reporting period, complete a fish ticket for each operator.

(iii) *Information required:* (A) Name and ADF&G vessel registration number of the catcher vessel;

(B) Name, signature and CFEC permit number of CFEC permit holder aboard the catcher vessel;

(C) The six-digit ADF&G groundfish statistical area denoting the actual area of catch;

(D) Write in gear type used by the catcher vessel, whether hook and line, pot, nonpelagic trawl, pelagic trawl, jig, troll, or other.

(3) *Information required from the mothership.* The operator of a mothership must ensure that the following information is written legibly or imprinted from the mothership's CFEC processor plate card on the consolidated weekly ADF&G fish ticket:

(i) Mothership name and ADF&G processor code;

(ii) Enter "FLD" for port of landing or vessel transshipped to;

(iii) Signature of the mothership operator;

(iv) The week-ending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel;

(v) Species code for each species from Table 2 to this part, except species codes 120, 144, 168, 169, or 171;

(vi) The product code from Table 1 to this part (in most cases, this will be product code 01, whole fish);

(vii) ADF&G 6-digit statistical area in which groundfish were harvested. If there are more than eight statistical areas for a fish ticket in a weekly

reporting period, complete a second fish ticket. These statistical areas are defined in a set of charts obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game and are also available on the ADF&G website at <http://www.cf.adfg.state.ak.us/geninfo/statmaps>;

(viii) The landed weight of each species to the nearest pound. If working in metric tons, convert to pounds using 2204.6 lb = 1 mt before recording on fish ticket.

(4) *Time limit and submittal.* (i) The operator of a mothership must complete a minimum of one ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.

(ii) The operator of a mothership must ensure copy distribution within the indicated time limit or retention of the multiple copies of each consolidated weekly ADF&G groundfish fish ticket (G series) as follows:

If fish ticket color is ...	Distribute to ...	Time limit
(A) White	Retained by Mothership, see paragraph (a)(13)(ii)(D)(6) of this section.	N/A
(B) Yellow	Alaska Commercial Fisheries Management & Development Division, Department of Fish & Game, 211 Mission Road, Kodiak, AK, 99615-6399.	Within 45 days after landings are received
(C) Pink	Catcher vessel delivering groundfish to the mothership	1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.
(D) Golden-rod	Extra copy	N/A

(n) *Groundfish CDQ fisheries—(1) CDQ delivery report—(i) Who must submit a CDQ delivery report?* The manager of each shoreside processor and stationary floating processor taking deliveries of groundfish CDQ or PSQ species from catcher vessels must submit for each delivery a CDQ delivery report, unless using the SPELR described at paragraph (e) of this section to submit the required CDQ information.

(ii) *Time limit and submittal.* The manager as defined at paragraph (n)(1)(i) of this section must submit to the Regional Administrator a CDQ delivery report within 24 hours of completion of each delivery of groundfish CDQ or PSQ species to the processor.

(iii) *Information required.* The manager as defined at paragraph (n)(1)(i) of this section must record whether the report is original or a revision and the following information on each CDQ delivery report:

(A) *CDQ group information.* CDQ group number as defined at § 679.2 and CDQ group name or acronym.

(B) *Processor information.* (1) Name and federal processor permit number of the processor as defined at paragraph (n)(1)(i) of this section taking delivery of the CDQ catch.

(2) Date delivery report submitted.

(C) *Vessel and catch information.* (1) Enter the name, Federal Fisheries Permit number if applicable, and ADF&G vessel registration number of the vessel delivering CDQ catch. Write "unnamed" if the vessel has no name;

(2) Enter the delivery date, date fishing began, harvest gear type, and Federal reporting area of CDQ harvest. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(D) *Groundfish CDQ Species in this delivery.* Enter weight by species codes and product codes as defined in Tables 1 and 2 to this part, respectively, of groundfish CDQ species that were delivered. Report the weight of each CDQ species in metric tons to at least the nearest 0.001 mt.

(E) *Halibut CDQ, halibut IFQ and sablefish IFQ in this delivery.* For

nontrawl vessels only, enter the product code and product weight for any halibut CDQ, halibut IFQ, and sablefish IFQ in this catch. Submit this same information to the Regional Administrator on an IFQ landing report (see paragraph (l)(2) of this section).

(F) *PSQ information.* For halibut, enter the species code and the weight to the nearest 0.001 mt. For salmon or crab, enter the species code and the number of animals.

(1) Enter PSQ species delivered and discarded from processor by species code and weight or numbers.

(2) Enter at-sea discards of PSQ for vessels without observers by species code and weight or numbers.

(2) *CDQ catch report—(i) Who must submit a CDQ catch report?* The CDQ representative must submit a CDQ catch report for all groundfish catch made by vessels groundfish CDQ fishing as defined at § 679.2 or for any groundfish harvested by vessels greater than or equal to 60 ft (18.3 m) LOA while halibut CDQ fishing and delivered to a

shoreside processor, to a stationary floating processor, or to a mothership.

(ii) *Time limit and submittal.* Submit to the Regional Administrator a CDQ catch report:

(A) Within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, stationary floating processor, or mothership.

(B) Within 7 days of the date gear used to catch CDQ was retrieved by a catcher/processor.

(iii) *Information required, all CDQ catch reports.* Record whether an original or revised report and the following information on each CDQ catch report:

(A) *Vessel type.* Indicate one appropriate vessel/gear/delivery type.

(B) *Vessel catch information—(1)* Enter the name, Federal fisheries permit number if applicable, and ADF&G vessel registration number of the vessel delivering CDQ catch. Write “unnamed” if the vessel has no name.

(2) *Reporting area.* Enter reporting area in which CDQ catch occurred. If a set occurs in more than one area, record the area code where gear retrieval was completed.

(3) *Gear type.* Circle gear type used to harvest CDQ catch. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(C) *CDQ group information.* Enter CDQ number as defined at § 679.2, CDQ group name or acronym, and date report submitted to NMFS.

(iv) *Catch and delivery information: catcher vessels retaining all groundfish CDQ and delivering to shoreside processors or stationary floating processors (Option 1 in the CDP).* Record the following information on each applicable CDQ catch report:

(A) *Delivery information.* Name and Federal processor permit number of the shoreside processor or the stationary floating processor taking delivery of the CDQ catch; date catch delivered to processor; and date fishing began on this trip.

(B) *Catch information, groundfish CDQ species.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species retrieved by a catcher/processor or delivered to a processor as defined in paragraph (n)(1)(i) of this section by product code and species code as defined in Tables 1 and 2 to this part, respectively.

(C) *Catch information, halibut CDQ, halibut IFQ and sablefish IFQ.* For non-trawl vessels only, enter the product code as defined in Table 1 to this part and product weight in metric tons to at least the nearest 0.001 mt for any

halibut CDQ, halibut IFQ, and sablefish IFQ in the CDQ delivery. Submit this same information to the Regional Administrator on an IFQ landing report (see § 679.5(l)(2)).

(D) *Mortality information, salmon and crab PSQ.* For salmon or crab, enter the species code, as defined in Table 2 to this part, and the number of animals.

(E) *Mortality information, halibut PSQ.* For halibut PSQ catch, enter the round weight to the nearest 0.001 mt, mortality rate, and overall halibut mortality in metric tons to the nearest 0.001 mt. Use the target fishery designations and halibut bycatch mortality rates in the annual final specifications published in the **Federal Register** under § 679.20(c).

(v) *Catch and delivery information: catcher/processors, catcher vessels delivering unsorted codends to motherships, or catcher vessels (with observers) using nontrawl gear and discarding groundfish CDQ at sea (Option 2 in the CDP).* Record the following information on each applicable CDQ catch report.

(A) *Delivery information.* (1) If a catcher vessel (with observers) using nontrawl gear, discarding groundfish CDQ at sea, and delivering to a shoreside processor or stationary floating processor, enter name and Federal processor permit number of the shoreside processor or the stationary floating processor, date catch delivered, and date fishing began on this trip.

(2) If a catcher vessel delivering unsorted codends to a mothership, enter the mothership name and Federal fisheries permit number, observer's haul number for this catch, and date codend is completely onboard the mothership as determined by the Level 2 observer.

(3) If a catcher/processor, the observer's haul number for this catch, and the date on which the gear was retrieved as determined by the Level 2 observer.

(B) *Catch information, groundfish CDQ species.* (See paragraph (n)(2)(iv)(B) of this section).

(C) *Catch information, halibut IFQ/CDQ and sablefish IFQ.* (See paragraph (n)(2)(iv)(C) of this section).

(D) *Mortality information, salmon and crab prohibited species.* (See paragraph (n)(2)(iv)(D) of this section).

(E) *Mortality information, halibut PSQ.* (See § 679.5(n)(2)(iv)(E) of this section).

(o) *Catcher vessel cooperative pollock catch report—(1) Applicability.* The designated representative of each AFA inshore processor catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report

detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements of this section.

(2) *Time limits and submittal.* (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By FAX.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.I.t. 1 week after the date of completion of delivery.

(3) *Information required.* The cooperative pollock catch report must contain the following information:

(i) Cooperative account number;

(ii) Catcher vessel ADF&G number;

(iii) Inshore processor Federal processor permit number;

(iv) Delivery date;

(v) Amount of pollock (in lb) delivered plus weight of at-sea pollock discards;

(vi) ADF&G fish ticket number.

* * * * *

5. In § 679.7, paragraphs (a)(10) and (a)(11) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(10) *Recordkeeping and reporting.* (i) Fail to comply with or fail to ensure compliance with requirements in §§ 679.4 or 679.5.

(ii) Alter, erase, or mutilate any permit, card or document issued under §§ 679.4 or 679.5.

(iii) Fail to submit or submit inaccurate information on, any report, application, or statement required under this part.

(iv) Intentionally submit false information on any report, application, or statement required under this part.

(11) *Buying station—(i) Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) *Associated processor.* Function as a vessel or land-based buying station without an associated processor.

* * * * *

6. In § 679.21, paragraphs (b)(1), (e)(1)(ii), and (e)(1)(iii) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

(b) *General.* (1) See § 679.2 for definition of prohibited species.
(e) * * *

(1) * * *
(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation

with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

When the number of mature female red king crab is ...	The zone 1 PSC limit will be ...
(A) At or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt)	32,000 red king crab.
(B) Above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lb (24,948 mt)	97,000 red king crab.
(C) Above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb	197,000 red king crab.

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

(A) The following table refers to the PSC limits for *C. bairdi* that you must follow in Zone 1:

When the total abundance of <i>C. bairdi</i> crabs is ...	The PSC limit will be ...
(1) 150 million animals or less	0.5 percent of the total abundance minus 20,000 animals
(2) Over 150 million to 270 million animals	730,000 animals
(3) Over 270 million to 400 million animals	830,000 animals
(4) Over 400 million animals	980,000 animals

(B) This table refers to the PSC limits for *C. bairdi* that you must follow in Zone 2.

When the total abundance of <i>C. bairdi</i> crabs is ...	The PSC limit will be ...
(1) 175 million animals or less	1.2 percent of the total abundance minus 30,000 animals
(2) Over 175 million to 290 million animals	2,070,000 animals
(3) Over 290 million to 400 million animals	2,520,000 animals
(4) Over 400 million animals	2,970,000 animals

* * * * *
7. In § 679.24, paragraph (b)(2) is removed and reserved; paragraph (a) heading and paragraphs (a)(1), (b)(3) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *
(a) *Marking of hook-and-line, longline pot, and pot-and-line gear.* (1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following:
(i) The vessel's name; and
(ii) The vessel's Federal fisheries permit number; or
(iii) The vessel's ADF&G vessel registration number.
* * * * *

(b) * * *
(3) *Trawl footrope.* No person trawling in any GOA area limited to pelagic trawling under § 679.22 may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow.
* * * * *

§ 679.32 [Amended]

8. In § 679.32, paragraph (a)(2) is removed; paragraph (a)(1) is redesignated as paragraph (a).
9. In § 679.40, paragraphs (a)(2)(i)(C) and (D) are added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *
(a) * * *
(2) * * *
(i) * * *
(C) Who is a citizen of the United States at the time of application for QS.
(D) Who is a corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.
* * * * *

§ 679.41 [Amended]

10. In § 679.41, paragraph (i)(2) is removed; and paragraph (i)(3) is redesignated as paragraph (i)(2).
11. In § 679.42, paragraph (c)(2) is revised and paragraph (c)(3) is added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *
(c) Requirements and deductions. * * *
(2) NMFS shall use the following sources of information to debit a CDQ or IFQ account. A CDQ or IFQ account will be debited as indicated in Table 3 to this part.
(i) Except as provided in § 679.5(l)(2)(vi)(j)(2), if offload of unprocessed CDQ or IFQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(vi) to be included in the IFQ/CDQ landing report.

(ii) If offload of processed IFQ & CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish processed product actually measured at or before the time of offload. If the product scale weights are taken before the time of offload, then the species and actual product weight of each box or container must be visibly marked on the outside of each container to facilitate enforcement inspection.

(3) All IFQ catch onboard a vessel must be debited from the IFQ permit holder's account under which the catch was harvested.
* * * * *

12. In § 679.45, paragraphs (a)(4)(iii) and (iv) are revised to read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *
(4) * * *
(iii) Payment address. Mail payment and related documents to:
Administrator, Alaska Region, NMFS,

Attn: RAM Program,
 P.O. Box 21668,
 Juneau, AK 99802 1668,
 FAX: (907) 586-7354.

or submit electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

* * * * *

13. In part 679, Figure 3b, "Coordinates," is revised, and Figures 19 and 20 are added to read as follows:

FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

b. Coordinates

Code	Description
610	<i>Western GOA Regulatory Area, Shumagin District.</i> Along the south side of the Aleutian Islands, including those waters south of Nichols Point (54°51'30" N lat) near False Pass, and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.18' N, 169°40.47' W; 52°49.24' N, 169°07.10' W; 53°23.13' N, 167°50.50' W; 53°18.95' N, 167°51.06' W; 53°58.97' N, 166°16.50' W; 54°02.69' N, 166°02.93' W; 54°07.69' N, 165°39.74' W; 54°08.40' N, 165°38.29' W; 54°11.71' N, 165°23.09' W; 54°23.74' N, 164°44.73' W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass) and 159°00' W long.
620	<i>Central GOA Regulatory Area, Chirikof District.</i> Along the south side of the Alaska Peninsula, between 159°00' W long and 154°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS—Continued

b. Coordinates

Code	Description
630	<i>Central GOA Regulatory Area, Kodiak District.</i> Along the south side of continental Alaska, between 154°00' W long and 147°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	<i>Eastern GOA Regulatory Area, West Yakutat District.</i> Along the south side of continental Alaska, between 147°00' W long and 140°00' W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	<i>Prince William Sound.</i> Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	<i>Eastern GOA Regulatory Area, Southeast Outside District.</i> East of 140°00' W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	<i>Eastern GOA Regulatory Area, Southeast Inside District.</i> As specified in Alaska State regulations at 5AAC 28.105 (a)(1) and (2).
690	<i>GOA outside the U.S. EEZs</i> described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

NOTE: A statistical area is the part of a reporting area contained in the EEZ.

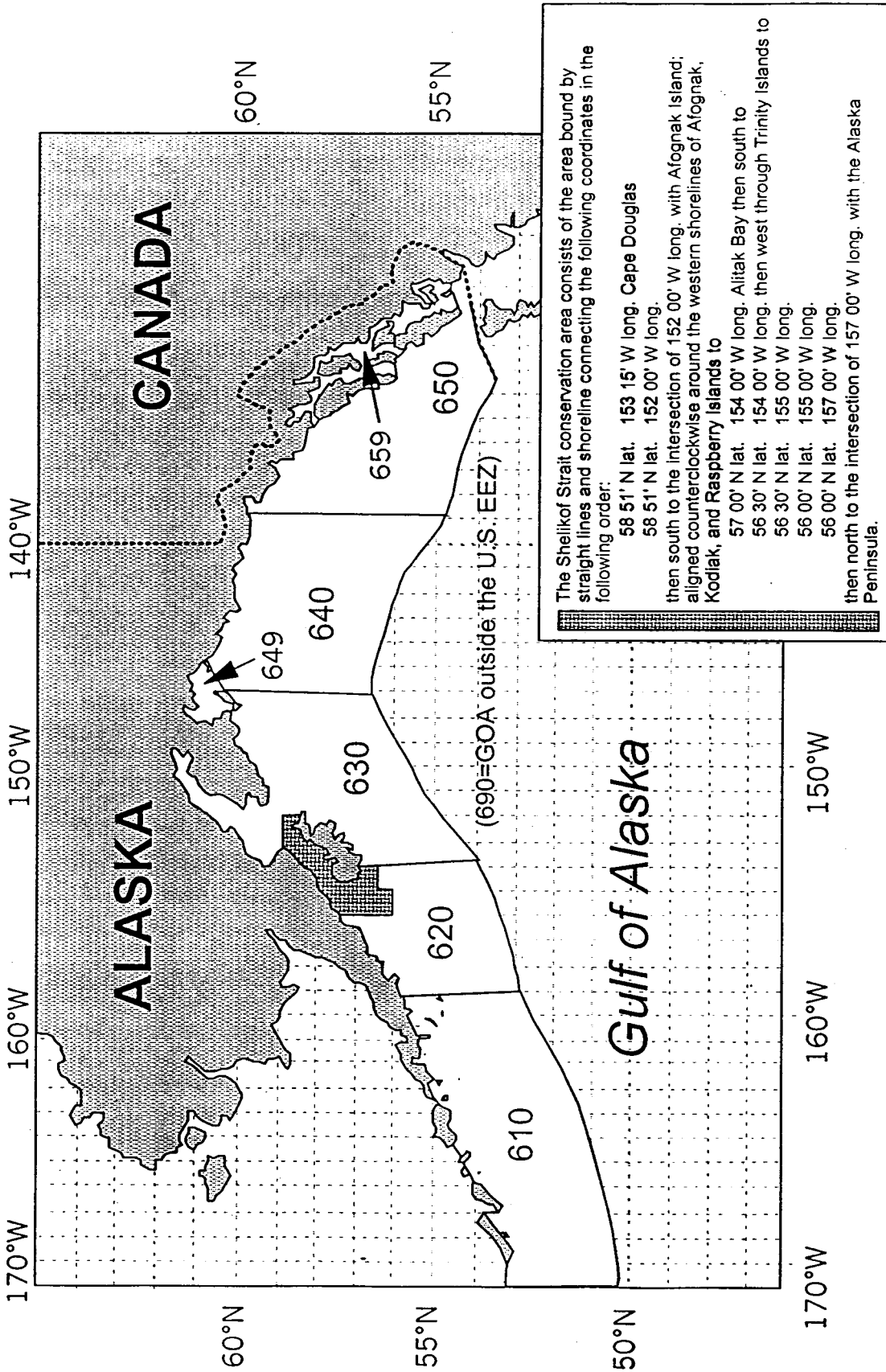


Figure 19 to Part 679. Shelikof Strait Conservation Area

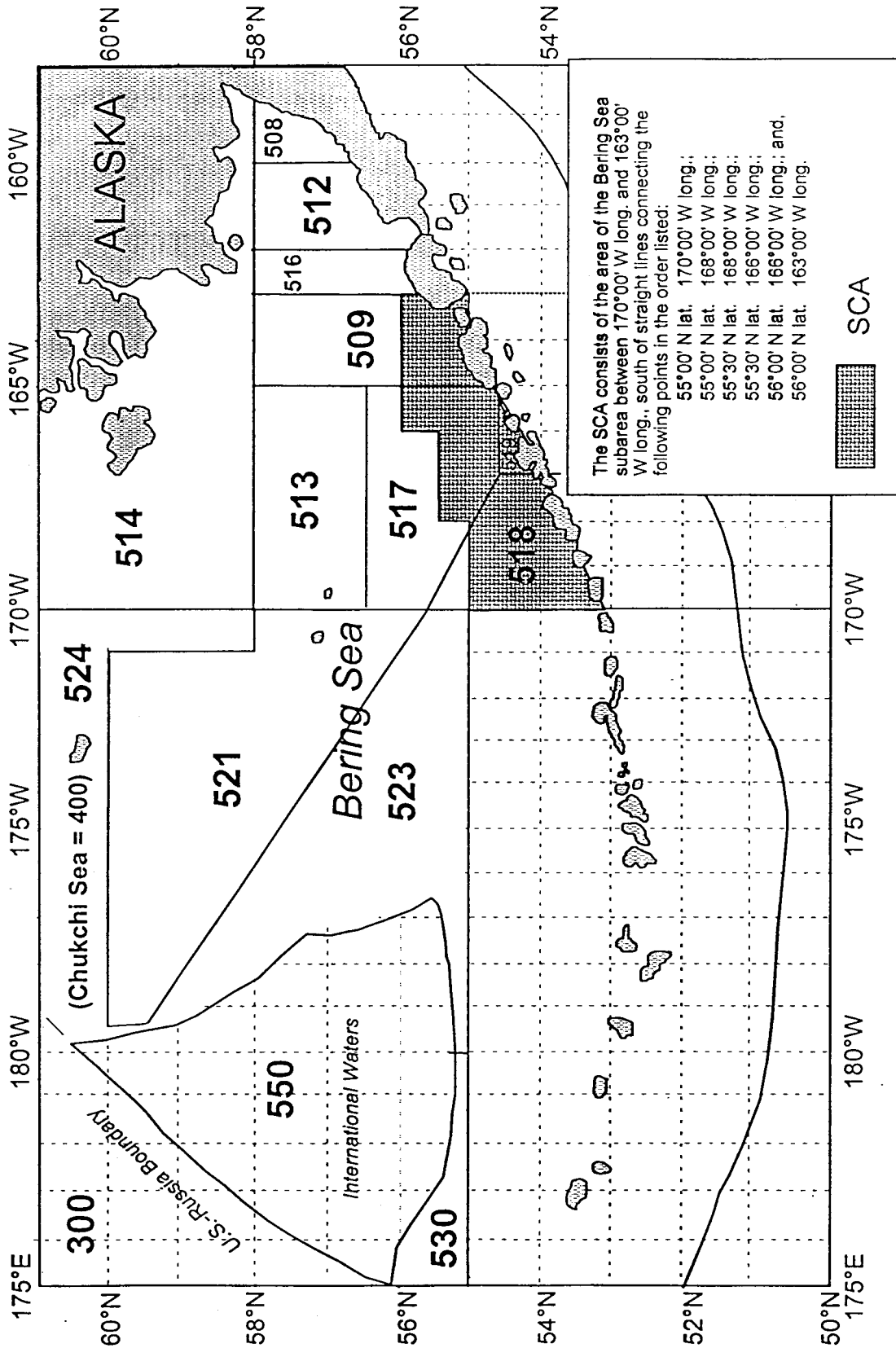


Figure 20 to Part 679. Steller sea lion conservation area (SCA) of the Bering Sea

14. In part 679, Tables 1, 2, 3, 8, 9, 10, 11, and 14a are revised, and Table 19 is added to read as follows:

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
GENERAL USE CODES*	
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head. (ancillary only)	19
Bled only. Throat, or isthmus, slit to allow blood to drain.	03
Bled fish destined for fish meal (includes offsite production) DO NOT RECORD ON PTR.	42
Bones (if meal, report as 32) (ancillary only).	39
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.	37
Cheeks. Muscles on sides of head (ancillary only)	17
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only)	18
Filletts, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.	24
Filletts, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.	23
Filletts with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.	22
Filletts with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.	20
Filletts with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.	21
Fish meal. Meal from whole fish or fish parts; includes bone meal.	32
Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard.	33
Gutted, head on. Belly slit and viscera removed.	04

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Head and gutted, with roe.	06
Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.	10
Heads. Heads only, regardless where severed from body (ancillary only).	16
Kirimi (Steak) Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.	11
Mantles, octopus or squid. Flesh after removal of viscera and arms.	36
Milt. (in sacs, or testes) (ancillary only).	34
Minced. Ground flesh.	31
Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses.	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh.	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only).	14
Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.	12
Stomachs. Includes all internal organs (ancillary only)	35
Surimi. Paste from fish flesh and additives	30
Whole fish/meal. Whole fish destined for meal (includes offsite production.) DO NOT RECORD ON PTR.	41 ¹
Whole fish/food fish.	01 ¹
Whole fish/bait. Processed for bait. Sold	02

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Wings. On skates, side fins are cut off next to body.	13
DISCARD/DISPOSITION CODES	
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.	86
Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.	92 ¹
Whole fish/damaged. Whole fish damaged by observer's sampling procedures.	93 ¹
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait	95 ¹
Whole fish, discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, catcher/processors, motherships, or vessel buying stations. DO NOT RECORD ON PTR.	98
Whole fish, discard, infested. Flea-infested fish, parasite-infested fish.	88
Whole fish, discard, decomposed. Decomposed or previously discarded fish	89
Whole fish, discard, onshore. Discard after delivery and before processing by shoreside processors, stationary floating processors and buying stations and in-plant discard of whole ground-fish and prohibited species during processing. DO NOT RECORD ON PTR.	99
PRODUCT DESIGNATION CODES	
Ancillary product. A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.	A
Primary product. A product, such as fillets, made from each fish, with the highest recovery rate.	P

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Reprocessed or rehandled product. A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.	R
PACIFIC HALIBUT IFQ & CDQ CODES The following codes are authorized for IFQ and CDQ reporting of Pacific halibut.	
Gutted, head off. Belly slit and viscera removed. Pacific halibut only.	05
Gutted, head on. Belly slit and viscera removed. Pacific halibut.	04
The following codes are effective through December 31, 2001.	
Whole fish/food fish with ice & slime. Sablefish only.	51
Gutted, head on. Belly slit and viscera removed. Pacific halibut and sablefish.	54
Gutted, head off, with ice & slime. Belly slit and viscera removed. Pacific halibut only.	55
Headed and gutted, Western cut, with ice & slime. Sablefish only.	57
Headed and gutted, Eastern cut, with ice & slime. Sablefish only.	58

¹When using whole fish codes, record round weights not product weights, even if the whole fish is not used.

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Atka mackerel (greenling)	193
FLOUNDER	
Arrowtooth and/or Kamchatka	121
Starry	129
Alaska Plaice	133
Octopus	870
Pacific Cod	110
Pollock	270
ROCKFISH	
Aurora	185
Black (BSAI)	142
Blackgill	177
Bocaccio	137
Canary	146
Chilipepper	178

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
China	149
Copper	138
Darkblotched	159
Dusky	154
Greenstriped	135
Harlequin	176
Northern	136
Pacific Ocean Perch (<i>S. alutus</i> only)	141
Pygmy	179
Quillback	147
Redbanded	153
Redstripe	158
Rosethorn	150
Rougheye S. Aleutianus	151
Sharpchin	166
Shortbelly	181
Shortraker (<i>S. borealis</i>)	152
Silvergray	157
Splitnose	182
Stripetail	183
Thornyhead (all <i>Sebastes</i> species)	143
Tiger	148
Vermilion	184
Widow	156
Yelloweye	145
Yellowmouth	175
Yellowtail	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS	
general	689
Pacific sleeper	692
salmon	690
spiny dogfish	691
Skate, longnose	701
Skates, general	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid	875
Turbot, Greenland	134
FORAGE FISH (all species of the following families)	
Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>)	209
Capelin smelt (family <i>Osmeridae</i>)	516
Deep-sea smelts (family <i>Bathylagidae</i>)	773
Eulachon smelt (family <i>Osmeridae</i>)	511
Gunnels (family <i>Pholidae</i>)	207
Krill (order <i>Euphausiacea</i>)	800
Laternfishes (family <i>Myctophidae</i>)	772
Pacific herring (family <i>Clupeidae</i>)	235
Pacific Sand fish (family <i>Trichodontidae</i>)	206

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Pacific Sand lance (family <i>Ammodytidae</i>)	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <i>Stichaeidae</i>)	208
Surf smelt (family <i>Osmeridae</i>)	515
GROUP CODES (DO NOT USE FOR SORTING SPECIES. Do not record on ADF&G fish tickets).	
<i>Demersal shelf rockfish</i> (china, copper, quillback, rosethorn, tiger, yellow-eye, canary)	168
<i>Miscellaneous flatfish</i> (all flatfish without separate codes)	120
<i>Pelagic shelf rockfish</i> (dusky, yellowtail, widow)	169
Shortraker/rougheye rockfish	171
<i>Slope rockfish</i> (aurora, blackgill, Bocaccio, redstripe, silvergray, chili-pepper, dark-blotched, green-striped, harlequin, pygmy, redbanded, shortbelly, splitnose, stripetail, vermilion, yellowmouth, sharpchin)	144
PROHIBITED SPECIES CODES	
CRAB	
Red king	921
Blue king	922
Gold/brown king	923
Scarlet king	924
Bairdi tanner	931
Opilio Tanner	932
Tanner, grooved	933
Tanner, triangle	934
Pacific halibut	200
Pacific herring (family <i>Clupeidae</i>)	230
SALMON	
Chinook	410
Sockeye	420
Coho	430
Pink	440
Chum	450
Steelhead trout	540
Additional *non-FMP CODES (*These species codes may be recorded in NMFS logbooks and reports but are not required by regulations of this part.)	
Abalone	860
Albacore	720
Arctic char, anadromous	521*
CLAMS	
Butter	810*
Cockle	820*
Eastern softshell	842*
Geoduck	815*
Little-neck	840*
Razor	830*
Surf	812*
Coral	899*
CRAB	
Box	900*
Dungeness	910
Korean horsehair	940*
Multispine	951*
Verrilli	953*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Dolly varden, anadromous	531*
Eels or eel-like fish	210*
Giant grenadier	214*
Greenling, kelp	194*
Greenling, rock	191*
Greenling, whitespot	192*
Grenadier (rattail)	213*
Jellyfish	625*
Lamprey, pacific	600*
Lingcod	130*
Lumpsucker	216*
Mussel, blue	855*
Pacific flatnose	260*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Pacific hagfish	212*
Pacific saury	220*
Pacific tomcod	250*
Prowfish	215*
Rockfish, black	142*
Rockfish, blue	167*
Sardine, Pacific (pilchard)	170*
Scallop, weathervane	850*
Scallop, pink (or calico)	851*
Sea cucumber	895*
Sea urchin, green	893*
Sea urchin, red	892*
Shad	180*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
SHRIMP	
Pink	961*
Sidestripe	962*
Humpy	963*
Coonstripe	964*
Spot	965*
Skilfish	715*
Smelt, surf	515*
Snails	890*
Sturgeon, general	680*

BILLING CODE 3510-22-S

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE							
		32 MEAL	33 OIL	34 MILT	35 STOMACHS	36 MANTLES	37 BUTTERFLY BACKBONE REMOVED	88, 89 INFESTED OR DECOMPOSED FISH	98, 99 DISCARDS
PACIFIC COD	110	0.17	...	...	...	...	0.43	0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17	...	...	...	...	...	0.00	1.00
FLATHEAD SOLE	122	0.17	...	...	...	...	...	0.00	1.00
ROCK SOLE	123	0.17	...	...	...	...	...	0.00	1.00
DOVER SOLE	124	0.17	...	...	...	...	...	0.00	1.00
REX SOLE	125	0.17	...	...	...	...	...	0.00	1.00
YELLOWFIN SOLE	127	0.17	...	...	...	...	...	0.00	1.00
GREENLAND TURBOT	134	0.17	...	...	...	...	...	0.00	1.00
THORNYHEAD ROCKFISH	143	0.17	...	...	...	...	...	0.00	1.00
SCULPINS	160	0.17	...	...	...	...	...	0.00	1.00
ATKA MACKEREL	193	0.17	...	...	...	...	...	0.00	1.00
POLLOCK	270	0.17	...	...	...	0.43	0.00	0.00	1.00
SMELTS	510	0.17	...	...	...	...	...	0.00	1.00
BULACHON	511	0.17	...	...	...	...	...	0.00	1.00
CAPELIN	516	0.17	...	...	...	...	...	0.00	1.00
SHARKS	689	0.17	...	...	...	...	...	0.00	1.00
SKATES	700	0.17	...	...	...	...	...	0.00	1.00
SABLEFISH	710	0.17	...	...	...	...	...	0.00	1.00
OCTOPUS	870	0.17	...	...	...	0.85	0.00	0.00	1.00
SQUID	875	0.17	...	...	...	0.75	0.00	0.00	1.00
ROCKFISH	...	...	...	...	...	...	...	0.00	1.00
Conversion rates to Net Weight for PACIFIC HALIBUT	200	...	...	...	...	...	...	0.00	0.75

¹Standard pollock surimi rate during January through June
²Standard pollock surimi rate during July through December.
 Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.
 To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate
 To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 Or multiply by 1.33333.

BILLING CODE 3510-22-C

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS

Harvest Zone	Description
A1	BSAI EEZ off Alaska
A2	GOA EEZ off Alaska
B	State waters of Alaska
C	State waters other than Alaska

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS—Continued

Harvest Zone	Description
D	Donut Hole
F	Foreign Waters Other than Russia
I	International Waters other than Donut Hole and Seamounts

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS—Continued

Harvest Zone	Description
R	Russian waters
S	Seamounts in International waters
U	U.S. EEZ other than Alaska

TABLE 9 TO PART 679—REQUIRED LOGBOOKS, REPORTS, FORMS AND ELECTRONIC LOGBOOK AND REPORTS FROM PARTICIPANTS IN THE FEDERAL GROUND FISH FISHERIES

Requirement Name	Catcher vessel	Catcher/Processor	Mothership	Shoreside Processor ³	Buying Station
Daily Fishing Logbook (DFL) ¹	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL) ¹	NO	YES	YES	YES	NO
Buying Station Report (BSR)	NO	NO	NO	NO	YES
Check-in/Check-out Report	NO	YES	YES	YES	NO
Optional: Electronic Check-in/out report	NO	YES	YES	YES	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Optional: Electronic WPR	NO	YES	YES	YES	NO
Shoreside Processor Electronic Logbook Report (SPELR) instead of DCPL and WPR when receiving AFA pollock or pollock harvested in a directed pollock fishery	NO	NO	NO	YES	NO
Optional: SPELR instead of DCPL and WPR	NO	NO	NO	YES	NO
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Daily Production Report (DPR) ²	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO
Required use AFA and CDQ at-sea scales, including daily scale test, printed scale output, request for inspection of scales and observer station, scale approval sticker	NO	YES	YES	NO	NO
VMS when fishing for Atka mackerel or AFA pollock	YES	YES	NO	NO	NO

¹ Two formats of the DFL and catcher/processor DCPL exist: one for trawl gear and one for longline and pot gear.

² DPR is submitted only when specifically requested by Regional Administrator.

³ Also stationary floating processor.

BILLING CODE 3510-22-S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES													
Code	Species	Pollock	Pacific cod	DW flat ¹	Rex sole	Flathead sole	SW flat ²	Arrowtooth	Sablefish	Aggregated rockfish ⁽³⁾	SR/RE ERA ⁽¹⁾	DSR SEO	Atka mackerel	Aggregated forage ⁽⁶⁾ fish	Other species
110	Pacific cod	20	na ⁹	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20
121	Arrowtooth	5	5	0	0	0	0	na ⁹	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	20	na ⁹	20	35	7	15	7	1	20	2	20
125	Rex sole	20	20	20	na ⁹	20	20	35	7	15	7	1	20	2	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
143	Thomyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
152/151	Shortraker/roughye ⁽³⁾	20	20	20	20	20	20	35	7	15	na ⁽⁹⁾	1	20	2	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	⁽³⁾	10	na ⁽⁹⁾	2	20
270	Pollock	na ⁹	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20
710	Sablefish	20	20	20	20	20	20	35		15	7	1	20	2	20
	Flatfish, deep water ⁽¹⁾	20	20	na ⁽⁹⁾	20	20	20	35	7	15	7	1	20	2	20
	Flatfish, shallow water ⁽³⁾	20	20	20	20	na ⁽⁹⁾	20	35	1	5	⁽³⁾	10	20	2	20
	Rockfish, other ⁽⁴⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, pelagic ⁽⁵⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, DSR-SEO ⁽⁶⁾	20	20	20	20	20	20	35	7	15	7	na ⁽⁹⁾	20	2	20
	Other species ⁽⁷⁾	20	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	na ⁽⁹⁾
	Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20

Notes to Table 10 to Part 679	
1	Deep-water flatfish Dover sole, Greenland turbot, and deep-sea sole
2	Shallow water flatfish Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder
3	Shortraker/rougheye rockfish SR/RE shortraker/rougheye rockfish (171) shortraker rockfish (152) rougheye rockfish (151) SR/RE ERA shortraker/rougheye rockfish in the Eastern Regulatory Area. Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish
4	Other rockfish Western Regulatory Area Central Regulatory Area West Yakutat District Southeast Outside District means slope rockfish and demersal shelf rockfish means slope rockfish
5	Slope rockfish <u>S. auroa</u> (aurora) <u>S. variegatus</u> (harlequin) <u>S. brevispinis</u> (silvergrey) <u>S. melanostomus</u> (blackgill) <u>S. wilsoni</u> (pygmy) <u>S. diploproa</u> (splitnose) <u>S. paucispinis</u> (bocaccio) <u>S. babcocki</u> (redbanded) <u>S. saxicola</u> (stripetail) <u>S. goodei</u> (chilipepper) <u>S. proriger</u> (redstripe) <u>S. miniatus</u> (vermillion) <u>S. frameji</u> (darkblotch) <u>S. zacentrus</u> (sharpchin) <u>S. reedj</u> (yellowmouth) <u>S. elongatus</u> (greenstriped) <u>S. jordani</u> (shortbelly) In the Eastern GOA only, Slope rockfish also includes <u>S. polyspinous</u> . (Northern)
6	Pelagic shelf rockfish <u>S. ciliatus</u> (dusky) <u>S. entomelas</u> (widow) <u>S. flavidus</u> (yellowtail)
7	Demersal shelf rockfish (DSR) <u>S. pinniger</u> (canary) <u>S. maliger</u> (quillback) <u>S. ruberrimus</u> (yelloweye) <u>S. nebulosus</u> (china) <u>S. helvomaculatus</u> (rosethorn) <u>S. saurinus</u> (copper) <u>S. nigrocinctus</u> (tiger)
8	Other species sculpins skates octopus

DSR-SEO = Demersal shelf rockfish in the Southeast Outside District

	sharks	squid	
9	Aggregated rockfish means rockfish of the genera <i>Sebastes</i> and <i>Sebastolobus</i> defined at § 679.2 except in: Southeast Outside District (SEO) where DSR is a separate category for those species marked with a numerical percentage Eastern Regulatory Area (ERA) where SR/RE is a separate category for those species marked with a numerical percentage		
10	N/A not applicable		
11	FORAGE FISH (all species of the following families) Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>) 209 Capelin smelt (family <i>Osmeridae</i>) 516 Deep-sea smelts (family <i>Bathylagidae</i>) 773 Eulachon smelt (family <i>Osmeridae</i>) 511 Gunnels (family <i>Photidae</i>) 207 Krill (order <i>Euphausiacea</i>) 800 Lanternfishes (family <i>Myctophidae</i>) 772 Pacific herring (family <i>Clupeidae</i>) 235 Pacific Sand fish (family <i>Trichodontidae</i>) 206 Pacific Sand lance (family <i>Ammodytidae</i>) 774 Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <i>Stichaeidae</i>) 208 Surf smelt (family <i>Osmeridae</i>) 515		

TABLE 11 TO PART 679—BSAI RETAINABLE PERCENTAGES
INCIDENTAL CATCH SPECIES¹

BASIS SPECIES	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish ¹	Rock sole	Flathead sole	Greenland turbot	Sablefish	Shortraker/rougheye	Aggregated Rockfish ²	Squid	Aggregate Forage Fish ³	Other Species
Pollock (270)	na ⁴	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod (110)	20	na ⁽⁴⁾	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel (193)	20	20	na ⁴	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth (121)	0	0	0	na ⁽⁴⁾	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole (127)	20	20	20	35	na ⁴	35	35	35	1	1	2	5	20	2	20
Other flatfish ¹	20	20	20	35	35	na ⁴	35	35	1	1	2	5	20	2	20
Rock sole	20	20	20	35	35	35	na ⁴	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na ⁴	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na ⁴	15	7	15	20	2	20
Sablefish ⁵	20	20	20	35	20	20	20	20	35	na ⁴	7	15	20	2	20
Other rockfish ⁶	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS ⁷	20	20	20	35	20	20	20	20	35	15	na ⁽⁴⁾	15	20	2	20
Pacific Ocean perch (141)	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin (166)/Northern AI (136)	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/Rougheye AI (171)	20	20	20	35	20	20	20	20	35	15	na ⁴	5	20	2	20
Squid (875)	20	20	20	35	20	20	20	20	1	1	2	5	na ⁴	2	20
Other species ⁸	20	20	20	35	20	20	20	1	1	2	5	20	2	na ⁴	
Aggregated amount of non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

¹For definition of grouped species, see footnotes to Table 1 of the GOA groundfish specifications (<http://www.fakr.noaa.gov/sustainablefisheries/2000harvestspecs.htm>). ²Aggregated rock fish of the genera *Sebastes* and *Sebastes* except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category. ³Forage fish are defined at Table 1 to this part. ⁴na = not applicable ⁵For fixed gear restrictions, see 50 CFR 679.7 (f)(3)(ii) and 679.7 (f)(11). ⁶“Other rockfish” includes all *Sebastes* and *Sebastes* species except for Pacific ocean perch; and sharpchin, northern, shortraker, and rougheye rockfish. ⁷ Other red rockfish (Bering Sea) includes shortraker, rougheye, sharpchin, and northern rockfish. ⁸ “Other species” includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2 are not included in the “other species” category.

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Adak	186	ADA			
Akutan	101	AKU	X	54°08'05"	165°46'20"
Akutan Bay	102				
Alitak	103	ALI			
Anchor Point	104				
Anchorage	105	ANC			
Angoon	106	ANG			
Aniak		ANI			
Anvik		ANV			
Atka	107	ATK			
Auke Bay	108				
Baranof Warm Springs	109				
Beaver Inlet	110				
Bethel		BET			
Captains Bay	112				
Chignik	113	CHG			
Chinitna Bay	114				
Cordova	115	COR	X	60°33'00"	145°45'00"
Craig	116	CRG	X	55°28'30"	133°09'00"
Dillingham	117	DIL			
Douglas	118				
Dutch Harbor/Unalaska	119	DUT	X	53°53'27"	166°32'05"
Edna Bay	121				

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA--Continued

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Egegik	122	EGE			.....
Ekuk		EKU			.....
Elfin Cove	123	ELF			.....
Emmonak		EMM			.....
False Pass	125	FSP			.....
Fairbanks		FBK	.....		.....
Galena		GAL		.....	.....
Glacier Bay		GLB		.....	.....
Glennallen		GLN	.....		.....
Gustavus	127	GUS			.....
Haines	128	HNS			.....
Halibut Cove	130	.....			.....
Hollis	131	.....			.....
Homer	132	HOM	X	59°38'40"	151°33'00"
Hoonah	133	HNH			.....
Hydaburg		HYD		.....	.....
Hyder	134	HDR			.....
Ikatan Bay	135	.....			.....
Juneau	136	JNU			.....
Kake	137	KAK			.....
Kaltag		KAL			.....
Kasilof	138	KAS			.....
Kenai	139	KEN			.....
Kenai River	140				.....
Ketchikan	141	KTN	X	55°20'30"	131°38'45"
King Cove	142	KCO	X	55°03'20"	162°19'00"
King Salmon	143	KNG			.....
Kipnuk	144				.....
Klawock	145	KLA			.....
Kotzebue		KOT			.....
La Conner		LAC			.....
Mekoryuk	147				.....
Metlakatla	148	MET			.....
Moser Bay		MOS			.....
Naknek	149	NAK			.....
Nenana		NEN			.....
Nikiski (or Nikishka)	150	NIK			.....
Ninilchik	151	NIN			.....
Nome	152	NOM			.....
Nunivak Island		NUN			.....
Old Harbor	153	OLD			.....
Other/Unknown ¹	499	UNK			.....
Pelican	155	PEL	X	57°57'30"	136°13'30"
Petersburg	156	PBG	X	56°48'10"	132°58'00"
Point Baker	157				.....
Port Alexander	158	PAL			.....
Port Armstrong		PTA			.....
Port Bailey	159	PTB			.....
Port Graham	160	GRM			.....
Port Lions		LIO			.....
Port Moller		MOL			.....
Port Protection	161				.....
Resurrection Bay	163				.....
Sand Point	164	SPT	X	55°20'15"	160°30'00"
Savoonga	165				.....
Seldovia	166	SEL			.....
Seward	167	SEW	X	60°06'30"	149°26'30"
Sitka	168	SIT	X	57°03'	135°20'
Skagway	169	SKG			.....
Soldotna		SOL			.....
St. George	170	STG			.....
St. Lawrence	171				.....
St. Mary		STM			.....
St. Paul	172	STP	X	57°07'20"	170°16'30"
Tee Harbor	173				.....
Tenakee Springs	174	TEN			.....
Thorne Bay	175				.....

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA—Continued

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Togiak	176	TOG			
Toksook Bay	177				
Tununak	178				
Ugadaga Bay	179				
Ugashik		UGA			
Unalakleet		UNA			
Valdez	181	VAL			
Wasilla		WAS			
Whittier	183	WHT			
Wrangell	184	WRN			
Yakutat	185	YAK	X	59°33'	139°44'

¹To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that we may update our list. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

TABLE 19 TO PART 679—SEABIRD AVOIDANCE GEAR CODES

Code	Seabird Avoidance Gear
1	<i>Bird streamer line.</i> Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks. Streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. This device can be single or paired.
2	<i>Buoy bag, bird bag, or other float device.</i> Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking baited hooks. Each of these devices consist of two components: a length of line (without streamers attached), and one or more float devices at the terminal end. Multiple devices may be used.
3	<i>Lining tube and /or line shooter.</i> Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from setting on hooks during deployment of gear.
4	<i>Combination of devices.</i> Any combination of the above devices (codes 1, 2, and / or 3).
9	<i>No bird deterrent device</i> deployed.
0	<i>Night fishing</i> Deploy gear only during the hours specified in § 679.24 (e)(3) using only the minimum vessel's lights necessary for safety.

§§ 679.1, 679.2, 679.4, 679.5, 679.6, 679.7, 679.20, 679.21, 679.22, 679.23, 679.24, 679.26, 679.30, 679.32, 679.41, 679.43, 679.50, and Figure 3 to Part 679 [Amended]

phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column.
BILLING CODE 3510-22-S

15. At each of the locations shown in the "Location" column, remove the

LOCATION	REMOVE	ADD	FREQUENCY
§ 679.1(f)	(applicable through December 31, 1997)	(applicable through December 31, 2002)	1
§ 679.2 Definition for Area endorsement	means a	means (for purposes of groundfish LLP) a	1
§ 679.2 Definition for Area endorsement, paragraph (3)	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.2 Definition for Area endorsement, paragraph (5)	Western Area of the Gulf of Alaska	Western GOA regulatory area	1
§ 679.2 Definition for Area/species endorsement, paragraph (1)	Aleutian Islands brown king	Aleutian Islands brown king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (2)	Aleutian Islands red king	Aleutian Islands red king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (3)	Bristol Bay red king	Bristol Bay red king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (4)	Bering Sea and Aleutian Islands Area <u>C. opilio</u> and <u>C. bairdi</u>	Bering Sea and Aleutian Islands Area <u>C. opilio</u> and <u>C. bairdi</u> (see Figure 16 to this part)	1

§ 679.2 Definition for Area/species endorsement, paragraph (5)	Norton Sound red king and Norton Sound blue king	Norton Sound red king and Norton Sound blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (6)	Pribilof red king and Pribilof blue king	Pribilof red king and Pribilof blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (7)	St. Matthew blue king	St. Matthew blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Authorized distributor	taken as	taken as incidental catch	1
§ 679.2 Definition for Authorized fishing gear	limitations) means	limitations and Table 15 to this part for gear codes) means	1
§ 679.2 Definition for Buying station	shoreside processor	shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Central Gulf or GOA Central Regulatory Area	Central Gulf or GOA Central Regulatory Area	Central GOA Regulatory Area	1
§ 679.2 Definition for CDQ number or group number	CDQ number or group number	CDQ group number	1
§ 679.2 Definition for Clearing officer	ports listed in § 679.5(1)(3)(vi ii)	ports listed in Table 14 to this part	1

§ 679.2 Definition for Crab species	Crab species means	Crab species means (see also king crab and tanner crab)	1
§ 679.2 Definition for Directed fishing, subparagraph (1)	maximum retainable bycatch amount	maximum retainable amount	1
§ 679.2 Definition for Eastern Gulf or GOA Eastern Regulatory Area	Eastern Gulf or GOA Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Eligible applicant	means a	means (for purposes of the LLP program) a	1
§ 679.2 Definition for Eligible community	means a	means (for purposes of the CDQ program) a	1
§ 679.2 Definition for Federal waters	EEZ off Alaska	EEZ off Alaska (see also reporting area)	1
§ 679.2 Definition for Fishing day	means a	means (for purposes of Subpart E) a	1
§ 679.2 Definition for Fishing month	refers to	means (for purposes of subpart E) a	1
§ 679.2 Definition for Food bank distributor	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for Food bank network	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for groundfish license	means a	means (for purposes of the LLP program) a	1
§ 679.2 Definition for Halibut CDQ fishing, paragraph (1) (ii)	maximum retainable bycatch amounts	maximum retainable amounts	1

§ 679.2 Definition for Hunger relief agency	free of charge	free of charge (see § 679.26)	1
§ 679.2 Definition for IFQ regulatory area, paragraph (1)	chapter III of this title	chapter III of this title (see also Figure 15 to this part)	1
§ 679.2 Definition for IFQ regulatory area, paragraph (2)	limited entry program	limited entry program (see Figure 14 to this part)	1
§ 679.2 Definition for Manager	shoreside processor	shoreside processor, stationary floating processor	2
§ 679.2 Definition for Observer	vessels or shoreside processors	vessels, shoreside processors, or stationary floating processors	1
§ 679.2 Definition for Observer contractor	vessels and shoreside processors	vessels, shoreside processors, or stationary floating processors	1
§ 679.2 Definition for Red King Crab Savings Area (RKCSA) of the BSAI	(see § 679.22(a)(3))	(see § 679.22(a)(3) and Figure 11 to this part)	1
§ 679.2 Definition for Red King Crab Savings Subarea (RKCSS) of the BSAI	(see §679.21(e)(3)(ii)(B))	(see § 679.21(e)(3)(ii)(B)) and Figure 11 to this part)	1
§ 679.2 Definition for Resident fisherman	means an	means (for purposes of the CDQ Program) an	1

§ 679.2 Definition for Rockfish, paragraph (1)	For the Gulf of Alaska	For the GOA	1
§ 679.2 Definition for Rockfish, paragraph (2)	For the Bering Sea and Aleutian Islands Management Area	For the BSAI	1
§ 679.2 Definition for Southeast Outside District of the GOA	Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Tender vessel	shoreside processor	shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (1)	or shoreside processor	shoreside processor, or stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (1)	at any shoreside processor	at any shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (2)	at any shoreside processor	at any shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Unsorted codend	mothership or shoreside processor	mothership, shoreside processor, or stationary floating processor	1

§ 679.2 Definition for Vessel Activity Report (VAR)	(see § 679.5)	(see § 679.5(k))	1
§ 679.2 Definition for Vessel operations category	(see § 679.4)	(see § 679.5(b)(3))	1
§ 679.2 Definition for West Yakutat District of the GOA	GOA Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Western Gulf or GOA Western Regulatory Areas	Western Gulf or GOA Western Regulatory Areas	Western GOA Regulatory Area	1
§ 679.4(b)(4)(ii), (f)(4)(ii)	RAM Division	RAM Program	1
§ 679.4(f)(1)	or vessel of the United States operating solely as a mothership in Alaska State waters	or stationary floating processor	1
§ 679.4(f)(2)(vi)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.4(f)(6)(i)	shoreside processor	shoreside processor, or stationary floating processor	1
§ 679.4(j)	Salmon donation program permits	Prohibited species donation program permits	1

§ 679.4(k)(1)(i)	issued by NMFS to a qualified person	issued by NMFS	1
§ 679.4(k)(4)(ii)(C) (1), (2), (3), and (4)	Western Area of the Gulf of Alaska	Western GOA regulatory area	once for (1), (2), (4); twice for (3)
§ 679.4(k)(4)(ii)(D) (1), (2), and (3)	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.6(b)(7) introductory text, (d)(1)(iii), (d)(1)(v), (d)(1)(vi), (d)(2), (e) introductory text, (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(7), (e)(8)	experimental fishing	exempted fishing	1
§ 679.6(b) introductory text, (b)(3), (b)(9), (d)(1) introductory text	experimental fishing	exempted fishing	2
§ 679.6(f)	Experimental fishing	Exempted fishing	2
§ 679.6(f)	Experimental fishing	Exempted fishing	1
§ 679.7(a)(15)	or vessel of the United States operating solely as a mothership in Alaska State waters	or stationary floating processor	1

§ 679.7(a)(16)	maximum retainable groundfish bycatch amount	maximum retainable groundfish amount	1
§ 679.7(d)(16)	retainable bycatch amounts	maximum retainable amounts	1
§ 679.7(d)(20)	shoreside processor	shoreside processor, stationary floating processor	1
§ 679.8	§ 600.740	§ 600.730	1
§ 679.20(a)(4)(i) heading	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.20(a)(4)(i) text	Eastern Area of the GOA	Eastern GOA regulatory area	1
§ 679.20(a)(4)(ii) heading	GOA Central and Western Areas	Central and western GOA regulatory areas	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas of the GOA	Central and western GOA regulatory areas	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas	Central and western GOA regulatory areas	1
§ 679.20(e) heading	Maximum retainable bycatch amounts	Maximum retainable amounts	1
§ 679.20(e)(1), (e)(2)(i), (e)(2)(ii), (e)(2)(iii)	maximum retainable bycatch amount	maximum retainable amount	1
§ 679.20(e)(1)	bycatch species or species group	incidental catch species	1

§ 679.20(e)(2)(i) (e)(2)(ii) (e)(2)(iii)	bycatch species	incidental catch species	1
§ 679.20(e)(2)(i) (e)(2)(ii) (e)(2)(iii)	individual retainable bycatch amount	individual retainable amount	1
§ 679.21(d)(4)(iii) (A)	GOA Eastern Regulatory Area	Eastern GOA regulatory area	1
§ 679.22(a)(3)	§ 679.21(e)(4)(i) i)(B)	§ 679.21(e)(3)(ii) (B)	1
§ 679.22(a)(11)(iv) (B) introductory text	SCA	SCA (see Figure 20 to this part)	1
§ 679.22(b)(3)(iii)(A)	defined at § 679.23(d)(3) of this part	defined at § 679.23(d)(3) and Figure 20 to this part,	1
§ 679.22(b)(3)(iii) (B) introductory text	Shelikof Strait conservation area	Shelikof Strait conservation area (see Figure 19 to this part)	1
§ 679.23(h)(1)	Western and Central Regulatory Areas of the GOA	Western and Central GOA regulatory areas	1
§ 679.23(h)(2)	Western Regulatory Area of the GOA	Western GOA regulatory area	2
§ 679.23(h)(3)	Central Regulatory Area of the GOA	Central GOA regulatory area	2

§ 679.24(c)(2) heading, (c)(2)(i)(A)	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.24(c)(2)(ii)(A), (B)	GOA Eastern Regulatory Area	Eastern GOA regulatory area	1
§ 679.24(c)(3) heading	GOA Central and Western Areas	Central and Western GOA regulatory areas	1
§ 679.24(c)(3)	GOA Central and Western Regulatory Areas	Central and western GOA regulatory areas	1
§ 679.24(d)(2) introductory text	in this paragraph (d)	in this paragraph (d) and in Figure 7 to this part	1
§ 679.26(b)(3) heading	SDP Permit	PSD Permit	1
§ 679.26(c)(3)	until 1 year after	until 3 years after	1
§ 679.30(a)(5)(i)(B) heading	Shoreside processors	shoreside processors or stationary floating processors	1
§ 679.30(a)(5)(i)(B)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.32(c)	shoreside processors	shoreside processors or stationary floating processors	1

§ 679.32(c)(3) heading	Shoreside processors and vessels of the United States operating solely as a mothership in Alaska State waters	shoreside processors and stationary floating processors	1
§ 679.32(c)(3) introductory text	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.32(d)(1)	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.32(f)(1)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.32(f)(3)	shoreside processor	shoreside processor or stationary floating processor	2
§ 679.41(e)(2)(iii)	Central Gulf area	Central GOA regulatory area	1
§ 679.41(e)(2)(iv)	Western Gulf area	Western GOA regulatory area	1

§ 679.43 (a)	under part 679 of this chapter	under this subpart D as well as portions of subpart C of this part	1
§ 679.50 (c) (1) (vi)	Eastern Regulatory Area of the GOA	Eastern GOA regulatory area	1
§ 679.50 (c) (3) (iii)	shoreside processor or to a mothership processor vessel in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.50 (d) introductory text heading	shoreside processors	shoreside processors and stationary floating processors	1
§ 679.50 (d) introductory text and (d) (4) (i)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (e) (2), (g)	vessels or shoreside processors	vessels, shoreside processors or stationary floating processors	1
§ 679.50 (f) (2) heading	Shoreside processor	shoreside processor or stationary floating processor	1

§ 679.50 (f) (2)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (f) (2) (iii) (A), (f) (2) (iv), (f) (2) (v)	shoreside processor's	shoreside processor's or stationary floating processor's	1
§ 679.50 (h) (2) (i) (A) (4)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor	1
§ 679.50 (i) (2) (v) (A)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (i) (2) (v) (C)	vessels and/or shoreside processors	vessels, shoreside processors and/or stationary floating processors	1
§ 679.50 (i) (2) (xiv) (B), (C), and (D)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor	1
§ 679.50 (i) (2) (xiv) (G) (3) and (4)	Shoreside processors	Shoreside processors or stationary floating processors	1
§ 679.50 (j) (4) (i)	vessels and shoreside processors	vessels, shoreside processors, and stationary floating processors	1



Federal Register

**Monday,
January 28, 2002**

Part III

Department of Commerce

**50 CFR Part 679
Fisheries of the Exclusive Economic Zone
Off Alaska; Revisions to Recordkeeping
and Reporting Requirements; Final Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 010313063-1297-02; I.D. 121200A]

RIN 0648-AO20

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Final rule; recordkeeping and reporting.

SUMMARY: NMFS issues a final rule to amend portions of the regulations implementing recordkeeping and reporting (R&R) requirements for groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska. This action is necessary to refine or correct regulations for improved management, to remove obsolete text, and to clarify and simplify existing text. This action is intended to facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the Northern Pacific Halibut Act. This action is intended to further the goals and objectives of the fishery management programs for groundfish fisheries off Alaska and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 25, 2002; except an amendment to § 679.26(c), which will not be effective until approval by OMB under the Paperwork Reduction Act (PRA). A document will be published in the **Federal Register** announcing OMB approval and the effective date.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

NMFS manages the U.S. groundfish fisheries of the EEZ off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This final rule revises several sections of the regulations implementing the FMPs that pertain to permits and R&R. These changes are necessary to promote the ability of fishermen to conduct groundfish fishing operations more efficiently, to enhance NMFS' ability to manage the fisheries through improved quality of data received for management of the fisheries, and to improve the clarity and consistency of R&R regulations.

NMFS published a proposed rule in the **Federal Register** on August 8, 2001 (66 FR 41664), for a 30-day public comment and review period that ended on September 7, 2001. The preamble to the proposed rule contains a full description of the revisions and their justification, which is not repeated here. NMFS invited public comment on the changes contained in this action through September 7, 2001. No comments were received during this time period.

This final rule primarily consists of technical edits and clarifications to existing R&R requirements. These revisions include:

(1) Standardizing several terms and sets of instructions and correcting several terms within the regulatory text for uniformity and improved clarity;

(2) Adding cross references to regulatory text;

(3) Combining similar types of information into relational tables;

(4) Revising Figure 3, adding new Figures 19 and 20;

(5) Revising Tables 1, 2, 3, 7, 8, 9, 10, 11, and 19;

(6) Revising logbooks and forms;

(7) Amending 679.2 Definitions—by revision, additions, and deletions;

(8) Amending 679.4 Permits—by reorganizing, revising, and adding information to the regulatory text and summary tables;

(9) Amending 679.5 Recordkeeping and Reporting—by reorganizing to present common descriptions in one section; eliminating duplication; promoting uniformity; shortening descriptions of mundane tasks; and presenting options in tabular form so that specific requirements may be quickly located. In-text tables are added to display complex relationships and to sort out multiple options, steps, conditions, and choices.

Changes From the Proposed Rule to the Final Rule

This final rule makes certain changes to the regulatory text from the proposed rule. Some changes result from internal review, and are anticipated to improve the efficiency of the data collection system. Some changes correct inadvertent printing errors in the proposed rule published in the **Federal Register**.

The changes are intended to simplify the R&R tasks required by NMFS. Forms for data collection are redesigned to be easier to complete and submit, resulting in improved more accurate data. Regulatory text is amended to be consistent with the format of the forms and logbooks. These changes are as follows:

Tables

In Table 2, the Latin name of two species is added: rougheye rockfish (*S. aleutianus*) and shortraker rockfish (*S. borealis*).

Table 7 is revised by removing the proposed revisions that add eight communities that NMFS determined were eligible for the CDQ Program in 1999. Revisions to Table 7 will be considered by NMFS in a future rulemaking that will address a wider range of CDQ issues.

In Tables 10 and 11, the footnotes are revised. To improve convenience for the user and because the table numbers referenced in the footnotes from the annual Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) groundfish specifications are constantly changing, the footnotes are expanded to contain complete information on species groups without reference to another document.

Tables 16 through 18 are removed because these tables were included in the final rule implementing the Commercial Operators Annual Report (66 FR 43524, August 20, 2001).

New Features

Certain improvements are included in this final rule to make the groundfish and Individual Fishing Quota (IFQ) regulations at 50 CFR part 679 more

efficient and understandable. Electronic options to submit reports are made available without changing the information required.

Buying Station Report (BSR) Scale Weights

This rule adds an option at § 679.5(d)(1)(v) that provides for the operator or manager of a buying station to add groundfish species codes and scale weights (in lb or mt) on the buying station report (BSR) in addition to the required total estimated delivery weight or actual scale weight of a catcher vessel delivery. This is especially helpful when the buying station is delivering groundfish incidental catch harvested in an IFQ fishery, as the information is recorded on Alaska Department of Fish & Game (ADF&G) fish tickets.

IFQ Landing Report Internet Submittal

This rule amends § 679.5(l)(2) by adding a new electronic reporting option available to IFQ registered buyers. Instead of submitting an IFQ landing report by automated transaction terminal (ATM), in 2002 it is possible for participants to use Internet submittal methods to submit the report. This option requires that participants obtain at their own cost, hardware (including a printer), software, and Internet connectivity to support Internet submittals.

IFQ Fees and Buyer Report Electronic Submittal

This rule amends §§ 679.5(l)(7) and 679.45(a)(4)(iii) through (iv) by adding an option for participants to submit annual IFQ fees, fee forms, and IFQ Buyer Reports electronically.

Shoreside Processor Electronic Logbook Report (SPELR)

This rule adds § 679.5(e)(4)(iv) to clarify regulations for shoreside processors and stationary floating processors that are using the NMFS-provided SPELR but are not required by regulation to use it. If a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from one of the AFA-permitted catcher vessels listed on the NMFS Alaska Region web page at <http://www.fakr.noaa.gov/ram>, the SPELR daily report may be transmitted to NMFS on Monday.

American Fisheries Act (AFA) Pollock

This rule adds § 679.5(e)(4)(iv) to state that, if a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from

one of the AFA-permitted catcher vessels, the SPELR daily report may be transmitted on Monday.

This rule adds § 679.5(a)(7)(xv)(E) to clarify the recording of AFA pollock. The AFA check-box and the cooperative account number are to be used ONLY for landings from the directed pollock fishery that are counting against an AFA cooperative quota. Other species delivered at the same time as the AFA pollock can go on the same report.

Editorial Additions and Corrections

This final rule also makes minor editorial revisions to correct errors or clarify the regulatory text as described below:

Global

Changes all reference to catcher vessel blue copy of DFL logsheets to say “blue DFL” at: §§ 679.5(a)(6)(iii)(A)(4)(ii) (twice); (a)(7)(iv)(C)(7); (a)(10)(v); (a)(11)(i); (a)(11)(iii)(C) (twice); (a)(11)(iv)(A); (a)(14)(iii)(C)(2); (d)(1)(iii); and (e)(7)(iii).

Changes the abbreviation for NOAA Fisheries Office for Law Enforcement from NOFE to OLE at: (e)(3)(ii); (g)(2)(ii); (k)(1); (l)(1)(i); (l)(2)(ii)(A); (l)(2)(ii)(C) twice; (l)(2)(ii)(D); (l)(2)(iii)(A) (twice); (l)(3)(iii)(B); (l)(3)(i)(B); (l)(3)(iii) twice; and (l)(3)(xi)(A).

Definitions

Revises paragraph (1) for definition of Agent at § 679.2 to add support vessel, IFQ permit holders, and community development quota (CDQ) halibut permit holders that were inadvertently omitted.

Adds a definition for “Authorized officer” to mean, for purposes of recordkeeping and reporting, a NOAA special agent, a NOAA fishery enforcement officer, or U.S. Coast Guard (USCG) fisheries enforcement personnel.

Revises the definition of “Associated processor” to remove “a contract or agreement” and to replace it with “contractual relationship.”

Permits

Revises § 679.4(a)(1)(iv)(A) and (B) by changing the date from “3 years” to “until next renewal cycle” because even though the permits are renewed on a 3-year schedule, each participant may revise the permit during that 3-year cycle thus shortening the time span to less than 3 years;

Revises heading of § 679.4(a)(3) from “how do you obtain a permit” to read “permit application.”

Revises § 679.4(d)(2)(iii) by adding “or submits a departure report” after the word “clearance.”

Groundfish R&R

Corrects § 679.5(a)(1)(iv)(B) by removing “IFQ, CDQ halibut and” because the paragraph is referring to use of the combined logbook by participants fishing only for groundfish.

Revises paragraph 679.5(a)(2)(i) to read as originally written in the regulations.

Revises § 679.5(a)(2)(ii) to require that SPELR printouts be signed by the owner or manager.

Revises § 679.5(a)(2)(iii) as this text is redundant to information given in § 679.5(d).

Corrects § 679.5(a)(6)(iii)(A) intext table by adding “DCPL” in column 4 in the row entitled “(3) Production”.

Clarifies § 679.5(a)(7)(iii)(C)(4) by adding “End date” after last word of the sentence to ensure the location of recording the last day of an inactive period.

Corrects § 679.5(a)(7)(iv)(I)(3) in text table by removing “Enter the cumulative estimated total discards or disposition since last delivery” because it is duplicate text.

Corrects § 679.5(a)(7)(x) introductory text by removing “according to the table in paragraph (a)(7)(xii) of this section” and replacing it with “to record information as described in paragraphs (a)(7)(x)(A) through (a)(7)(x)(E) of this section.”

Corrects § 679.5(a)(7)(x)(C) by adding “(see paragraph (a)(7)(xii))” after the words “reporting area” in the first sentence.

Corrects § 679.5(a)(7)(xv)(B) intext table by removing “679.26” from the third column and replacing it with “679.6.”

Corrects cross reference in §§ 679.5(a)(10)(iv) and (a)(11)(iv) by removing “(a)(10)(vi)” and replacing it with “(a)(10)(v)”.

Revises § 679.5(a)(10)(vi) by adding the words “but not in PSC status” after “directed fishing” in the first sentence.

Corrects § 679.5(a)(11)(i) at the beginning of the second sentence by removing “Discards must also be recorded” and replace it with “Discards and dispositions must also be recorded.” It is important that the dispositions be recorded on the blue DFL for quota management.

Corrects § 679.5(a)(11)(ii)(A) by removing “and also when no groundfish are delivered but the blue discard logsheet containing records of discards is submitted by a catcher vessel (e.g., an IFQ fish delivery with no groundfish incidental catch)”; and replacing it with “Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of

groundfish discards or disposition (e.g., an IFQ halibut delivery with groundfish incidental catch).

Corrects § 679.5(a)(11)(ii)(B) by removing “would be incorporated” and replacing it with “must be incorporated”

Corrects § 679.5(a)(11)(iii)(E) by adding “(A.l.t.) After the word “time” in the heading.

Revises § 679.5(a)(12)(i) by adding “all corrections must be made in ink.”

Corrects § 679.5(a)(13) by removing “operator of a buying station” and replacing it with “operator or manager of a buying station.”

Corrects § 679.5(a)(14)(i)(D) by removing “shoreside processor electronic logbook delivery report” and replacing it with “SPELR” because it was defined earlier in the document.

Corrects § 679.5(a)(14)(iv)(B)(1) by adding the data element that appears in the logbooks but was inadvertently omitted from this table: haul number for each haul.

Corrects § 679.5(a)(14)(iv)(B)(2) to add the following data elements that appear in the logbooks but were inadvertently omitted from this table: CDQ group number, halibut CDQ permit number, and IFQ permit number (if applicable)

Revises § 679.5(a)(15) by removing the heading “Transfer document comparison” and by replacing it with the heading “IFQ/groundfish transfer document comparison.”

Revises § 679.5(a)(15) by removing the text and replacing it with: “When the operator or manager is participating in both the groundfish fisheries and the IFQ fisheries, certain exceptions to submittal of product shipment and transfer forms are provided to avoid duplication. In the following table, an “X” indicates submittal requirements under those circumstances.”

Revises § 679.5(a)(15)(ii) column 3, intext table by removing “X” because a PTR is not required under these circumstances.

Revises § 679.5(a)(15)(iv) column 3, intext table by removing “X” because a PTR is not required under these circumstances.

Revises the BSR and paragraph 679.5(d)(1)(i) to record the date and time delivery from a catcher vessel was completed.

IFQ R&R

Revises § 679.5(l)(2)(i)(C) by removing the words “offshore landings” and “(frozen)” to avoid potential confusion with paragraph 679.5(l)(2)(vi)(j)(2).

Revises § 679.5(l)(2)(iii)(A) by removing the local Juneau telephone number and leaving the toll-free telephone number, because NMFS is

relocating the data clerks to Anchorage, and a new local Anchorage number will be issued soon.

Revises § 679.5(l)(2)(iii)(F) by removing “paragraph (l)(7)” and replacing it with “paragraph (l)(6)”;

Revises § 679.5(l)(2)(iv) to clarify the exemptions to the IFQ landing time limits by removing “unless:”

Revises the last word in the sentence of § 679.5(l)(2)(iv)(A) and change the punctuation from a colon to a period.

Adds new paragraph § 679.5(l)(2)(iv)(C) with the heading “Exemptions.”

Redesignates § 679.5(l)(2)(iv)(A)(1) and (2) and changes to read (l)(2)(iv)(C)(1) and (2);

Removes the text of § 679.5(l)(3)(i).

Revises § 679.5(l)(3)(i)(A) by removing the text after “sablefish” and adding “for which the Registered Buyer submitted a landing report before the fish leave the landing site;”

Revises heading of § 679.5(l)(3)(iv) by removing “or outside landing.”

Revises §§ 679.5(l)(5)(i), (ii), (iv) (vessel clearance) and 679.5(l)(5)(xii)(A)(departure report) to clarify that primary ports are in Alaska and in Bellingham, WA, whether landing IFQ species in Alaska, Canada, or any other foreign country;

Revises § 679.5(l)(5)(i) to remove reference to a written clearance. Enforcement does not typically rely on a written record from the IFQ vessel operator to perform the required vessel clearance. The required information instead is obtained through an interview between the vessel operator and the clearing officer.

Removes § 679.5(l)(5)(iii) as this duplicates revised paragraph § 679.5(l)(5)(i);

Redesignates § 679.5(l)(5)(iv) through (xii) as (l)(5)(iii) through (xi).

Revises § 679.5(l)(5)(xi) to reformat the first sentence, to remove “at a port in a state other than Alaska” and to replace it with “outside the State of Alaska”.

Revises § 679.5(b) by adding “or stationary floating processor” after “management of a shoreside processor.”

Removes § 679.5(p) and amend instruction 4 to remove mention of addition of paragraph (p). Paragraph (p) was added by a separate rulemaking for the Commercial Operator’s Annual Report (COAR) (66 FR 43524, August 20, 2001). Instruction paragraphs are renumbered from hereon.

Removes proposed revisions to § 679.22 at paragraphs (a)(11)(iv)(A), (a)(11)(iv)(B), (b)(3)(iii)(A), (b)(3)(iii)(B) because this section is subject to changes in the Steller sea lion emergency revisions being prepared for

implementation on January 1, 2002. The instruction paragraphs are renumbered.

Revises § 679.24(b)(3) by rewriting the paragraph to remove mention of net-sounder devices.

The proposed revision to § 679.31(d) related to crab CDQ reserves is removed because separate rulemaking was proposed on July 25, 2001 (66 FR 38626) that would revise this paragraph. The instruction paragraphs are renumbered starting with 9.

Classification

This final regulatory amendment is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Northern Pacific Halibut Act, 16 U.S.C. 773 *et seq.* The Regional Administrator has determined that the final regulatory amendment published under the authority of the Magnuson-Stevens Act is consistent with the FMPs and that Act, and that the final regulatory amendment is published under the authority of the Northern Pacific Halibut Act and is consistent with that Act.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

Alternatives that addressed modifying reporting requirements for small entities or the use of performance standards rather than design standards for small entities were not included in the analysis, because such alternatives are not relevant to this final action and would not mitigate impacts on small entities. Allowing exemptions for small entities would not be appropriate because the objectives of the proposed actions are to: (a) clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; (b) ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; (c) reduce the costs of enforcing fisheries regulations; (d) enhance the value of the pollock fisheries managed under the AFA; (e) reduce the costs of compliance with pollock reasonable and prudent alternatives (RPAs) for Steller sea lion protection; (f) reduce the costs and increase the effectiveness of regulations to protect migratory birds identified as endangered or threatened under the Endangered Species Act (ESA).

The NMFS Alaska Region prepared a FRFA that analyzes a final rule that implements regulations for the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands and the FMP for Groundfish of the Gulf of Alaska by revising R&R requirements and describes the impact of these regulations

on small entities. The number of small entities to which the proposed rule will apply are identified as: 1,254 catcher vessels; 47 catcher processors; 32 onshore processors, 6 CDQ groups; 268 buying stations; 1,613 halibut fishing operations; and 92 Registered Buyers.

This FRFA analyzes proposed amendments to regulations at 50 CFR part 679 that would revise R&R regulations for the Alaska groundfish fisheries and for the IFQ halibut and sablefish fisheries off of Alaska. The objectives of the proposed actions are: to clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; to ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; to reduce the costs of enforcing fisheries regulations; to enhance the value of the pollock fisheries managed under the AFA; to reduce the costs of compliance with pollock reasonable and prudent alternatives (RPAs) for Steller sea lion protection; and to reduce the costs and increase the effectiveness of regulations protecting migratory birds identified as endangered or threatened under the ESA. It provides the analyses required under Executive Order 12866 and the RFA.

Seven categories of regulatory changes are analyzed. Any one of them may be adopted in combination with any possible grouping of the others. Because of this, the FRFA evaluates each of the seven categories independently. Each of the proposals is evaluated against a "no action" alternative and the costs and benefits relative to the "no action" alternative are identified.

(1) Regulatory Housekeeping. Remove obsolete text, clarify and simplify existing text, and reorganize text to remove duplication. Add, revise, and remove definitions. Because the changes do not impose new responsibilities on small entities, there are no added costs.

(2) Buying Station Daily Cumulative Logbook (DCL) and Buying Station Report (BSR). Remove the requirement to obtain, complete, and submit the DCL. Add a requirement to complete, maintain, and distribute a Buying Station Report (BSR). As with the DCL, the processors who receive fish from buying stations must compile data from the BSRs; unlike the DCL, processors will not be required to file quarterly reports with NMFS. NMFS estimates that the annual costs for this activity for at-sea tenders would be about \$312 per buying station per processor. The cost for 268 at-sea tenders would be about \$83,616. This estimate assumes all

tender permits are active and all at-sea tenders are in complete compliance. Costs for on-shore buying stations cannot be determined since the number of on-shore buying stations cannot be estimated with current data. NMFS' estimated costs would be about \$670 per year for preparation and delivery of the BSR.

Substitution of the BSR for the DCL should benefit operators of buying stations by reducing their paperwork costs. It will benefit processors to the extent that the buying stations are their subsidiaries and they share in the reduced paperwork costs. NMFS estimates a reduction in public and private costs (a benefit) of about \$8,700 per year. This estimate assumes all tender permits are active and in complete compliance with the program and does not take in to account the unknown number of land-based buying stations. No apparent additional costs are anticipated to implement this proposal other than those costs already incurred for the DCL.

(3) Shoreside Processor Electronic Logbook Report (SPELR). Extend the requirement to use the SPELR for processors buying from AFA catcher vessels past January 16, 2001, and require shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery to use the SPELR.

Regulations at § 679.5(f)(3) currently require managers of shoreside processors or stationary floating processors, who receive groundfish deliveries from AFA catcher vessels, to record and submit a SPELR for each catcher vessel delivery and to retain printed reports for the duration of the fishing year. Currently, 19 processors use the SPELR system under the Federal AFA regulations. Two processors that are not currently using the SPELR are making progress in bringing the SPELR system on line. NMFS estimates that adoption of the SPELR requires the use of a personal computer with a value of about \$1,000 and 40–80 hours of staff time. The upper limit of this cost is estimated to be about \$4,000 per entity.

The SPELR brings three classes of benefits: (a) Reduced annual R&R costs for NMFS and for entities adopting the SPELR, (b) enhanced value from the AFA statute, and (c) reduced costs of compliance with pollock RPAs for Steller sea lion protection. The annual R&R costs for firms and NMFS can be estimated. Each firm that adopts the SPELR will have annual SPELR expenses, but will no longer have to file or maintain the WPR or DCPL. The SPELR is expected to cost \$941 per year for each entity while the savings on the

WPR and DCPL is expected to be \$2,508. NMFS will incur an additional \$133 to receive SPELR reports from a new entity, but will save \$627 per year on WPR and DCPL paperwork. The net overall paperwork savings should be about \$2,194 per year for each firm that adopts the SPELR. Since two firms are expected to adopt, the total cost is \$4,388 per year.

The cost of adopting the SPELR system is the cost to each firm of acquiring a computer and converting to the data processing system and software used by the SPELR. These costs are estimated to be \$4,000 per firm. Four firms not using the SPELR would have to begin using it under this regulation, and three of these firms are known to have already made significant progress toward adopting the SPELR. As noted, 19 firms are currently required to use the SPELR because they buy groundfish from AFA catcher vessels. Another two firms would be required to begin using the SPELR under the provisions of the proposed rule requiring that firms accepting deliveries of pollock from fisheries targeting pollock use the SPELR. On the basis of anecdotal information, 13 of these firms are believed to be large firms, employing or affiliated with firms that employ more than 500 persons. The sizes of another eight of these firms are not known. For the purpose of this analysis, these have been treated as small entities, although this may overestimate the numbers of small entities. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities.

(4) Individual Fishing Quota (IFQ) Program. Reporting requirements for data elements are added to the Prior Notice of IFQ Landing Report, the IFQ Landing Report, the IFQ Shipment Report, the IFQ Transshipment Authorization, the IFQ Vessel Clearance Report and the IFQ Departure Report.

Weight prior to offload. Some of the vessels landing IFQ halibut and IFQ sablefish are catcher/processors that freeze and package IFQ halibut and sablefish on board before delivery. In many cases, the vessel operator acts as an IFQ Registered Buyer taking possession of the IFQ fish and making the landing report. These operations often calculate the weight of product that they produce at the time of production. However, current regulations at § 679.5(l)(2)(vi) require that Registered Buyers, taking possession of IFQ fish at landing, record the product code and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained. Frozen product requires a

second weighing of the fish. This regulatory change would redesignate § 679.5(1)(2)(vi)(j) as § 679.5(1)(2)(vi)(j)(1) and add a new paragraph (1)(2)(vi)(j)(2) to allow a vessel operator, if he or she is a Registered Buyer reporting the IFQ landing, to substitute the "accurate weight of IFQ sablefish processed product obtained before the offload" for the "initial accurate weight at time of offload." OLE would still be able to monitor the offload and weigh the product if necessary for the purpose of auditing under other regulations.

Debit all catch to IFQ account; Vessel operator responsible for landing. Regulatory changes would make it clear that fishermen who set aside part of their IFQ catch for home consumption would be required to debit that harvest against their IFQ account; a vessel operator has an obligation to offload all IFQ fish to a Registered Buyer. A new § 679.5(1)(2)(i)(C) would be added to clarify that the weight of any halibut or sablefish offshore landings made by a catcher/processor into product (frozen) prior to offload at the landing site must be properly debited from the IFQ permit holder's account under which the catch was harvested. These regulatory changes would not add new requirements to the IFQ halibut and IFQ sablefish program but would only clarify existing regulations. If this clarification reduced efforts to by-pass the reporting requirements, or made it easier to prosecute those requirements, it would reduce program costs. Because the requirement does not impose new responsibilities on fishermen, it does not add to their costs.

Regulatory area on prior notice of IFQ landing report. This change would amend § 679.5(1)(1)(iii) to add a question to the Prior Notice of IFQ Landing Report; fishermen would be required to report on the IFQ regulatory area within which IFQ halibut or IFQ sablefish were harvested. The benefit of the regulation would be the improved compliance with IFQ regulations. The cost would be the burden of answering the additional question when the prior notice of landing was made. This cost would be very small since the information is already known when the Prior Notice of IFQ Landing is made. In 2000, 10,279 prior notices of landing were submitted. If the answer to the question added 30 seconds to each notice, the total additional time would have been 86 hours. At \$20 per hour (the pay for a Federal GS-7 in Alaska, including COLA), the total cost would have valued at about \$1,700.

IFQ landing report. Additional information would be collected in the

landings reports filled out by Registered Buyers that would reduce the costs of monitoring landings made under the exemption. This information would include the gear type used to harvest the fish and regardless of whether the IFQ fish were landed concurrently with salmon or dinglebar lingcod.

The benefits from these proposed changes would be increased flexibility and consequent reduced operating costs for dinglebar lingcod fishermen who hold halibut QS, and in addition, an improved ability by NMFS to target its enforcement assets. The cost to registered buyers of collecting and reporting the additional information would be small.

Registered buyers complete landings reports using automated terminals. These terminals lead the buyers through a series of question prompts. The change would require the addition to prompts for the gear type used in the landing and for information on whether or not salmon or lingcod taken with dinglebar gear was landed concurrently with the IFQ fish. This information should be known to or readily available to the registered buyer. In 2000, about 10,057 landings reports were submitted. At 1 minute for the two additional questions, the total additional time required would have been about 168 hours. At \$20 per hour (the pay for a Federal GS-7 in Alaska, including COLA), the total cost would have valued at about \$3,400.

IFQ shipment report. Regulations at § 679.5(1)(3) would be amended to add a requirement to the IFQ Shipment Report to allow short-distance movement of IFQ fish accompanied by an ATM landing receipt by a Registered Buyer to his or her processing plant. Currently Registered Buyers are required to complete and file an IFQ shipment report before they move fish away from the place where they are landed. Many firms, whose plants are located away from landing places, are inconvenienced by the need to complete the form before moving the fish from the place where they were landed to the place where they will be processed. This regulatory change would reduce the costs for this class of Registered Buyer. OLE would still receive a landing report from the landing place; the IFQ shipment report would still be required from the Registered Buyer before the buyer disposed of the fish to other parties. The most important use for Shipment Reports is to provide the ability to audit Registered Buyers' landings by monitoring movements of fish being moved in the chain of possession from the Registered Buyer. There are no costs associated with this

regulatory change and there will be cost savings to Registered Buyers whose plants are located at a distance from landings places.

IFQ transshipment authorization. Regulations at § 679.5(1)(4) would be amended to revise the regulatory text describing the IFQ Transshipment Authorization by adding a list of required information to obtain a transshipment authorization. Vessel operators transshipping (from one vessel to another) IFQ halibut and IFQ sablefish are required to obtain a Transshipment Authorization at least 24 hours before the transshipment. This gives OLE time to decide whether or not to monitor the transshipments, plan resources, and arrange the logistics for monitoring the transshipment. This change is principally needed to monitor the offloading of freezer longliners to tramp freighters. OLE routinely collects certain information from persons requesting the authorization to find out when and where the transshipment will occur and how long it might take. This change will provide a basis in regulation for the specific information collected when an authorization is requested. This should not increase the costs for fishing operations or for the operations taking possession of the fish at sea since it would not affect the requirement for authorizations. It may reduce enforcement costs by clarifying the types of information that are required when an authorization is requested.

IFQ vessel clearance report and the IFQ departure report. This proposed change will make the vessel clearance and departure report regulations clearer and may reduce the amount of time it takes to find, read and interpret them. The substantive part of the change involves the revision of the departure report requirement to prevent IFQ fishing after the report is filed. This change clarifies the intent of the regulation that departure reports be filed after IFQ fishing has finished. While almost all departure reports are believed to have been filed after fishing has been concluded, at least one in the last 2 years was not. The intent is to close this loophole. The benefit will be an enhanced ability to enforce the IFQ program. There is no cost to fishermen from this change because a departure report can be filed as easily after fishing is concluded as before it is concluded.

(5) Product Transfer Report (PTR). Regulations at § 679.5(g) currently require the operators of motherships, catcher/processors, or managers of shoreside processors or stationary floating processors to record each transfer of groundfish product (including unprocessed fish) or donated

prohibited species, on a PTR. An important enforcement document, the PTR provides the principal information for the movement of volumes of groundfish into and out of the facilities of a processor and provides a check on buyer purchase reports. Because of its importance, the PTR is used with audits and by physical inspection of product.

This change would provide processors more flexibility in adapting their responses to their working procedures and may result in some private sector time savings. If the regulation change reduces the time taken to fill out the PTRs by 10 percent, it would produce a private sector cost savings of about \$1,568 per year. There are no implementation or other costs.

NMFS estimates that 171 processors (110 catcher/processors, 3 motherships, and 58 shoreside processors or stationary floating processors) must currently file a PTR for each transfer of product an average of 25 times a year generating 4,275 PTRs per year. The estimated time requirement for a PTR is 11 minutes. Total time devoted to PTRs is estimated to be 784 hours a year. NMFS estimates that the total cost of PTR preparation is \$15,675 (this does not include costs of submittal to NMFS by FAX).

Forty-seven catcher/processors and 32 shoreside processors are assumed to be small entities. The remaining operations are assumed to be large entities. Six CDQ groups would also be impacted. CDQ groups are considered to be small non-profit entities. The new PTR format would reduce the costs to NOAA and USCG enforcement efforts and would allow for more effective enforcement of product transfer rules.

(6) Marking of gear. The rule would increase the financial costs to a few small entities by extending requirements to mark identification information on marker buoys that currently apply only to longline gear to include also hook-and-line, longline pot, and pot-and-line gear. Most fishermen have their marker buoys properly identified and would not be adversely affected by this regulation. Fishermen affected by this regulation would incur the costs of marking their own marker buoys and legally would not be able to use another fisherman's marker buoys. State regulations (5 AAC 28.050) currently require crab and groundfish pots to carry the ADF&G registration number of the vessel operating the gear. Since many Pacific cod fishermen already participate in State groundfish and crab fisheries, they would already be subject to this requirement.

The regulation extends the marker buoy requirement to vessels using pot gear to fish for groundfish. In 1999, 254 catcher-vessels caught groundfish with pot gear off of Alaska; 13 catcher-processors also used pot gear. In 1999, no pot vessels had Alaska groundfish landings with ex-vessel or product value over \$3,000,000. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities. Marking of marker buoys reduces the costs to NOAA and USCG enforcement efforts and allows for more effective enforcement of gear rules.

(7) Seabird avoidance gear. The rule would add a requirement for operators of catcher vessels over 60 ft (18.3 m) LOA and catcher/processors using hook-and-line gear to record in the logbook the type of bird avoidance gear used on the vessel. A regulation currently exists at § 679.24(e) that requires bird avoidance gear be used. This rule merely makes it a requirement to record the code in the logbook that describes the type of gear used. NMFS estimates that it would take approximately 1 minute per haul for a vessel operator to collect information on what type of avoidance gear is being used and to enter the information into the log. Based on 19,245 hauls, the cost in time to the entire hook-and-line fleet would be approximately 321 hours per year. Evaluating this time at a cost of \$20/hour (the average wages and benefits for a Federal GS-7 employee in Alaska, including COLA), the cost imposed would be \$6,415 per year.

A copy of this analysis is available from NMFS (see *ADDRESSES*).

This rule contains several collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB. Public reporting burden for these collections of information is given below by collection-of-information number and is estimated to average the time given per individual response for each requirement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see *ADDRESSES*)."

0648-0206: 5 hours for an exempted fishery progress report; 5 hours for an exempted fishery permit application; and 30 minutes for a High Seas Power Troller Salmon Permit; 20 minutes for the Federal Fisheries Permit/Federal Processor Permit Application.

0648-0213: 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; 17 minutes for Catcher Vessel trawl gear DFL; 28 minutes for Catcher Vessel longline and pot gear DFL; 31 minutes for Catcher/processor trawl gear DCPL; 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product transfer report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the weekly production report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 23 minutes for buying station report.

0648-0269: 1 hour for CDQ Delivery Report; and 15 minutes for CDQ catch report.

0648-0353: 15 minutes to paint each buoy with the vessel name and Federal permit number, or ADF&G registration number.

0648-0401: 30 minutes for daily completion of the Shoreside Processor Electronic Logbook (SPELR) and the estimated time to electronically submit the SPELR (30 min./day); and 5 minutes for estimated time to print the SPELR reports.

0648-0272: 12 minutes for IFQ Prior notice of landing; 12 minutes for IFQ Landing report; 18 minutes for IFQ Shipment report; 12 minutes for IFQ Transshipment authorization; 12 minutes for IFQ Vessel clearance; 6 minutes for IFQ Departure report; 6 minutes for IFQ Dockside sale; 6 minutes for Administrative waiver.

This rule also contains the following requirements that will be submitted to OMB for approval.

Forty hours for a distributor application; 6 minutes for product tracking of a shipment by a vessel or processor; and 15 minutes to provide documentation on a vessel or processor.

Public comment is sought regarding: whether these three collection of information requirements are necessary for the proper functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology. Send comments on these requirements to NMFS (see *ADDRESSES*) and to OMB (see

ADDRESSES). NMFS will publish a notice announcing the effectiveness of these requirements if and when they have been approved by OMB.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The Assistant Administrator for Fisheries, (AA) NOAA, under 5 U.S.C. 553(d)(3), finds that the need to provide for consistent recordkeeping and reporting for the 2002 groundfish fishing year would be contrary to the public interest to delay the effective date of this action for 30 days.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 18, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., and 3631 et seq.

2. In § 679.2 the definitions for "Bycatch species," "CDQ delivery number," "Gear deployment," and "Gear retrieval" are removed; the definitions for "Active/inactive periods," "Ancillary product," the introductory text of "Area/species endorsement," paragraph (1)(v) of "Fishing trip," "Forage fish," "Groundfish," "Logbook," "Person," "Primary product," "Reprocessed or rehandled product," "Sablefish (black cod)," and "Set" are revised; the definitions for "Agent," "Associated processor," "Authorized officer," "Bycatch or bycatch species," "Endorsement," "Experimental fishery," "Gear," "Gear deployment (or to set gear)," "Gear retrieval (or to haul gear)," "Harvest zone codes," "Incidental catch or incidental species," "Product transfer report (PTR)," "Prohibited species," "Representative," "Seabird avoidance gear," "Shoreside processor electronic logbook report (SPELR)," "Tagged halibut or sablefish," and "Weekly production report (WPR)" are added to read as follows:

§ 679.2 Definitions.

* * * * *
Active/inactive periods (see § 679.5(a)(7)(i)).

* * * * *
Agent (1) For purposes of permits issued under § 679.4, means a person appointed and residing within the United States who may apply for permits and may otherwise act on behalf of the owner, operator, or manager of a catcher vessel, catcher/processor, mothership, shoreside processor, stationary floating processor, buying station, support vessel, or on behalf of the IFQ permit holders, IFQ registered buyers, or CDQ halibut permit holders.

(2) For purposes of groundfish product distribution under § 679.5(g), means a buyer, distributor, or shipper but not a buying station, who may receive and distribute groundfish on behalf of the owner, operator, and manager of a catcher/processor, mothership, shoreside processor, or stationary floating processor.

(3) For purposes of IFQ recordkeeping and reporting under § 679.5(l), means a person who on behalf of the Registered Buyer may submit IFQ reports.

* * * * *
Ancillary product (see Table 1 to this part).

* * * * *
Area/species endorsement means (for purposes of LLP) a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area (see Figures 16 and 17 to this part). Area/species endorsements for crab species licenses are as follows:

* * * * *
Associated processor means, a federally permitted mothership, shoreside processor, or stationary floating processor that has a contractual relationship with a buying station to conduct groundfish buying station activities for that processor.

* * * * *
Authorized officer means, for purposes of recordkeeping and reporting, a NOAA special agent, a NOAA fishery enforcement officer, or USCG fisheries enforcement personnel.

* * * * *
Bycatch or bycatch species means fish caught and released while targeting another species or caught and released while targeting the same species.

* * * * *
Endorsement. (1) (See area endorsement for purposes of the groundfish LLP permits);

(2) (See area/species endorsement for purposes of the crab LLP permits);

(3) (See § 679.4(g)(3)(ii) area endorsements for purposes of the scallop permit).

Experimental fishery (see Exempted fishery, § 679.6).

* * * * *
Fishing trip means:

(1) * * *
(v) The end of a weekly reporting period (except a catcher vessel); whichever comes first.

* * * * *
Forage fish (see Table 2 to this part).

* * * * *
Gear (see the definition for Authorized fishing gear of this section).

Gear deployment (or to set gear) means:

(1) Position of gear deployment (lat. and long.):
(i) For trawl gear. The position where the trawl gear reaches the fishing level and begins to fish.

(ii) For hook-and-line gear. The beginning position of a set of hook-and-line gear.

(iii) For jig or troll gear. The position where the jig or troll gear enters the water.

(iv) For pot gear. The position of the first pot in a string of pots.

(2) Time of gear deployment (A.l.t.):
(i) For trawl gear. The time when the trawl gear reaches the fishing level and begins to fish.

(ii) For hook-and-line gear. The time when the first hook-and-line gear of a set is deployed.

(iii) For jig or troll gear. The time when jig or troll gear enters the water.

(iv) For pot gear. The time when the first pot in a string of pots is deployed.

Gear retrieval (or to haul gear) means:
(1) Position of gear retrieval (lat. and long. to the nearest minute):

(i) For trawl gear. The position where retrieval of trawl gear cable commences.

(ii) For hook-and-line gear. The position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.

(iii) For jig or troll gear. The position where the jig or troll gear leaves the water.

(iv) For pot gear. The position where the last pot of a set is retrieved, regardless of where the majority of the set took place.

(2) Time of gear retrieval (A.l.t.):
(i) For trawl gear. The time when retrieval of trawl gear cable commences.

(ii) For hook-and-line gear. The time when the last hook-and-line gear of a set leaves the water.

(iii) For jig or troll gear. The time when the jig or troll gear leaves the water.

(iv) *For pot gear.* The time when the last pot of a set is retrieved.
Groundfish means (1) FMP species as listed in Table 2 to this part.

(2) Target species and the "other species" category, specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish*; *CDQ species*; and *IR/IU species* of this section).

* * * * *

Harvest zone codes (see Table 8 to this part).

* * * * *

Incidental catch or incidental species means fish caught and retained while targeting on some other species, but does not include discard of fish that were returned to the sea.

* * * * *

Logbook means Daily Cumulative Production Logbook (DCPL) or Daily Fishing Logbook (DFL) required by § 679.5.

* * * * *

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

Primary product (see Table 1 to this part).

* * * * *

Product transfer report (PTR) (see § 679.5(g)).

Prohibited species means any of the species of Pacific salmon

(*Oncorhynchus spp.*), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasii*), king crab, and Tanner crab, caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

* * * * *

Representative (see § 679.5(b)).

Reprocessed or rehandled product (see Table 1 to this part).

* * * * *

Sablefish (black cod) means *Anoplopoma fimbria*. (See also *IFQ sablefish*; *fixed gear sablefish* at § 679.31(b); and *sablefish as a prohibited species* at § 679.24(c)(2)(ii)).

* * * * *

Seabird avoidance gear (see §§ 679.24(e), 679.42(b)(2), and Table 19 to this part).

Set means a string of longline gear, a string of pots, or a group of pots with individual pots deployed and retrieved in the water in a similar location with similar soak time. In the case of pot gear, when the pots in a string are hauled more than once in the same position, a new set is created each time the string is retrieved and re-deployed. A set includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested.

* * * * *

Shoreside processor electronic logbook report (SPELR) (see § 679.5(d)).

* * * * *

Tagged halibut or sablefish (see § 679.40(g)).

* * * * *

Weekly production report (WPR) (see § 679.5(i)).

* * * * *

3. In § 679.4 paragraphs (a)(1) through (a)(6) are redesignated as paragraphs (a)(3) through (a)(8), respectively; paragraph (a) introductory text, paragraphs (a)(1), (a)(2), and (a)(3)(v) are added; and paragraph (a) heading, newly redesignated (a)(3) heading and paragraphs (b)(3), (b)(4)(ii), (b)(5), paragraph (d) heading, (d)(2), the heading of paragraph (d)(3), and paragraphs (d)(3)(i)(A), (f)(2), and (f)(4)(ii) are revised to read as follows:

§ 679.4 Permits.

(a) *Requirements.* Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ card issued to an individual person designated by a QS or IFQ permit holder as a master employed to fish his/her IFQ need not be held by a U.S. citizen.

(1) *What permits are available?* Various types of permits are issued for programs codified at 50 CFR part 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see ..
(i) IFQ		
(A) Registered Buyer	Specified fishing year	Paragraph 679.4(d)(2) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph 679.4(d)(3)(i)(B) of this section
(C) Halibut & sablefish cards	Specified fishing year	Paragraph 679.4(d)(3)(i)(C) of this section
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	679.32(f)
(B) Halibut card	Specified fishing year	679.32(f)
(iii) AFA		
(A) Catcher/processor	12/31/04	Paragraph (f) of this section
(B) Catcher vessel	12/31/04	Paragraph (f) of this section
(C) Mothership	12/31/04	Paragraph (f) of this section
(D) Inshore processor	12/31/04	Paragraph (f) of this section
(E) Inshore cooperative	Calendar year	Paragraph (f) of this section
(F) Replacement vessel	Takes dates of replaced vessel's permit	Paragraph (f) of this section
(iv) Groundfish		
(A) Federal fisheries	Until next renewal cycle	Paragraph (b) of this section
(B) Federal processor	Until next renewal cycle	Paragraph (f) of this section
(v) High seas salmon permit	Indefinite	Paragraph (h) of this section
(vi) High Seas Fishing Compliance Act (HSFCA)	5 years	§ 300.10 of this title
(vii) License Limitation Program (LLP)		
(A) Groundfish license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(B) Crab license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(viii) Exempted fisheries	1 year or less	§ 679.6
(ix) Research	1 year or less	§ 600.745(a) of this chapter

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see ..
(x) Prohibited species donation program (A) Salmon (B) Halibut	3 years 3 years	§ 679.26 § 679.26

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements.

(3) *Permit application.* * * *

(v) All permits are issued free of charge.

* * * * *

(b) * * *

(3) *Vessel operations categories.*

(i) A Federal fisheries permit authorizes a vessel to conduct operations in the GOA or BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel.

(ii) A Federal fisheries permit is issued to a vessel to function as a support vessel or as any combination of the other four categories (catcher vessel, catcher/processor, mothership, tender vessel).

(iii) A vessel permitted as a catcher/processor, catcher vessel, mothership, or tender vessel also may conduct all operations authorized for a support vessel.

(iv) A vessel permitted as a support vessel may not conduct activities as a catcher vessel, catcher/processor, mothership, and/or tender vessel.

(4) * * *

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.

* * * * *

(5) *How do I obtain a Federal fisheries permit?* To obtain a Federal fisheries permit, the owner must complete a Federal fisheries permit application and provide the following information for each vessel to be permitted:

(i) *New or amended application?*

Indicate whether application is for a new or amended Federal fisheries permit and if revision, enter the current Federal fisheries permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) that manages the operations of the vessel.

(iii) *Vessel information.* Indicate the vessel name and homeport (city and

state); U.S. Coast Guard (USCG) documentation number; ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage, and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Area and gear information.* Indicate requested/elected area(s) of operation. If a catcher/processor and/or a catcher vessel, the gear types used for groundfish fishing. If a mothership or catcher/processor operating in the GOA, choose inshore or offshore component.

* * * * *

(d) *IFQ permits.* * * *

(2) *Registered buyer permit.* A

Registered buyer permit is required of:

(i) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(ii) Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(A) In a dockside sale;

(B) Outside of an IFQ regulatory area;

or

(C) Outside the State of Alaska.

(iii) A vessel operator who obtains a vessel clearance or submits a departure report (see § 679.5(l)(5)(iv)).

(3) *How do I obtain an IFQ permit, IFQ card, or Registered Buyer Permit?*

(i) *IFQ permits and cards—(A) Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

* * * * *

(f) * * *

(2) *How do I obtain a Federal processor permit?* To obtain a Federal processor permit, the owner must complete a Federal processor permit application and provide the following information for each shoreside processor facility or plant and stationary floating processor to be permitted:

(i) *Permit application information.* Indicate whether application is for a new or amended Federal processor permit and if a revision, the current Federal processor permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing

address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) who manages the operations of the shoreside processor or stationary floating processor.

(iii) *Stationary floating processor information.* Indicate the vessel name and homeport (city and state); USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; name and physical location of facility or plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility; and if yes, name of previous processor; whether there are multiple processors at this facility; whether the owner named in paragraph (f)(2)(ii) of this section owns this facility; shoreside processor ADF&G processor code, business telephone number, business FAX number, and business e-mail address.

(v) *Signature.* The owner or agent of the owner of the shoreside processor or stationary floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(4) * * *

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.

* * * * *

4. Section 679.5 is amended by revising paragraphs (a) through (k), (l)(1) through (6), (l)(7)(i)(C)(3)(ii), (l)(7)(i)(D), (l)(7)(i)(C)(4)(f), and (m) through (o) to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements—(1) Applicability—(i) Who must comply with recordkeeping and reporting requirements?* Except as provided in paragraphs (a)(1)(iii) and (iv) of this

section, the owner, operator, or manager of the following participants must comply with the recordkeeping and reporting requirements of this section:

(A) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(B) Any shoreside processor, stationary floating processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(C) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or stationary floating processor issued a Federal processor permit under § 679.4(f).

(D) Any shoreside processor or stationary floating processor that is required to have a Federal processor permit under § 679.4.

(E) For purposes of this section, “operator or manager” means “the operator of a catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station.”

(ii) *What fish need to be recorded and reported?* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

(iii) *Who is exempt from recordkeeping and reporting requirements?* (A) *Catcher vessels less than 60 ft (18.3 m) LOA.* A catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with recordkeeping and reporting requirements contained in paragraphs (a) through (k) of this section.

(B) *Catcher vessels that take groundfish in crab pot gear for use as crab bait on that vessel.* (1) Owners or operators of catcher vessels who, during open crab season, take groundfish in crab pot gear for use as crab bait on board their vessels, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section. This exemption does not apply to fishermen who:

(i) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(ii) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(2) No groundfish species listed by NMFS as “prohibited” in a management or regulatory area may be taken in that area for use as bait.

(iv) *Who needs to use the combined groundfish/IFQ logbook?* (A) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor, that participates in an IFQ sablefish fishery, IFQ halibut fishery, or CDQ halibut fishery and that retains any groundfish from the GOA or BSAI, must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all IFQ halibut and sablefish, CDQ halibut, and groundfish.

(B) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor that is using longline or pot gear in the groundfish fisheries of the GOA or BSAI must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all groundfish.

(2) *Responsibility*—(i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(ii) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the requirements given in paragraph (a)(3)(i).

(iii) The owner or manager must sign the SPELR printed pages or the owner, operator, or manager must sign the DFL or DCPL as verification of acceptance of the responsibility required in paragraph (a)(2)(i) of this section.

(3) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section for a catcher vessel 60 ft (18.3 m) or greater LOA, a catcher/processor, a mothership, a shoreside processor, a

stationary floating processor, and a buying station (see Table 9 to this part).

(ii) The operator or manager must use the current edition of the logbooks and forms or obtain approval from the Regional Administrator to use current electronic versions of the logbooks and forms. Upon notification by the Regional Administrator, logbooks or forms may be used from the previous year.

(4) *Shoreside processor electronic logbook report (SPELR).* The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels or receiving pollock harvested in a directed pollock fishery is required to use SPELR or NMFS-approved software described at paragraph (e) of this section to report every delivery from all catcher vessels and is required to maintain the SPELR and printed reports as described at paragraph (f) of this section. The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks, as appropriate:

(i) *Name and signature.* Name and signature of operator or manager.

(ii) *Catcher vessel.* If a catcher vessel, the name as displayed in official documentation, Federal fisheries permit number and ADF&G vessel registration number.

(iii) *Shoreside processor or stationary floating processor.* If a shoreside processor or stationary floating processor, the processor name as displayed in official documentation, ADF&G processor code, and Federal processor permit number. If a shoreside processor, the geographic location of plant.

(iv) *Mothership or catcher/processor.* If a mothership or catcher/processor, the name as displayed in official documentation, ADF&G processor code and Federal fisheries permit number.

(v) *Buying station.* If a buying station, the name as displayed in official documentation; ADF&G vessel registration number (if a vessel) or vehicle registration number (if a vehicle); name, ADF&G processor code, and Federal fisheries permit number of the associated mothership, or name, geographic location of plant, ADF&G processor code, and Federal processor permit number of the associated shoreside processor or stationary

floating processor to which groundfish deliveries were made.

(6) *Maintenance of records.* The operator or manager must:

(i) Maintain in English all records, reports, and logbooks in a legible, timely, and accurate manner; if handwritten, in indelible ink; if computer-generated, in a printed paper copy; and based on A.I.t.

(ii) Account for each day of the fishing year, January 1 through December 31, in the DFL or DCPL. Unless the appropriate box is checked to indicate an inactive period, records are assumed to be for an active period. Record the first day of the fishing year,

January 1, on the first page of the DFL or DCPL. Record time periods consecutively in the logbook.

(A) If a vessel owner or operator is granted reinstatement of a Federal fisheries permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(B) If a shoreside processor owner or manager is granted reinstatement of a Federal processor permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section

must be continuous throughout that year, without interruption of records.

(C) If inactive due to surrender of a Federal fisheries or processor permit, the operator or manager must mark the inactive box, write "surrender of permit," and follow complete instructions for recording an inactive period.

(iii) Record in the appropriate report, form, and logbook, when applicable, the date of activity and type of participant as presented in the following table:

(A) *Date of activity*, as month-day-year.

Date of	If a ¹	Means the date when	In the
(1) Delivery	(i) CV	Delivery of harvest was completed	DFL
	(ii) SS, SFP, MS	Delivery of harvest was completed	DCPL
	(iii) BS	Delivery of harvest was completed	BSR
(2) Landing	SS, SFP	Sorting and weighing of a delivery by species was completed	DCPL
(3) Production	SS, SFP	Production was completed	DCPL
(4) Discard or disposition	(i) CV using longline or pot gear	Discard or disposition occurred	DFL
	(ii) SS, SFP, MS	Discard or disposition occurred at the facility; or Received blue DFL from a catcher vessel (not the actual date of discard or disposition indicated on the blue DFL); or Received BSR from a buying station (not the actual date of discard or disposition indicated on the BSR).	DCPL

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(B) *Week-ending date.* The last day of the weekly reporting period: 2400 hours, A.I.t., Saturday night (except during the last week of each year, when it ends on December 31).

(C) *Time*, in military format, A.I.t.

(D) *Page numbering.* (1) Number the pages in each logbook and BSR consecutively, beginning with page 1 and continuing for the remainder of the fishing year.

(2) If a shoreside processor or stationary floating processor, number the DCPL pages within Part I and Part II separately, beginning with page 1. If

in an inactive period, the manager needs only to record in Part I.

(E) *Logbook numbering—(1) Two logbooks of same gear type.* If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

(2) *Two logbooks of different gear types.* If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page 1.

(3) *Two logbooks for pair trawl.* If two catcher vessels are dragging a trawl between them (pair trawl), two logbooks

must be maintained, a separate DFL by each vessel to record the amount of the catch retained and fish discarded by that vessel, each separately paginated.

(F) *Original/revised report.* Except for a DFL or DCPL, if a report is the first one submitted to the Regional Administrator for a given date, gear type, and reporting area, indicate ORIGINAL REPORT. If a report is a correction to a previously submitted report for a given date, gear type, and reporting area, indicate REVISED REPORT.

(G) *Position coordinates*, position in lat. and long.

(7) How do you record active/inactive periods and fishing activity? (i) The operator or manager daily must record in the appropriate logbook or SPELR the status of fishing activity as active or inactive according to the following table:

If participant is a ...	Fishing activity is ...	An active period is ...	An inactive period is ...
(A) CV ¹	Harvest or discard of groundfish ..	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.	When no gear remains on the grounds in a reporting area
(B) SS, SFP, MS	Receipt, discard, or processing of groundfish.	When checked in or processing ...	When not checked in or not processing
(C) C/P	Harvest, discard, or processing of groundfish.	When checked in or processing ...	When not checked in or not processing
(D) BS	Receipt, discard, or delivery of groundfish.	When conducting fishing activity for an associated processor.	When not conducting fishing activity for an associated processor

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(ii) The operator or manager daily must record in the appropriate logbook or SPELR if no activity occurred according to the following table:

The operator or manager must enter:	In the ...	If ...
(A) No receipt	(1)DCPL	No deliveries received for a day
(B) No landings	(2)DCPL, WPR	No deliveries received during a weekly reporting period
(C) No production	(1)DCPL, DPR	No landings occurred for a day
(D) No discard or Disposition	(2) DCPL, WPR	No landings occurred during a weekly reporting period
	(1) DCPL, DPR	No production occurred for a day
	(2) DCPL, WPR	No production occurred for a weekly reporting period
	(1)DCPL, DFL, BSR or DPR.	No discards or dispositions occurred for a day
	(2) DCPL, WPR	No discards or dispositions occurred for a weekly reporting period

(iii) The operator or manager daily must record whether active or inactive in the appropriate logbook or SPELR according to the following table:

(A) *Active*. If active, complete a separate logsheet for each day (except a shoreside processor, stationary floating processor, catcher vessel longline or pot gear, or catcher/processor longline or pot gear).

(B) *Inactive*. If inactive, complete on one logsheet:

- (1) Check "inactive."
- (2) Record the date of the first day when inactive under "Start date"
- (3) Indicate brief explanation that you are inactive.

(4) Record the date of the last day when inactive under "End date."

(C) *Inactive two or more quarters*. If the inactive time period extends across two or more successive quarters, the operator or manager must complete two logsheets: the first logsheet to indicate the first and last day of the first inactive

quarter and the second logsheet to indicate the first and last day of the second inactive quarter.

(D) *Participant information if inactive*. On each logsheet used to record an inactive period, the operator or manager must record the participant information as described at paragraph (a)(8) of this section.

(iv) *Weight of fish*. When recording weight in a logbook or form, the operator or manager must follow the guidelines in the tables in paragraphs (a)(7)(iv)(C) and (D) and (a)(7)(iv)(F) through (I) of this section and must:

(A) Indicate whether records of weight are in pounds or metric tons.

(1) If using a DFL, DCPL, BSR, or shoreside processor check-in report or check-out report, record weight in pounds or in metric tons to the nearest 0.001 mt, but be consistent throughout the year.

(2) If using a WPR or DPR, record weight in metric tons to the nearest 0.001.

(B) Record the weight of groundfish landings, groundfish product, and groundfish or prohibited species Pacific herring discard or disposition weight by species codes as defined in Table 2 to this part and product codes and product designations as defined in Table 1 to this part. Except for product information provided by shoreside processors or stationary floating processors [which is the sum of product weight separately by BSAI or GOA management area], the operator or manager must summarize groundfish weights separately by reporting area, management program information, gear type, and if trawl gear used, whether harvest was caught in the CVOA or the COBLZ.

(C) *Daily catch weight*. The operator or manager must enter daily catch weight per the following table:

Enter ...	In a ...	If a ...
(1) Estimated total round catch weight of groundfish, listed by CV or BS	DCPL	SS, SFP
(2) Estimated total round catch weight of groundfish by haul	Trawl DFL	CV
(3) Estimated total round catch weight of groundfish by haul, excluding pollock and Pacific cod	Trawl DCPL ...	C/P
(4) Estimated total round catch weight of groundfish listed by CV or BS, excluding pollock and Pacific cod	DCPL	MS
(5) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut and IFQ sablefish	Longline or pot DFL.	CV

Enter ...	In a ...	If a ...
(6) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut, IFQ sablefish, pollock and Pacific cod	Longline or pot DCPL.	C/P
(7) If a CV reported discards on a blue DFL but did not deliver groundfish, enter "0" in this column.	(i) DCPL (ii) BSR	MS, SS, SFP BS

(D) *Daily landings weight.* The operator or manager must enter daily landings weight per the following table:

Enter...	In a ...	If a ...
(1) Obtain actual weights for each groundfish species received and retained by: Sorting according to species codes and direct weighing of that species, or weighing the entire delivery and then sorting and weighing some or all of the groundfish species individually to determine their weight.	DCPL, DPR.	SS, SFP
(2) Record daily combined scale weights of landings by species and product codes.	DCPL, DPR.	SS, SFP

(E) *Daily product weight.* The operator or manager of a SS, SFP, MS, or C/P must enter total daily fish product weight or actual scale weight of fish product by species and product codes in the DCPL and DPR. must enter daily discard or disposition weight and number per the following table:

(F) *Daily discard or disposition weight and number.* The operator or manager

Enter ...	In a ...	If a ...
(1) The daily estimated total weight of discards or disposition for Pacific herring and each groundfish species or species group	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P
(2) The daily estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs.	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P

(G) *Balance brought forward.* The operator or manager must enter the balance brought forward per the following table:

Enter ...	In a ...	If a ...
(1) The total product balance brought forward from the previous day	DCPL	MS, C/P
(2) The total estimated discards or disposition balance brought forward from the previous day	DFL, DCPL	CV, MS, C/P

(H) *Zero balance.* The operator or manager must enter zero balance per the following table:

Record weights as zero ...	In a ...	If a ...
(1) After the offload or transfer of all fish or fish product onboard and prior to the beginning of each fishing trip.	DFL	CV
(2) After the offload or transfer of all fish or fish product onboard, if such offload occurs prior to the end of a weekly reporting period. Nothing shall be carried forward.	DCPL	MS, C/P
(3) At the beginning of each weekly reporting period. Nothing shall be carried forward from the previous weekly reporting period.	DCPL	MS, C/P

(I) *Cumulative totals.* The operator or manager must enter cumulative totals per the following table:

Enter ...	In a ...	If a ...
(1) Weekly cumulative totals, calculated by adding the daily totals and balance carried forward	DCPL, WPR.	MS, C/P
(2) Weekly cumulative totals, calculated by adding the daily totals	DCPL, WPR.	SS, SFP
(3) Cumulative total discards or disposition since last delivery, calculated by adding the daily totals and balance carried forward from the day before.	DFL	CV

(v) *Numbers of fish.* The operator or manager must record the estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs.

(vi) *Species codes.* To record species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes.

(vii) *Product codes and product designations.* To record product

information for federally managed groundfish, the operator or manager must use Table 1 to this part to determine product codes and product designations.

(viii) *Target codes.* To record target species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes. Target species may be recorded as primary and secondary.

(ix) *Gear type information.* If a catcher vessel or catcher/processor using longline or pot gear, the operator must enter:

(A) The gear type used used to harvest the fish and appropriate "gear ID".

(B) If gear information is the same on subsequent pages, check the appropriate box instead of re-entering the information.

(C) A description of the gear per the following table:

If gear type is ...	Then enter ...
(1) Pot (2) Hook-and-line	Number of pots set (i) Check the appropriate box to indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations). (ii) Length of skate to the nearest foot (optional, but may be required by IPHC regulations). (iii) Size of hooks, hook spacing in feet, and number of hooks per skate (optional, but may be required by IPHC regulations). (iv) Number of skates set (v) Number of skates lost (if applicable) (optional, but may be required by IPHC regulations). Bird avoidance gear code (see Table 19 to this part)
(3) Longline	

(x) *Separate logsheet, WPR, check-in/check-out report.* The operator or manager must use a separate page (logsheet, WPR, check-in/check-out report) to record information as described in paragraphs (x)(A) through (E) of this section:

(A) For each day of an active period, except shoreside processor or stationary floating processors may use one logsheet for each day of an active period or use one logsheet for up to 7 days.

(B) If harvest from more than one reporting area.

(C) If harvest from COBLZ or RKCSA within a reporting area (see paragraph (a)(7)(xii)). Use two separate logsheets, the first to record the information from the reporting area that includes COBLZ or RKCSA, and the second to record the information from the reporting area that does not include COBLZ or RKCSA.

(D) If harvest with more than one gear type.

(E) If harvest under a separate management program. If harvest for more than one CDQ group, use a

separate logsheet for each CDQ group number.

(xi) *Reporting area.* The operator or manager must record the reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Record in the DFL, BSR, DCPL, SPELR, WPR, DPR, and mothership or catcher/processor check-in/check-out report.

(xii) *Areas within a reporting area.* If harvest was caught using trawl gear, the operator or manager must indicate whether fishing occurred in the COBLZ or RKCSA:

	Area	Reference
(A) COBLZ	BSAI <i>C. opilio</i> Bairdi By-catch Limitation Zone.	Figure 13 to this part
(B) RKCSA	Red King Crab Savings Area.	Figure 11 to this part

(xiii) *Observer information.* Record the number of observers aboard or on site, the name of the observer(s), and the observer cruise number(s) in the DFL and DCPL. If a shoreside processor or stationary floating processor, record also the dates present for each observer.

(xiv) *Number of crew or crew size.* Record the number of crew, excluding certified observer(s), on a mothership or catcher/processor WPR and in the BSR; on the last day of the weekly reporting period in a mothership or catcher/processor DCPL; and in the DFL on the last day of a trip for a catcher vessel.

(xv) *Management program.* Indicate whether harvest occurred under one of the listed management programs in a DFL, BSR, DCPL, SPELR, WPR, DPR, or check-in/check-out report. If harvest is not under one of these management programs, leave blank.

If harvest made under ... program	Indicate yes and record the...	Reference
(A) CDQ	CDQ group number	Subpart C to part 679
(B) Exempted Fishery	Exempted fishery permit number	§ 679.6
(C) Research	Research program permit number	§ 600.745(a) of this chapter
(D) IFQ	IFQ permit number(s)	Subpart D to part 679
(E) AFA	AFA Cooperative account number ONLY for landings from the directed pollock fishery that are counting against the coop quota. (Other species delivered at the same time can go on the same report.).	§ 679.5(e)

(8) *Landings information*—(i) *Requirement.* The manager of a shoreside processor or stationary floating processor must record landings information for all retained species from groundfish deliveries.

(A) If recording in DCPL, or DPR, enter date of landing and daily weight and weekly cumulative weight by species code and product code.

(B) If recording in WPR, enter weekly cumulative weight by species code and product code.

(ii) *Landings as product.* If a shoreside processor or stationary floating processor receives groundfish, records them as landings in Part IB of the DCPL, and transfers these fish to another processor without further processing, the manager must also record the species code, product code, and weight of these fish in Part II of the DCPL prior to transfer.

(9) *Product information*—(i) *Requirement.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record groundfish product information for all retained species from groundfish deliveries.

(A) If recording in DCPL or DPR, enter date of production (shoreside processor or stationary floating processor only); daily weight, balance forward (except shoreside processor or stationary floating processor), and weekly cumulative weight by species code, product code, and product designation.

(B) If recording in WPR, enter weekly cumulative weight by species code, product code, and product designation.

(ii) *Custom processing.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record products that result from custom processing by you for another processor. If you receive unprocessed or processed groundfish to be handled or processed for another processor or business entity, enter these groundfish in a DCPL and a WPR consistently throughout a fishing year using one of the following two methods:

(A) *Combined records.* Record landings (if applicable), discards or

dispositions, and products of contract-processed groundfish routinely in the DCPL, SPELR, WPR, and DPR without separate identification; or

(B) *Separate records.* Record landings (if applicable), discards or dispositions, and products of custom-processed groundfish in a separate DCPL, WPR, and DPR identified by the name, Federal processor permit number or Federal fisheries permit number, and ADF&G processor code of the associated business entity.

(10) *Discard or disposition information*—(i) *Shoreside processor, stationary floating processor, mothership*—(A) *DCPL or DPR.* (1) Except as described in paragraph (a)(10)(v) of this section, the manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a DCPL and DPR, discard or disposition information that occurred on and was reported by a catcher vessel, that occurred on and was reported by a buying station, and that occurred prior to, during, and after production of groundfish.

(2) Discard or disposition information must include: Date of discard or disposition (only shoreside processor or stationary floating processor); daily weight of groundfish; daily weight of Pacific herring PSC; daily number of PSC animals; balance forward (except shoreside processor or stationary floating processor); and weekly cumulative weight of groundfish and herring PSC; weekly cumulative number of PSC animals; species codes and product codes.

(B) *WPR.* The manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a WPR, discard or disposition information to include: week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(ii) *Catcher/processor*—(A) *DCPL or DPR.* (1) The operator of a catcher/processor must record in a DCPL and DPR, discard or disposition information

that occurred prior to, during, and after production of groundfish.

(2) Discard or disposition information must include: Daily weight of groundfish; daily weight of herring PSC; daily number of PSC animals, balance forward, and weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(B) *WPR.* The operator of a catcher/processor must record in a WPR, discard or disposition information to include: Week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(iii) *Buying station.* The operator or manager of a buying station must record in a BSR discard or disposition information that occurred on and was reported by a catcher vessel and that occurred on and prior to delivery to an associated processor. Discard or disposition information must include: daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(iv) *Catcher vessel.* Except as described in paragraph (a)(10)(v) of this section, the operator of a catcher vessel must record in a DFL discard or disposition information that occurred on and prior to delivery to a buying station, mothership, shoreside processor, or stationary floating processor. Discard or disposition information must include daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(v) *Exemption: Catcher vessel unsorted codends.* If a catcher vessel is using trawl gear and deliveries to a mothership, shoreside processor, stationary floating processor, or buying station are of unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue DFL for that delivery.

(vi) *Discard quantities over maximum retainable amount.* When fishing in an IFQ fishery and the fishery for Pacific

cod or rockfish is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount for Pacific cod or

rockfish as defined in Table 10 or 11 to this part; quantities over this amount must be discarded and recorded as discard in the logbook.

(vii) *Discard or disposition logbook recording time limits.* The operator or

manager must record discards and disposition information in the logbook within the time limits given in the following table:

If participant type is a ¹ ...	Record information ...
(A) MS,SS,SFP	By noon each day to record the previous day's discard/disposition that: (1) Occurs on site after receipt of groundfish from a CV or BS; (2) Occurs during processing of groundfish received from a CV or BS. (3) Was reported on a blue DFL received from a CV delivering groundfish; (4) Was reported on a BSR received from a BS delivering groundfish, if different from blue DFL
(B) CV, C/P (C) BS	By noon each day to record the previous day's discard/disposition that: (1) Was reported on a blue DFL received from a CV delivering groundfish. (2) Occurs on BS after receipt of harvest from a CV. (3) Occurs prior to delivery of harvest to a MS, SS, or SFP.

¹ CV = Catcher vessel; SS = Shoreside processor; SFP = Stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(11) *Delivery information—(i) Mothership, shoreside processor or stationary floating processor.* The operator of a mothership or manager of a shoreside processor or stationary floating processor must record delivery information in a DCPL or SPELR when unprocessed groundfish deliveries are received from a buying station or a catcher vessel. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of groundfish discards or disposition (e.g., an IFQ fish delivery with groundfish incidental catch).

(ii) *Buying station.* (A) The operator or manager of a buying station must record delivery information in a BSR when unprocessed groundfish deliveries are received from a catcher vessel. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of groundfish discards or disposition (e.g., an IFQ fish delivery with groundfish incidental catch).

(B) In addition, a catcher vessel operator by prior arrangement with a processor may function as a buying station for his own catch by: Shipping his groundfish catch with a copy of the BSR directly to that processor via truck or airline in the event that the processor is not located where the harvest is offloaded; or by driving a truck that contains his catch and a copy of the BSR to the processor. When the shipment arrives at the processor, the information

from the BSR must be incorporated by the manager of the shoreside processor or stationary floating processor into the DCPL.

(iii) *Required delivery information, Mothership, shoreside processor, stationary floating processor, or buying station—(A) Date of delivery.* Enter date of delivery.

(B) *CV or BS.* If a mothership, shoreside processor, or stationary floating processor, the manager or operator must:

(1) Enter CV or BS to indicate delivery from catcher vessel or buying station, respectively.

(2) If delivery is from a buying station, keep the BSR for each delivery on file throughout the fishing year and for 3 years after the end of the fishing year.

(C) *Receive discard report.* Indicate whether the blue DFL was received from the catcher vessel at the time of catch delivery. If delivery from a buying station, leave this column blank. If the blue DFL is not received from the catcher vessel, enter NO and the response code (example: NO-L) to describe the reason for non-submittal as follows:

If blue DFL not submitted by catcher vessel, record number followed by ...	To indicate the catcher vessel
(1) P	Does not have a Federal fisheries permit

If blue DFL not submitted by catcher vessel, record number followed by ...	To indicate the catcher vessel
(2) P	Is under 60 ft (18.3 m) LOA and does not have a Federal fisheries permit
(3) L	Is under 60 ft (18.3 m) LOA and has a Federal fisheries permit
(4) U	Delivered an unsorted codend
(5) O	Other. Describe.

(D) *Name and ADF&G vessel registration number* (if applicable) of the catcher vessel or buying station delivering the groundfish;

(E) *Time (A.l.t.) when receipt of groundfish delivery was completed;*

(F) *Mothership begin position.* If a mothership, the mothership's begin position coordinates when receiving the groundfish delivery;

(G) *ADF&G fish ticket numbers.* (1) If a mothership, shoreside processor, or stationary floating processor and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the ADF&G fish ticket number issued to each catcher vessel; if receiving unprocessed groundfish from an associated buying station, record in the DCPL and WPR the ADF&G fish ticket numbers issued by the buying station to the catcher vessel.

(2) If a buying station and receiving unprocessed groundfish from a catcher vessel, record in the BSR the ADF&G

fish ticket numbers issued to each catcher vessel.

(H) *Fish ticket numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the fish ticket numbers issued for that non-Alaska state along with the two-character abbreviation for that state.

(I) *Catch receipt numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska where no fish ticket system is available and receiving unprocessed groundfish from a catcher vessel, record in the DCPL the catch receipt number issued to the catcher vessel.

(iv) *Catcher vessel using trawl gear.* If a catcher vessel using trawl gear, indicate whether sorting of codend onboard or bleeding from a codend occurred prior to delivery to a mothership, shoreside processor, stationary floating processor, or buying station. If delivery is an unsorted codend, see paragraph (a)(10)(v) of this section. Delivery information required: The delivery date; the ADF&G fish ticket number(s) received for delivery; and recipient's name and ADF&G processor code.

(v) *Catcher vessel using longline or pot gear.* If IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of IFQ Registered Buyer receiving harvest; name of unloading

port (see paragraph (l)(5)(vii) of this section and Table 14 to this part) or landing location. If non-IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of recipient receiving harvest; name of unloading port (see Table 14 to this part) or landing location.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible. All corrections must be made in ink.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection and retention of records—(i) Inspection.* The operator of a catcher vessel, catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station must make all logbooks, reports, forms, and mothership-issued fish tickets required under this section available for inspection upon the request of an authorized officer for the time periods indicated in paragraph (a)(13)(ii) of this section.

(ii) *Retention of records.* The operator or manager must retain logbooks and forms as follows:

(A) *On site.* On site at the shoreside facility or onboard the vessel until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbooks and forms are retained.

(B) *For 3 years.* Make them available upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(14) *Submittal and distribution of logbooks and forms—(i) Submittal of forms.* The operator or manager must submit to NMFS the check-in report, check-out report, VAR, WPR, DPR, and PTR (see Table 9 to this part), as applicable, by:

(A) Faxing the NMFS printed form to the FAX number on the form; or

(B) Telexing a data file to the telex number on the form.

(C) Transmitting a data file with required information and forms to NMFS by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C).

(D) With the approval of the Regional Administrator, using the voluntary electronic reporting format for the check-in report, check-out report, WPR, and SPELR.

(ii) *Logbook copy sets.* (A) The copy sets of each logbook are described in the following table:

Type of logbook	Copy sets
(1) Catcher vessel longline and pot gear DFL	White, blue, green, yellow, goldenrod
(2) Catcher vessel trawl gear DFL	White, blue, yellow, goldenrod
(3) Catcher/processor longline and pot gear DCPL	White, green, yellow, goldenrod
(4) Catcher/processor trawl gear DCPL	White, yellow, goldenrod
(5) Mothership DCPL	White, yellow, goldenrod
(6) Shoreside processor DCPL	White, yellow, goldenrod

(B) [Reserved]

(iii) *Logsheet distribution.* The logsheet distribution is described in the following table:

If logsheet is ...	Then, the operator or manager must...
(A) White (B) Yellow	Retain, permanently bound in the logbook. Submit quarterly to: NOAA Office of Enforcement, Alaska Region Logbook Program, P.O.Box 21767 Juneau, AK 99802-1767 on the following schedule: 1st quarter by May 1 of that fishing year 2nd quarter by August 1 of that fishing year 3rd quarter by November 1 of that fishing year 4th quarter by February 1 of the following fishing year
(C) Blue	(1) <i>Catcher vessel.</i> Except when delivering an unsorted codend (see paragraph (a)(10)(vi) of this section), submit to the buying station, mothership, shoreside processor or stationary floating processor that receives the harvest. (2) <i>Buying station.</i> Submit upon delivery of catch to an associated mothership, shoreside processor, or stationary floating processor any blue DFL received from catcher vessels delivering groundfish to the buying station.

If logsheet is ...	Then, the operator or manager must...
(D) Green	<i>Longline and pot gear DFL and DCPL.</i> To support a separate IFQ data collection by the IPHC under the joint NMFS/IPHC logbook program; check with the IPHC for submittal and retention requirements.
(E) Goldenrod	Submit to the observer onboard or onsite after the logsheet is signed by the operator or manager.

(iv) *Logbook time limits.* The following table displays the responsibilities of the operator or

manager to submit the identified logsheet within a specified time limit:
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If a ...	The operator or manager must ...	Time limit
(A) CV	Submit the blue DFL to the MS, SS, SFP, or BS receiving the catch.	Within 2 hours after completion of catch delivery
(B) CV or C/P	(1) DFL, DCPL using trawl gear: record haul number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable) and estimated total round weight by species for each haul	Within 2 hours after completion of gear retrieval
	(2) DFL, DCPL using longline or pot gear: record set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, and IFQ permit number (if applicable) number of pots set, and estimated total round weight of species for each set	Within 2 hours after completion of gear retrieval
	(3) DFL, DCPL: notwithstanding other time limits, record all information required in the DFL or DCPL	Within 2 hours after the vessel's catch is off-loaded
(C) CV, C/P, MS, SS or SFP	(1) DFL, DCPL: record discard or disposition information	By noon each day to record the previous day's discard/disposition
	(2) DFL, DCPL: sign the completed logsheets	By noon of the day following the week-ending date of the weekly reporting period
	(3) DFL, DCPL: submit the goldenrod logsheet to the observer	After signature of operator or manager
(D) C/P, MS, SS, or SFP	(1) DFL, DCPL: record all other required information	By noon of the day following completion of production.
	(2) DFL, DCPL: record product information	By noon each day for the previous day's production
(E) MS, SS or SFP	(1) DFL, DCPL: record delivery information	Within 2 hours after completion of receipt of each groundfish delivery
	(2) DFL, DCPL: record all other information required in the logbook	By noon of the day following the day the receipt of groundfish was completed.
(F) SS or SFP	DCPL: record landings information	By noon each day to record the previous day's landings

Note: SS = shoreside processor; SFP = stationary floating processor; C/P = catcher/processor; CV = catcher vessel; MS = mothership; BS = buying station

(15) IFQ/groundfish transfer document comparison. When the

operator or manager is participating in both the groundfish fisheries and the

IFQ fisheries, certain exceptions to submittal of product shipment and

transfer forms are provided to avoid duplication. In the following table, an

“X” indicates submittal requirements under those circumstances.

	VAR	PTR	IFQ trans shipment authorization	IFQ Vessel Clearance	IFQ Departure Report	IFQ dockside sale Receipt	IFQ Shipment Report
	§679. 5(k)	§679. 5(g)	§679. 5(1)(4)	§679. 5(1)(5)	§679. 5(1)(5)	§679. 5(1)(3)(iv)	§679. 5(1)(3)
(i) If a catcher vessel leaving or entering Alaska with groundfish but no IFQ product onboard	X						
(ii) If a mothership or catcher/processor leaving Alaska with groundfish but no IFQ product onboard	X						
(iii) If a vessel leaving Alaska with IFQ sablefish or halibut but no other groundfish onboard				X	X		
(iv) If a vessel leaving Alaska with IFQ sablefish or halibut and other groundfish onboard	X			X	X		
(v) Transfer of groundfish		X					
(vi) Transfer of CDQ sablefish							X
(vii) Transfer of IFQ fish						X	X
(viii) Transfer of IFQ between vessels			X				

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(b) *Representative.* (1) The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or stationary floating processor or buying station delivering to a shoreside processor or stationary floating processor may identify one contact person to complete the logbook and forms and to respond to inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(2) of this section.

(2) Except for a DFL, BSR, PTR, or DCPL, the operator or manager must provide the following representative identification information: The representative's name; daytime business telephone number (including area code); and FAX or telex number. In addition, if completing a DPR, a VAR, or a mothership or catcher/processor check-in/check-out report, the representative's COMSAT number.

(c) *Catcher vessel DFL and catcher/processor DCPL—(1) Longline and pot DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest groundfish or the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest IFQ sablefish or IFQ halibut must record in the DFL or DCPL:

- (i) Gear type;
- (ii) IFQ permit number of the operator, if any, and of each IFQ holder aboard the vessel;
- (iii) Groundfish CDQ group number;
- (iv) Halibut CDQ permit number;
- (v) The set number, sequentially by year;
- (vi) Date, time, and begin position coordinates of gear deployment;
- (vii) Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations);
- (viii) Date, time, and end position coordinates of gear retrieval;
- (ix) Begin and end gear depths, recorded to the nearest fathom (optional, but may be required by IPHC regulations);
- (x) Number of skates or pots set;
- (xi) Number of skates or pots lost (optional, but may be required by IPHC regulations);
- (xii) Target species code;
- (xiii) Estimated catch weight of IFQ halibut and CDQ halibut to the nearest pound, indicate "CDQ" above the amount of CDQ halibut;
- (xiv) Estimated weight of IFQ sablefish to the nearest pound;

(xv) Indicate whether IFQ sablefish product is Western cut, Eastern cut, or round weight;

(xvi) Number of sablefish;

(xvii) The bird avoidance gear code;

(xviii) If a catcher/processor, enter separately the round catch weight of pollock and Pacific cod to the nearest pound or metric ton and the estimated total round catch weight of all retained species combined, except sablefish, halibut, pollock and Pacific cod to at least the nearest 0.001 mt; and

(ix) If a catcher vessel, the estimated total round catch weight of all species combined, except sablefish and halibut.

(2) *Trawl gear DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using trawl gear to harvest groundfish must record in the DFL or DCPL:

- (i) Whether nonpelagic trawl or pelagic trawl;
- (ii) Haul number, sequentially by year;
- (iii) Time and begin position coordinates of gear deployment;
- (iv) Date, time, and end position coordinates of gear retrieval;
- (v) Average sea depth and average gear depth, recorded to the nearest meter or fathom and whether depth recorded in meters or fathoms;
- (vi) Target species code;
- (vii) If a catcher/processor, enter separately the round catch weight of pollock, Pacific cod, and the estimated total round catch weight of all retained species, except Pacific cod and pollock, and indicate whether weight is recorded to the nearest pound or metric ton;
- (viii) If a catcher vessel, enter the estimated total round catch weight of all retained species.

(d) *Buying station report (BSR)—(1)* In addition to information required at paragraphs (a) and (b) of this section, the operator or manager of a buying station must:

- (i) Enter on each BSR the name, ADF&G processor code, and Federal fisheries or processor permit number of its associated processor, date delivery completed, and time delivery completed;
- (ii) Record each delivery of unprocessed groundfish or donated prohibited species to an associated processor on a separate BSR.
- (iii) Ensure that a BSR, along with any blue DFLs received from a catcher vessel, accompanies each groundfish delivery from the landing site to the associated processor.
- (iv) Retain a copy of each BSR.
- (v) In addition to recording the total estimated delivery weight or actual

scale weight of a catcher vessel delivery, the operator or manager of a buying station may enter specific species codes and weights (in lb or mt) to the BSR.

(2) The operator or manager must record all information required and sign the BSR within 2 hours of completion of delivery from catcher vessel.

(e) *Shoreside processor electronic logbook report (SPELR).* (1) The owner or manager must use SPELR or NMFS-approved software for the duration of the fishing year to report every delivery, including but not limited to groundfish from AFA catcher vessels and pollock from a directed pollock fishery participant, from all catcher vessels and maintain the SPELR and printed reports as described at paragraph (f) of this section, if a shoreside processor or stationary floating processor:

- (i) Receives groundfish from AFA catcher vessels; or
 - (ii) Receives pollock harvested in a directed pollock fishery.
- (2) The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e)(1) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR. Processors using the SPELR must maintain the SPELR and printed reports as described in this paragraph (e) and at paragraph (f) of this section.

(3) *Exemptions.* The owner or manager who uses the SPELR per paragraphs (e)(1) and (2) of this section is exempt from the following requirements:

- (i) Maintain shoreside processor DCPL.
- (ii) Submit quarterly DCPL logsheets to NOAA Fisheries, Office for Law Enforcement (OLE), Juneau, as described at paragraph (a)(14)(iii) of this section.

(iii) Maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(iv) If receiving deliveries of fish under a CDQ program, submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(4) *Time limit and submittal.* (i) The SPELR must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. The owner or manager must retain the return receipt as proof of report submittal. If an owner or manager does not receive a return receipt from NMFS, the owner or manager must contact

NMFS within 24 hours for further instruction on submittal of SPELRs.

(ii) Daily information described at paragraph (e)(6) of this section must be entered into the SPELR each day on the day they occur.

(iii) Except as indicated in paragraph (e)(4)(iv) of this section, information for each delivery described at paragraph (e)(7) of this section must be submitted to the Regional Administrator by noon of the following day for each delivery of groundfish.

(iv) If a shoreside processor or stationary floating processor using the SPELR or equivalent software is not taking deliveries over a weekend from one of the AFA-permitted catcher vessels listed on NMFS Alaska Region web page at <http://www.fakr.noaa.gov/rwm> the SPELR daily report may be transmitted on Monday.

(5) *Information entered once (at software installation) or whenever it changes.* The owner or manager must enter the following information into the SPELR when software is installed or whenever any of the information changes:

(i) Shoreside processor or stationary floating processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(ii) State port code as described in Table 14 to this part;

(iii) Name, telephone and FAX numbers of representative.

(6) *Information entered daily.* The owner or manager must daily enter the following information into the SPELR:

(i) Whether no deliveries or no production;

(ii) Number of observers on site;

(iii) Whether harvested in BSAI or GOA;

(iv) Product by species code, product code, and product designation;

(v) Product weight (in lb or mt).

(7) *Information entered for each delivery.* The owner or manager must enter for each delivery the following information into the SPELR:

(i) Date fishing began; delivery date; vessel name and ADF&G vessel registration number; ADF&G fish ticket number of delivery; management program name and identifying number (if any); gear type of harvester; landed species of each delivery by species code, product code, and weight (in pounds or mt); ADF&G statistical area(s) where fishing occurred and estimated percentage of total delivered weight corresponding to each area; and whether delivery is from a buying station.

(ii) If delivery received from a buying station, indicate name and type of buying station (vessel, vehicle, or other);

date harvest received by buying station; if a vessel, ADF&G vessel registration number; if a vehicle, license plate number; if other than a vessel or vehicle, description.

(iii) Whether a blue DFL was received from catcher vessel; if not received, reason given; discard or disposition species; if groundfish or PSC herring, enter species code, product code, and weight (in pounds or mt); if PSC halibut, salmon, or crab, enter species code, product code, and count (in numbers of animals).

(iv) If a CDQ delivery, enter species code, product code, weight (in pounds or mt) and count of PSQ halibut.

(f) *SPELR printed reports*—(1) *Requirement*—(i) *Daily printouts.* The manager daily must print onsite at the shoreside processor or stationary floating processor two reports: a shoreside logbook daily production report and a delivery worksheet using pre-determined formats generated by the SPELR or NMFS-approved software.

(ii) *Signature.* The owner or manager of the shoreside processor or stationary floating processor must sign and enter date of signature onto each SPELR printed report. The signature of the owner or manager on SPELR printed reports is verification of acceptance of the responsibility required in paragraphs (e) and (f) of this section.

(iii) *Delivery worksheet.* The Delivery Worksheet results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily landings and discards.

(iv) *Shoreside logbook daily production report.* The Shoreside Logbook Daily Production Report results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily production.

(2) *Retention.* The manager must retain the paper copies of the reports described in paragraph (f)(1) of this section as follows:

(i) *Onsite.* Onsite at the shoreside processor or stationary floating processor until the end of the fishing year during which the reports were made and for as long thereafter as fish or fish products recorded in the reports are retained.

(ii) *For 3 years.* For 3 years after the end of the fishing year during which the reports were made.

(3) *Inspection.* The owner or manager must make available the reports described in paragraph (f)(1) of this section upon request of observers, NMFS personnel, and authorized officers.

(g) *Groundfish Product Transfer Report (PTR).* (1) Except as provided in paragraphs (g)(1)(i) through (iv) of this

section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record on a separate PTR each transfer of groundfish product (including unprocessed fish) or donated prohibited species.

(i) *Exemption: Bait sales.* The operator or manager may aggregate individual sales or transfers of groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day. If transfer is a daily aggregation of bait sales, enter "BAIT SALES" in the "RECEIVER" box and enter the time of the first sale of the day and the time of the last sale of the day.

(ii) *Exemption: Over-the-counter groundfish sales.* (A) The operator or manager daily may aggregate and record on one PTR, individual over-the-counter sales of groundfish for human consumption, where each sale weighs less than 10 lb (0.0045 mt), when recording the amount of such over-the-counter product leaving a facility that day.

(B) If a PTR records a daily aggregation of over-the-counter product sales, enter "OVER-THE-COUNTER SALES" in the "RECEIVER" box. Enter the time of the first sale of the day and the time of the last sale of the day.

(iii) *Exemption: Wholesale sales.* (A) The operator or manager may aggregate and record on one PTR, wholesale sales of groundfish by species when recording the amount of such wholesale product leaving a facility that day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(B) If a PTR records a daily aggregation of wholesale product sales, enter "WHOLESALE SALES" in the "RECEIVER" box. Enter the time of the first sale of the day and enter the time of the last sale of the day.

(iv) *Exemption: IFQ Registered Buyer permit and IFQ or CDQ sablefish product.* If the operator or the manager possesses a Registered Buyer permit issued per § 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor or stationary floating processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by FAX or electronic file a copy of each PTR to OLE, Juneau, by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) A PTR is not required to accompany a shipment or offload.

(3) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section the operator or manager must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether receipt or shipment. "RECEIPT" if product is received; "SHIPMENT" if transferring product off

your site or transferring product off your vessel;

(iii) Your processor type;

(iv) Whether you are the shipper or the receiver.

(4) *Transfer Information—(i) Shipper.*

(A) Enter information about your company: If you are shipping groundfish or groundfish product, enter your company name, address, FAX number, and ADF&G processor code.

(B) *Enter information about the other company:* If you are receiving groundfish or groundfish product from another company, enter name of the other company and ADF&G processor code (if applicable).

(ii) *Receiver.* (A) *Enter information about your company:* If you are receiving groundfish or groundfish product, enter your company name and ADF&G processor code.

(B) *Enter information about the other company:* If you are shipping groundfish or groundfish product to another company on land, enter name of the receiver and ADF&G processor code (if applicable).

(C) If you are the shipper, enter appropriate information about the other company as provided in the following table:

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If you are the shipper and ...	Then enter ...	
(1) Receiver is on land	Receiver name and ADF&G processor code (if applicable)	(i) If transfer involves one van or truck, enter the Date and time when shipment leaves the plant; Name of the shipping company; and Location of van or truck destination
		(ii) If transfer involves multiple vans or trucks; enter the Date and time when loading of vans or trucks is completed each day; Name of the shipping company; and Location of van or truck destination
		(iii) If transfer involves one airline flight; enter the Date and time when shipment leaves the plant; Name of the airline; and Location of destination airport
		(iv) If transfer involves multiple airline flights; enter the Date and time of shipment when the last airline flight of the day leaves; Name of the airline; and Location of destination airport
(2) Receiver is a vessel	Vessel name and call sign	If transfer occurs at sea (i) Transfer position coordinates in latitude and longitude, in degrees and minutes. (ii) The first destination of the vessel. If a mothership or catcher/processor and transfer takes place in port (iii) Name of the port and country (if other than USA) (iv) Start and finish dates and times of transfer
(3) Receiver is an agent (buyer, distributor, or shipping agent)	Agent name and location (city, state)	If a containerized van (i) Name of the vessel transporting the van (ii) Destination port (iii) Transfer start and finish dates and times

<p>(4) If aggregating individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR</p>	<p>(i) "OVER-THE-COUNTER SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day</p>
<p>(5) If aggregating individual bait sales of groundfish during a day onto one PTR</p>	<p>(i) "BAIT SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day "BAIT SALES"</p>
<p>(6) If aggregating wholesale product sales of groundfish by species during a single day onto one PTR and maintaining for inspection by an authorized officer, invoices detailing destinations for all of the product</p>	<p>(i) "WHOLESALE SALES" (ii) Time of the first sale of the day (iii) Time of the last sale of the day</p>

(5) *Products shipped or received.*
 Enter information for each transfer:
 (i) The species code and product code for each product transferred (Tables 1 and 2 to this part).
 (ii) The number of cartons or production units transferred.
 (iii) The average weight of one carton or production unit for each species and product code in kilograms or pounds (indicate which).
 (iv) The total net weight (to the nearest 0.001 mt) of the products transferred.
 (v) In addition to paragraphs (g)(5)(i) through (iv) of this section, if recording two or more species with one or more product types of fish in the same carton, enter the actual scale weight of each

product of each species to the nearest 0.001 mt. If not applicable, enter "n/a" in the species weight column. If you use more than one line to record species in one carton, use a bracket to tie the carton information together.
 (6) *Total or partial offload.* (i) If a mothership or catcher/processor, indicate whether the transfer is a total or partial offload.
 (ii) If a partial offload, for the products remaining on board, enter: species code, product code, and total product weight to the nearest 0.001 mt for each product.
 (h) *Check-in/check-out report*—(1) *Time limits and submittal.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or

stationary floating processor must submit a check-in report prior to becoming active (see paragraph 679.5(a)(7)(i) of this section) and a check-out report for every check-in report submitted. Check-in and check-out reports must be submitted within the appropriate time limits to the Regional Administrator by FAX or Telex; or transmit a data file by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C); or transmit by voluntary electronic check-in and check-out reports.
 (i) *Check-in report (BEGIN message).* Except as indicated in paragraph (h)(1)(iii) of this section the operator or manager must submit a check-in report according to the following table:

Submit a separate BEGIN message for ...	If you are a ...	Within this time limit
(A) Each reporting area of groundfish harvest, except 300, 400, 550, or 690	(1) C/P using trawl gear	Before gear deployment
	(2) C/P using longline or pot gear	Before gear deployment. May be checked in to more than one area simultaneously.
	(3) MS, SS, SFP	Before receiving groundfish. May be checked in to more than one area simultaneously.
	(4) MS	Must check-in to reporting area(s) where groundfish were harvested
(B) COBLZ or RKCSA	(1) C/P using trawl gear	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA
	(2) MS, SS, SFP	Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA
(C) Gear Type	(1) C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	(2) MS, SS, SFP	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
(D) CDQ	(1) C/P	Prior to groundfish CDQ fishing under each CDQ program
	(2) MS, SS, SFP	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.
(E) Exempted or Research Fishery	(1) C/P	If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.
	(2) MS, SS, SFP	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
(F) Processor type	C/P, MS	If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.
(G) Change of fishing year	C/P, MS, SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.

check-out report according to the following table:

Submit a separate CEASE message for ...	If you are a ...	Within this time limit
(A) COBLZ or RKCSA	(1) C/P using trawl gear. (2) MS, SS, SFP	Upon completion of gear retrieval for groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA. If receiving groundfish harvested with trawl gear, upon completion of receipt of groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
(B) Processor type	C/P, MS	Upon completion of simultaneous activity as both catcher/ processor and mothership, a separate check-out, one for catcher/processor and one for mothership.
(C) Gear Type	(1) C/P	Upon completion of gear retrieval for groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
	(2) MS, SS, SFP	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
(D) CDQ	(1) C/P	Within 24 hours after groundfish CDQ fishing for each CDQ group has ceased.
	(2) MS, SS, SFP	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ group.
(E) Exempted or Research Fishery	(1) C/P	If groundfish are caught during an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
	(2) MS, SS, SFP	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
(F) Reporting Area	(1) C/P using longline or pot gear. (2) C/P using trawl gear. (3) SS, SFP	Upon completion of gear retrieval and within 24 hours after departing each reporting area
	(4) MS, SS, SFP	Within 24 hours after departing a reporting area but prior to checking-in another reporting area
	(5) MS	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or stationary floating processor ceases to receive or process groundfish from that reporting area for the fishing year.
(G) Change of fishing year	C/P, MS, SS, SFP ...	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, may submit a check-out report for that reporting area
(H) Interruption of production	SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, the manager may choose to submit a check-out report for that reporting area.

(iii) *Exception, two adjacent reporting areas.* If on the same day a catcher/processor intends to fish in two adjacent reporting areas (an action which would require submittal of check-out reports and check-in reports multiple times a day when crossing back and forth across a reporting area boundary), and the two reporting areas have on that day and time an identical fishing status for every species, the operator must:

(A) Submit to NMFS a check-in report to the first area prior to entering the first reporting area, and

(B) Submit to NMFS a check-in report to the second area prior to entering the second reporting area.

(C) Remain within 10 nautical miles (18.5 km) of the boundary described in paragraph (h)(1)(iii) of this section.

(D) If the catcher/processor proceeds in the second reporting area beyond 10 nautical miles (18.5 km) of the boundary between the two areas, the operator must submit a check-out report from the first reporting area. The operator must submit a check-out report from the second area upon exiting that reporting area (see paragraph (h)(1)(ii) of this section).

(2) *Transit through reporting areas.*

The operator of a catcher/processor or mothership is not required to submit a check-in or check-out report if the vessel is transiting through a reporting area and is not fishing or receiving fish.

(3) *Required information.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record the following information.

(i) *For each check-in and check-out report.* (A) Whether an original or revised report;

(B) Participant identification information (see paragraph (a)(5) of this section);

(C) Representative information (see paragraph (b)(2) of this section);

(D) Management program name and identifying number (if any);

(E) If a mothership or catcher/processor, processor type and gear type.

(ii) *For each check-in report, mothership.* (A) Date and time when receipt of groundfish will begin;

(B) Position coordinates where groundfish receipt begins;

(C) Reporting area code where gear deployment begins;

(D) Primary and secondary target species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iii) *For each check-in report, catcher/processor.* (A) Date and time when gear deployment will begin;

(B) Position coordinates where gear is deployed;

(C) Reporting area code of groundfish harvest;

(D) Primary and secondary target species expected to be harvested the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iv) *For each check-in report, shoreside processor or stationary floating processor:* (A) Indicate check-in report;

(B) Date facility will begin to receive groundfish;

(C) Whether checking in for the first time this fishing year or checking in to restart receipt and processing of

groundfish after filing a check-out report;

(D) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(E) Whether pounds or 0.001 mt.

(v) *For each check-out report, mothership:* Date, time, reporting area code, and position coordinates where the last receipt of groundfish was completed.

(vi) *For each check-out report, catcher/processor:* date, time, reporting area code, and position coordinates where the vessel departed the reporting area.

(vii) *For each check-out report, shoreside processor or stationary floating processor:* (A) Indicate check-out report;

(B) Date facility ceased to receive or process groundfish;

(C) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(D) Whether pounds or 0.001 mt.

(i) *Weekly Production Report (WPR)*—(1) *Who needs to submit a weekly production report?* (i) Except as indicated in paragraph (i)(1)(iii) of this section, the operator or manager must submit a WPR for any week the mothership, catcher/processor, shoreside processor, or stationary floating processor is checked-in pursuant to paragraph (h)(2) of this section.

(ii) If a vessel is operating simultaneously during a weekly reporting period as both a catcher/processor and a mothership, the operator must submit two separate WPRs for that week, one for catcher/processor fishing activity and one for mothership fishing activity.

(iii) *Exemption.* If using SPELR or software approved by the Regional Administrator as described in § 679.5(e), a shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

(2) *Time limit and submittal.* The operator or manager must submit a separate WPR by FAX or electronic file to the Regional Administrator by 1200 hours, A.l.t. on Tuesday following the end of the applicable weekly reporting period.

(3) *Submit separate WPR.* The operator or manager must submit a separate WPR if:

(i) *Processor type.* For each processor type if a catcher/processor is functioning simultaneously as a Mothership in the same reporting area.

(ii) *Gear type.* For each gear type of harvester if groundfish are caught in the same reporting area using more than one gear type.

(iii) *COBLZ or RKCSA.* If groundfish are caught with trawl gear, submit one report for fish harvested in the COBLZ or RKCSA and another report for fish harvested outside the COBLZ or RKCSA.

(iv) *Management Program.* If groundfish are caught under a specific management program, submit a separate report for each program.

(v) *Reporting area.* For each reporting area, except 300, 400, 550, or 690.

(vi) *Change of fishing year.* If continually active through the end of one fishing year and at the beginning of a second fishing year, the operator or manager must submit a WPR for each reporting area:

(A) To complete the year at midnight, December 31, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(B) To start the year on January 1, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(4) *Required information.* The operator or manager must record:

(i) Whether original or revised WPR;

(ii) Week-ending date;

(iii) Participant identification information (see paragraph (a)(5) of this section);

(iv) Representative information (see paragraph (b)(2) of this section);

(v) Date (month-day-year) WPR completed;

(vi) Management program name and identifying number (if any);

(vii) Gear type of harvester;

(viii) If a mothership or catcher/processor, processor type and crew size;

(ix) Reporting area of harvest;

(x) If a shoreside processor or stationary floating processor, landings scale weights of groundfish by species and product codes and product designations; scale weights or fish product weights of groundfish by species and product codes and product designations;

(xi) Discard or disposition weights or numbers by species and product codes;

(xii) ADF&G fish ticket numbers issued to catcher vessels at delivery (except catcher/processors).

(j) *Daily Production Report (DPR)*—(1) *Notification.* If the Regional Administrator determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submittal of DPRs from motherships, catcher/processors, shoreside processors and stationary floating processors for

reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the **Federal Register** specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

(2) *Applicability.* (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR, when required.

(ii) If a shoreside processor or stationary floating processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR when required.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by FAX to the Regional Administrator by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or the manager of a shoreside processor or stationary floating processor must record the processor type.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?* Except as noted in paragraphs (k)(1)(iii) and (iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership holding a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.—Canadian international boundary between Alaska and British Columbia.

(i) *Both groundfish and IFQ fish.* If a vessel is carrying both groundfish and IFQ halibut or IFQ sablefish, the operator must submit a VAR in addition to a Vessel Departure Report (VDR) or a Vessel Clearance (VC).

(ii) *Revised VAR.* If groundfish are landed at a port other than the one specified, submit a revised VAR showing the actual port of landing.

(iii) *Exemption: Vessel clearance.* If a vessel is carrying only IFQ halibut or

IFQ sablefish onboard and the operator has received a Vessel Clearance per paragraph (l)(5)(iii) of this section, a VAR is not required.

(iv) *Exemption: IFQ departure report.* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has submitted a Departure Report per paragraph (l)(5)(iii)(B) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher vessel, catcher/processor, or mothership); and representative information (see paragraph (b)(2) of this section).

(i) *Return report.* "Return," for purposes of this paragraph, means coming back to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(1) *IFQ and CDQ halibut recordkeeping and reporting.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following IFQ reports are required, when applicable: prior notices

of landing, landing report, shipment report, transshipment authorization, vessel clearance, and IFQ departure report.

(1) *Prior notice of IFQ landing—(i) Applicability.* Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(ii) *Time limits.* A prior notice of landing must be made to the toll-free telephone number 800-304-4846 OR TO 907-586-7202 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(iii) *Information required.* A prior notice of landing must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Name and permit number of the Registered Buyer who will be responsible for completion and submittal of the IFQ Landing Report(s);

(C) The location of the landing (port name or code);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Landing directions;

(F) Species and estimated weight (in pounds) of the IFQ halibut or IFQ sablefish that will be landed;

(G) IFQ regulatory area(s) in which the IFQ halibut or IFQ sablefish were harvested;

(H) IFQ permit number(s) that will be used to land the IFQ halibut or IFQ sablefish.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb (0.23 mt) or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the prior notice of landing required by this section.

(v) *Revision to prior notice of landing.* The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time (A.l.t.) reported in the prior notice of landing or later than 2 hours after the date and time (A.l.t.) reported in the prior notice of landing must submit a new prior notice of IFQ landing as described in paragraphs (l)(1)(i) through (iii) of this section.

(2) *Landing report—(i) Applicability.*

(A) A Registered Buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment of said fish or departure of the delivery vessel from the landing site.

(B) All IFQ catch retained onboard a vessel at commencement of a landing

must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.

(ii) *Electronic landing report.* (A) Except as indicated in paragraphs (l)(2)(ii)(D) and (E) of this section, electronic landing reports must be submitted to OLE, Juneau, AK using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to locate or procure a transaction terminal and report as required.

(B) The IFQ cardholder must initiate a landing report by using his or her own magnetic card and personal identification number (PIN).

(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by OLE, Juneau, AK and the IFQ cardholder's account is properly debited. A properly concluded transaction terminal receipt, printed Internet submission receipt, or manual landing report receipt received by FAX from OLE, Juneau, AK constitutes confirmation that OLE received the landing report and that the cardholder's account was properly debited. After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and a receipt is printed, the IFQ cardholder must sign the receipt to acknowledge the accuracy of the landing report. Legible copies of the receipt must be retained by both the Registered Buyer and the IFQ cardholder pursuant to paragraph (l)(6) of this section.

(D) Electronic landing reports may be submitted to OLE, Juneau, AK using Internet submission methods as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to obtain at his or her own expense, hardware, software and Internet connectivity to support Internet submissions and report as required.

(E) Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer.

(iii) *Manual landing report.* (A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from OLE, Juneau, AK at (800)304-4846. Completed manual landing reports must be submitted by

FAX to OLE, Juneau, AK at (907)586-7313.

(B) The manual landing report must be signed by the Registered Buyer or his/her representative, and the IFQ cardholder to acknowledge the accuracy of the landing report, and by the OLE representative to show that the IFQ cardholder's account was debited consistent with the landing report.

(iv) *Time limits and submittals.* (A) An IFQ landing may commence only between 0600 hours, A.L.t., and 1800 hours, A.L.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

(B) An IFQ landing report must be completed and the IFQ account(s) properly debited, as defined in paragraph (1)(2)(ii)(C) of this section, within 6 hours after the completion of the IFQ landing.

(v) *Landing verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(vi) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ landing report as follows:

(A) Date and time (A.L.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ card holder;

(D) Name and permit number of Registered Buyer receiving the IFQ species;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear type used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J)(1) Except as indicated in paragraph (1)(2)(vi)(j)(2) of this section, for each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds) made at the time of offloading for IFQ species sold and retained;

(2) If the vessel operator is a Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for

the initial accurate scale weight at time of offload.

(K) Whether ice and slime is present on the fish as offloaded from the vessel (YES or NO). Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2 percent deduction for ice and slime and must indicate NO SLIME & ICE.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear;

(M) Signature of Registered Buyer representative;

(N) Signature of IFQ/CDQ card holder.

(vii) *Manual landing report.* When a waiver is issued pursuant to paragraph (1)(2)(ii)(A) of this section, additional information is required. In addition to the information required in paragraph (1)(2)(vi) of this section, the following information is required to complete a landing report using a manual landing report:

(A) Whether the manual landing report is an original or revised;

(B) Name, telephone number, and FAX number of individual submitting the manual landing report.

(3) *Shipment report—(i) Requirement.*

(A) Except as provided in paragraph (1)(3)(i)(D) of this section, complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

(B) Assure that a shipment report is submitted to, and received by, OLE, Juneau, AK by FAX to (907) 586-7313 or mail to P.O. Box 21767, Juneau, AK 99802-1767, within 7 days of the date shipment commenced.

(C) Ensure that a copy of the shipment report or a bill of lading containing the same information accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing.

(D) A shipment report is not required for transportation of IFQ species directly from the landing site to a processing facility owned by the Registered Buyer submitting the IFQ landing report.

When transporting the fish in this manner, the landing report receipt from the IFQ terminal documenting the IFQ landing must accompany the offloaded IFQ species. For IFQ species transported in this manner, the Registered Buyer must complete a shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from the Registered Buyer's processing facility.

(ii) *Information required.* A shipment report must specify the following:

(A) Whether revised or original report;

(B) Shipment date;

(C) Registered Buyer name, address, FAX number, and permit number;

(D) Signature of Registered Buyer or Registered Buyer's representative;

(E) Receiver name (this is the first receiver; the purchaser, wholesaler, or retailer who will receive the shipment from the Registered Buyer) and address;

(F) Mode of transportation and intended route;

(G) Name of the shipping company or entity that is transporting the shipment.

(1) If by air, enter the name of the airline, flight number, departure and arrival airport locations.

(2) If by containerized van, enter the name of the shipping company, vessel transporting the van, and departure and arrival ports.

(3) If by vessel, enter the name of the shipping company if applicable, name of the vessel transporting, and the departure and arrival ports.

(4) If by ground transportation, enter the name of the shipping or trucking company, and departure and arrival locations.

(H) Species codes and product codes of IFQ species;

(I) Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(J) Unit weight (weight of single production unit as listed in "No. of Units"); indicate whether metric tons or pounds;

(K) Total fish product weight of shipment less packing materials; indicate whether metric tons or pounds.

(iii) *Revision to shipment report.* Each Registered Buyer must ensure that, if any information on the original Shipment Report changes prior to the first destination of the shipment, a revised shipment report is submitted to OLE, Juneau, clearly labeled "Revised Report" and that the revised shipment report be received by OLE, Juneau, AK within 7 days of the change.

(iv) *Dockside sale.* A Registered Buyer conducting dockside sales must issue a receipt in lieu of a shipment report, that includes the date of sale or transfer, the Registered Buyer permit number, and the fish product weight of the IFQ sablefish or halibut transferred to each individual receiving IFQ halibut or IFQ sablefish.

(4) *Transshipment authorization.* (i) No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a transshipment authorization, the vessel operator must provide the following information to the clearing officer:

- (A) Date and time (A.l.t.) of transshipment;
- (B) Location of transshipment;
- (C) Name and ADF&G vessel registration number of vessel offloading transshipment;
- (D) Name of vessel receiving the transshipment;
- (E) Product destination;
- (F) Species and product type codes;
- (G) Total product weight;
- (H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(5) *Vessel clearance*—(i) *Requirement.* A vessel operator who intends to make an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must first obtain a vessel clearance at a primary port from a clearing officer.

(ii) *Canadian ports.* A vessel operator who intends to land IFQ species in Canada must first obtain a vessel clearance from a clearing officer at a primary port and must make the landing only at the British Columbia ports of Port Hardy, Prince Rupert, or Vancouver.

(iii) *Registered Buyer permit.* A vessel operator obtaining an IFQ vessel clearance or submitting a departure report must have a Registered Buyer permit.

(iv) *IFQ permits on board.* A vessel operator obtaining an IFQ vessel clearance must ensure that one or more IFQ cardholders is on board with enough remaining IFQ balance to harvest amounts of IFQ fish equal to or greater than all IFQ halibut and IFQ sablefish on board.

(v) *Inspection.* A vessel for which a vessel operator is seeking an IFQ vessel clearance is subject to inspection of all fish, logbooks, permits, and other documents on board the vessel at the discretion of the clearing officer.

(vi) *Primary ports.* Unless specifically authorized on a case-by-case basis by a clearing officer, IFQ vessel clearances will be issued only at the primary ports listed in Table 14 to this part.

(vii) *Completion of fishing.* An IFQ vessel operator who obtains an IFQ vessel clearance may only obtain that IFQ vessel clearance after completion of all fishing. If any fishing takes place after issuance of an IFQ vessel clearance, the vessel operator must obtain a new IFQ vessel clearance.

(viii) *Required information.* To obtain an IFQ vessel clearance, the vessel

operator must provide the following information to the clearing officer:

- (A) Date, time (A.l.t.), and location of requested IFQ vessel clearance;
- (B) Vessel name and ADF&G vessel registration number;
- (C) Name and permit numbers of IFQ permits used to harvest IFQ species on board;
- (D) Vessel operator's IFQ Registered Buyer permit number;
- (E) Estimated total weight of IFQ halibut on board (lb/kg/mt);
- (F) Estimated total weight of IFQ sablefish on board;
- (G) IFQ areas of harvest;
- (H) Intended date, time (A.l.t.) and location of landing;
- (I) Signature of vessel operator.

(ix) *First landing of any species.* A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.

(x) *IFQ landing after vessel clearance.* A vessel operator having been granted an IFQ vessel clearance must be the Registered Buyer responsible for the IFQ landing and must submit the IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(xi) *IFQ departure report.* (A) A vessel operator who intends to obtain a vessel clearance outside the State of Alaska must submit an IFQ departure report, by telephone, to OLE, Juneau, AK at 907-586-7225 or 800-304-4846. The IFQ departure report may only be submitted after completion of all IFQ fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. The vessel operator must provide the following information:

- (B) Vessel name and ADF&G registration number;
- (C) Name of vessel operator submitting the IFQ departure report;
- (D) Total weight on board of IFQ halibut and total weight of IFQ sablefish;
- (E) Intended date, time (A.l.t.), and location for obtaining an IFQ vessel clearance.

(6) *Record retention.* A copy of all reports and receipts required by this section must be retained by Registered Buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(7) * * *

(i) * * *

(C) * * *

(3) * * *

(ii) *Certification,* including the signature or electronic PIN of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature or date of electronic submittal.

(D) *Submission address.* The registered buyer must complete an IFQ Buyer Report and submit by mail or FAX to:

Administrator, Alaska Region, NMFS,
Attn: RAM Program,
P.O. Box 21668,
Juneau, AK 99802 1668,
FAX: (907) 586-7354

or electronically to NMFS via forms available from

RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

* * * * *

(ii) * * *

(C) * * *

(4) *Fee payment and certification section*—(i) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number, signature, and date of signature on the Fee Payment section of the form or provide the electronic equivalent and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

* * * * *

(m) *Consolidated weekly ADF&G fish tickets from motherships*—(1)

Requirement. (i) The operator of a mothership must ensure that any groundfish catch received by a mothership from a catcher vessel that is issued a Federal fisheries permit under § 679.4 is recorded for each weekly reporting period on a minimum of one ADF&G groundfish fish ticket. The operator of a mothership may create a fish ticket for each delivery of catch. (An ADF&G fish ticket is further described at Alaska Administrative Code, 5 AAC Chapter 39.130.) A copy of the Alaska Administrative Code can be obtained from the Alaska Regional Office, see § 600.502 of this chapter, Table 1.

(ii) The operator of a mothership must ensure that the information listed in paragraph (m)(2)(iii) of this section is written legibly or imprinted from the catcher vessel operator's State of Alaska, Commercial Fisheries Entry Commission (CFEC) permit card on the consolidated weekly ADF&G fish ticket.

(2) *Information required from the catcher vessel.* (i) The operator of a catcher vessel delivering groundfish to a mothership must complete the parts of the fish ticket listed in paragraph (m)(2)(iii) of this section, sign the fish ticket, and provide it to the operator of the mothership receiving groundfish harvest for submittal to ADF&G.

(ii) If there is a change in the operator of the same catcher vessel during the same weekly reporting period, complete a fish ticket for each operator.

(iii) *Information required:* (A) Name and ADF&G vessel registration number of the catcher vessel;

(B) Name, signature and CFEC permit number of CFEC permit holder aboard the catcher vessel;

(C) The six-digit ADF&G groundfish statistical area denoting the actual area of catch;

(D) Write in gear type used by the catcher vessel, whether hook and line, pot, nonpelagic trawl, pelagic trawl, jig, troll, or other.

(3) *Information required from the mothership.* The operator of a mothership must ensure that the following information is written legibly or imprinted from the mothership's CFEC processor plate card on the consolidated weekly ADF&G fish ticket:

(i) Mothership name and ADF&G processor code;

(ii) Enter "FLD" for port of landing or vessel transshipped to;

(iii) Signature of the mothership operator;

(iv) The week-ending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel;

(v) Species code for each species from Table 2 to this part, except species codes 120, 144, 168, 169, or 171;

(vi) The product code from Table 1 to this part (in most cases, this will be product code 01, whole fish);

(vii) ADF&G 6-digit statistical area in which groundfish were harvested. If there are more than eight statistical areas for a fish ticket in a weekly

reporting period, complete a second fish ticket. These statistical areas are defined in a set of charts obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game and are also available on the ADF&G website at <http://www.cf.adfg.state.ak.us/geninfo/statmaps>;

(viii) The landed weight of each species to the nearest pound. If working in metric tons, convert to pounds using 2204.6 lb = 1 mt before recording on fish ticket.

(4) *Time limit and submittal.* (i) The operator of a mothership must complete a minimum of one ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.

(ii) The operator of a mothership must ensure copy distribution within the indicated time limit or retention of the multiple copies of each consolidated weekly ADF&G groundfish fish ticket (G series) as follows:

If fish ticket color is ...	Distribute to ...	Time limit
(A) White	Retained by Mothership, see paragraph (a)(13)(ii)(D)(6) of this section.	N/A
(B) Yellow	Alaska Commercial Fisheries Management & Development Division, Department of Fish & Game, 211 Mission Road, Kodiak, AK, 99615-6399.	Within 45 days after landings are received
(C) Pink	Catcher vessel delivering groundfish to the mothership	1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.
(D) Golden-rod	Extra copy	N/A

(n) *Groundfish CDQ fisheries—(1) CDQ delivery report—(i) Who must submit a CDQ delivery report?* The manager of each shoreside processor and stationary floating processor taking deliveries of groundfish CDQ or PSQ species from catcher vessels must submit for each delivery a CDQ delivery report, unless using the SPELR described at paragraph (e) of this section to submit the required CDQ information.

(ii) *Time limit and submittal.* The manager as defined at paragraph (n)(1)(i) of this section must submit to the Regional Administrator a CDQ delivery report within 24 hours of completion of each delivery of groundfish CDQ or PSQ species to the processor.

(iii) *Information required.* The manager as defined at paragraph (n)(1)(i) of this section must record whether the report is original or a revision and the following information on each CDQ delivery report:

(A) *CDQ group information.* CDQ group number as defined at § 679.2 and CDQ group name or acronym.

(B) *Processor information.* (1) Name and federal processor permit number of the processor as defined at paragraph (n)(1)(i) of this section taking delivery of the CDQ catch.

(2) Date delivery report submitted.

(C) *Vessel and catch information.* (1) Enter the name, Federal Fisheries Permit number if applicable, and ADF&G vessel registration number of the vessel delivering CDQ catch. Write "unnamed" if the vessel has no name;

(2) Enter the delivery date, date fishing began, harvest gear type, and Federal reporting area of CDQ harvest. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(D) *Groundfish CDQ Species in this delivery.* Enter weight by species codes and product codes as defined in Tables 1 and 2 to this part, respectively, of groundfish CDQ species that were delivered. Report the weight of each CDQ species in metric tons to at least the nearest 0.001 mt.

(E) *Halibut CDQ, halibut IFQ and sablefish IFQ in this delivery.* For

nontrawl vessels only, enter the product code and product weight for any halibut CDQ, halibut IFQ, and sablefish IFQ in this catch. Submit this same information to the Regional Administrator on an IFQ landing report (see paragraph (l)(2) of this section).

(F) *PSQ information.* For halibut, enter the species code and the weight to the nearest 0.001 mt. For salmon or crab, enter the species code and the number of animals.

(1) Enter PSQ species delivered and discarded from processor by species code and weight or numbers.

(2) Enter at-sea discards of PSQ for vessels without observers by species code and weight or numbers.

(2) *CDQ catch report—(i) Who must submit a CDQ catch report?* The CDQ representative must submit a CDQ catch report for all groundfish catch made by vessels groundfish CDQ fishing as defined at § 679.2 or for any groundfish harvested by vessels greater than or equal to 60 ft (18.3 m) LOA while halibut CDQ fishing and delivered to a

shoreside processor, to a stationary floating processor, or to a mothership.

(ii) *Time limit and submittal.* Submit to the Regional Administrator a CDQ catch report:

(A) Within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, stationary floating processor, or mothership.

(B) Within 7 days of the date gear used to catch CDQ was retrieved by a catcher/processor.

(iii) *Information required, all CDQ catch reports.* Record whether an original or revised report and the following information on each CDQ catch report:

(A) *Vessel type.* Indicate one appropriate vessel/gear/delivery type.

(B) *Vessel catch information—(1)* Enter the name, Federal fisheries permit number if applicable, and ADF&G vessel registration number of the vessel delivering CDQ catch. Write “unnamed” if the vessel has no name.

(2) *Reporting area.* Enter reporting area in which CDQ catch occurred. If a set occurs in more than one area, record the area code where gear retrieval was completed.

(3) *Gear type.* Circle gear type used to harvest CDQ catch. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(C) *CDQ group information.* Enter CDQ number as defined at § 679.2, CDQ group name or acronym, and date report submitted to NMFS.

(iv) *Catch and delivery Information: catcher vessels retaining all groundfish CDQ and delivering to shoreside processors or stationary floating processors (Option 1 in the CDP).* Record the following information on each applicable CDQ catch report:

(A) *Delivery information.* Name and Federal processor permit number of the shoreside processor or the stationary floating processor taking delivery of the CDQ catch; date catch delivered to processor; and date fishing began on this trip.

(B) *Catch information, groundfish CDQ species.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species retrieved by a catcher/processor or delivered to a processor as defined in paragraph (n)(1)(i) of this section by product code and species code as defined in Tables 1 and 2 to this part, respectively.

(C) *Catch information, halibut CDQ, halibut IFQ and sablefish IFQ.* For non-trawl vessels only, enter the product code as defined in Table 1 to this part and product weight in metric tons to at least the nearest 0.001 mt for any

halibut CDQ, halibut IFQ, and sablefish IFQ in the CDQ delivery. Submit this same information to the Regional Administrator on an IFQ landing report (see § 679.5(1)(2)).

(D) *Mortality information, salmon and crab PSQ.* For salmon or crab, enter the species code, as defined in Table 2 to this part, and the number of animals.

(E) *Mortality information, halibut PSQ.* For halibut PSQ catch, enter the round weight to the nearest 0.001 mt, mortality rate, and overall halibut mortality in metric tons to the nearest 0.001 mt. Use the target fishery designations and halibut bycatch mortality rates in the annual final specifications published in the **Federal Register** under § 679.20(c).

(v) *Catch and delivery information: catcher/processors, catcher vessels delivering unsorted codends to motherships, or catcher vessels (with observers) using nontrawl gear and discarding groundfish CDQ at sea (Option 2 in the CDP).* Record the following information on each applicable CDQ catch report.

(A) *Delivery information.* (1) If a catcher vessel (with observers) using nontrawl gear, discarding groundfish CDQ at sea, and delivering to a shoreside processor or stationary floating processor, enter name and Federal processor permit number of the shoreside processor or the stationary floating processor, date catch delivered, and date fishing began on this trip.

(2) If a catcher vessel delivering unsorted codends to a mothership, enter the mothership name and Federal fisheries permit number, observer's haul number for this catch, and date codend is completely onboard the mothership as determined by the Level 2 observer.

(3) If a catcher/processor, the observer's haul number for this catch, and the date on which the gear was retrieved as determined by the Level 2 observer.

(B) *Catch information, groundfish CDQ species.* (See paragraph (n)(2)(iv)(B) of this section).

(C) *Catch information, halibut IFQ/CDQ and sablefish IFQ.* (See paragraph (n)(2)(iv)(C) of this section).

(D) *Mortality information, salmon and crab prohibited species.* (See paragraph (n)(2)(iv)(D) of this section).

(E) *Mortality information, halibut PSQ.* (See § 679.5(n)(2)(iv)(E) of this section).

(o) *Catcher vessel cooperative pollock catch report—(1) Applicability.* The designated representative of each AFA inshore processor catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report

detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements of this section.

(2) *Time limits and submittal.* (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By FAX.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.I.T. 1 week after the date of completion of delivery.

(3) *Information required.* The cooperative pollock catch report must contain the following information:

(i) Cooperative account number;

(ii) Catcher vessel ADF&G number;

(iii) Inshore processor Federal processor permit number;

(iv) Delivery date;

(v) Amount of pollock (in lb) delivered plus weight of at-sea pollock discards;

(vi) ADF&G fish ticket number.

* * * * *

5. In § 679.7, paragraphs (a)(10) and (a)(11) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(10) *Recordkeeping and reporting.* (i) Fail to comply with or fail to ensure compliance with requirements in §§ 679.4 or 679.5.

(ii) Alter, erase, or mutilate any permit, card or document issued under §§ 679.4 or 679.5.

(iii) Fail to submit or submit inaccurate information on, any report, application, or statement required under this part.

(iv) Intentionally submit false information on any report, application, or statement required under this part.

(11) *Buying station—(i) Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) *Associated processor.* Function as a vessel or land-based buying station without an associated processor.

* * * * *

6. In § 679.21, paragraphs (b)(1), (e)(1)(ii), and (e)(1)(iii) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

(b) *General.* (1) See § 679.2 for definition of prohibited species.

(e) * * *

(1) * * *

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation

with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

When the number of mature female red king crab is ...	The zone 1 PSC limit will be ...
(A) At or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt)	32,000 red king crab.
(B) Above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lb (24,948 mt)	97,000 red king crab.
(C) Above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb	197,000 red king crab.

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

(A) The following table refers to the PSC limits for *C. bairdi* that you must follow in Zone 1:

When the total abundance of <i>C. bairdi</i> crabs is ...	The PSC limit will be ...
(1) 150 million animals or less	0.5 percent of the total abundance minus 20,000 animals
(2) Over 150 million to 270 million animals	730,000 animals
(3) Over 270 million to 400 million animals	830,000 animals
(4) Over 400 million animals	980,000 animals

(B) This table refers to the PSC limits for *C. bairdi* that you must follow in Zone 2.

When the total abundance of <i>C. bairdi</i> crabs is ...	The PSC limit will be ...
(1) 175 million animals or less	1.2 percent of the total abundance minus 30,000 animals
(2) Over 175 million to 290 million animals	2,070,000 animals
(3) Over 290 million to 400 million animals	2,520,000 animals
(4) Over 400 million animals	2,970,000 animals

* * * * *

7. In § 679.24, paragraph (b)(2) is removed and reserved; paragraph (a) heading and paragraphs (a)(1), (b)(3) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) *Marking of hook-and-line, longline pot, and pot-and-line gear.* (1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following:
 (i) The vessel's name; and
 (ii) The vessel's Federal fisheries permit number; or
 (iii) The vessel's ADF&G vessel registration number.

* * * * *

(b) * * *
 (3) *Trawl footrope.* No person trawling in any GOA area limited to pelagic trawling under § 679.22 may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow.

* * * * *

§ 679.32 [Amended]

8. In § 679.32, paragraph (a)(2) is removed; paragraph (a)(1) is redesignated as paragraph (a).

9. In § 679.40, paragraphs (a)(2)(i)(C) and (D) are added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *
 (2) * * *
 (i) * * *
 (C) Who is a citizen of the United States at the time of application for QS.
 (D) Who is a corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

* * * * *

§ 679.41 [Amended]

10. In § 679.41, paragraph (i)(2) is removed; and paragraph (i)(3) is redesignated as paragraph (i)(2).

11. In § 679.42, paragraph (c)(2) is revised and paragraph (c)(3) is added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) Requirements and deductions. * *

*

(2) NMFS shall use the following sources of information to debit a CDQ or IFQ account. A CDQ or IFQ account will be debited as indicated in Table 3 to this part.

(i) Except as provided in § 679.5(l)(2)(vi)(j)(2), if offload of unprocessed CDQ or IFQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(vi) to be included in the IFQ/CDQ landing report.

(ii) If offload of processed IFQ & CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish processed product actually measured at or before the time of offload. If the product scale weights are taken before the time of offload, then the species and actual product weight of each box or container must be visibly marked on the outside of each container to facilitate enforcement inspection.

(3) All IFQ catch onboard a vessel must be debited from the IFQ permit holder's account under which the catch was harvested.

* * * * *

12. In § 679.45, paragraphs (a)(4)(iii) and (iv) are revised to read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(4) * * *

(iii) Payment address. Mail payment and related documents to:
 Administrator, Alaska Region, NMFS,

Attn: RAM Program,
 P.O. Box 21668,
 Juneau, AK 99802 1668,
 FAX: (907) 586-7354.

or submit electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

* * * * *

13. In part 679, Figure 3b, "Coordinates," is revised, and Figures 19 and 20 are added to read as follows:

FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

b. Coordinates

Code	Description
610	<i>Western GOA Regulatory Area, Shumagin District.</i> Along the south side of the Aleutian Islands, including those waters south of Nichols Point (54°51'30" N lat) near False Pass, and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.18' N, 169°40.47' W; 52°49.24' N, 169°07.10' W; 53°23.13' N, 167°50.50' W; 53°18.95' N, 167°51.06' W; 53°58.97' N, 166°16.50' W; 54°02.69' N, 166°02.93' W; 54°07.69' N, 165°39.74' W; 54°08.40' N, 165°38.29' W; 54°11.71' N, 165°23.09' W; 54°23.74' N, 164°44.73' W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass) and 159°00' W long.
620	<i>Central GOA Regulatory Area, Chirikof District.</i> Along the south side of the Alaska Peninsula, between 159°00' W long and 154°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS—Continued

b. Coordinates

Code	Description
630	<i>Central GOA Regulatory Area, Kodiak District.</i> Along the south side of continental Alaska, between 154°00' W long and 147°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	<i>Eastern GOA Regulatory Area, West Yakutat District.</i> Along the south side of continental Alaska, between 147°00' W long and 140°00' W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	<i>Prince William Sound.</i> Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	<i>Eastern GOA Regulatory Area, Southeast Outside District.</i> East of 140°00' W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	<i>Eastern GOA Regulatory Area, Southeast Inside District.</i> As specified in Alaska State regulations at 5AAC 28.105 (a)(1) and (2).
690	<i>GOA outside the U.S. EEZs</i> described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

NOTE: A statistical area is the part of a reporting area contained in the EEZ.

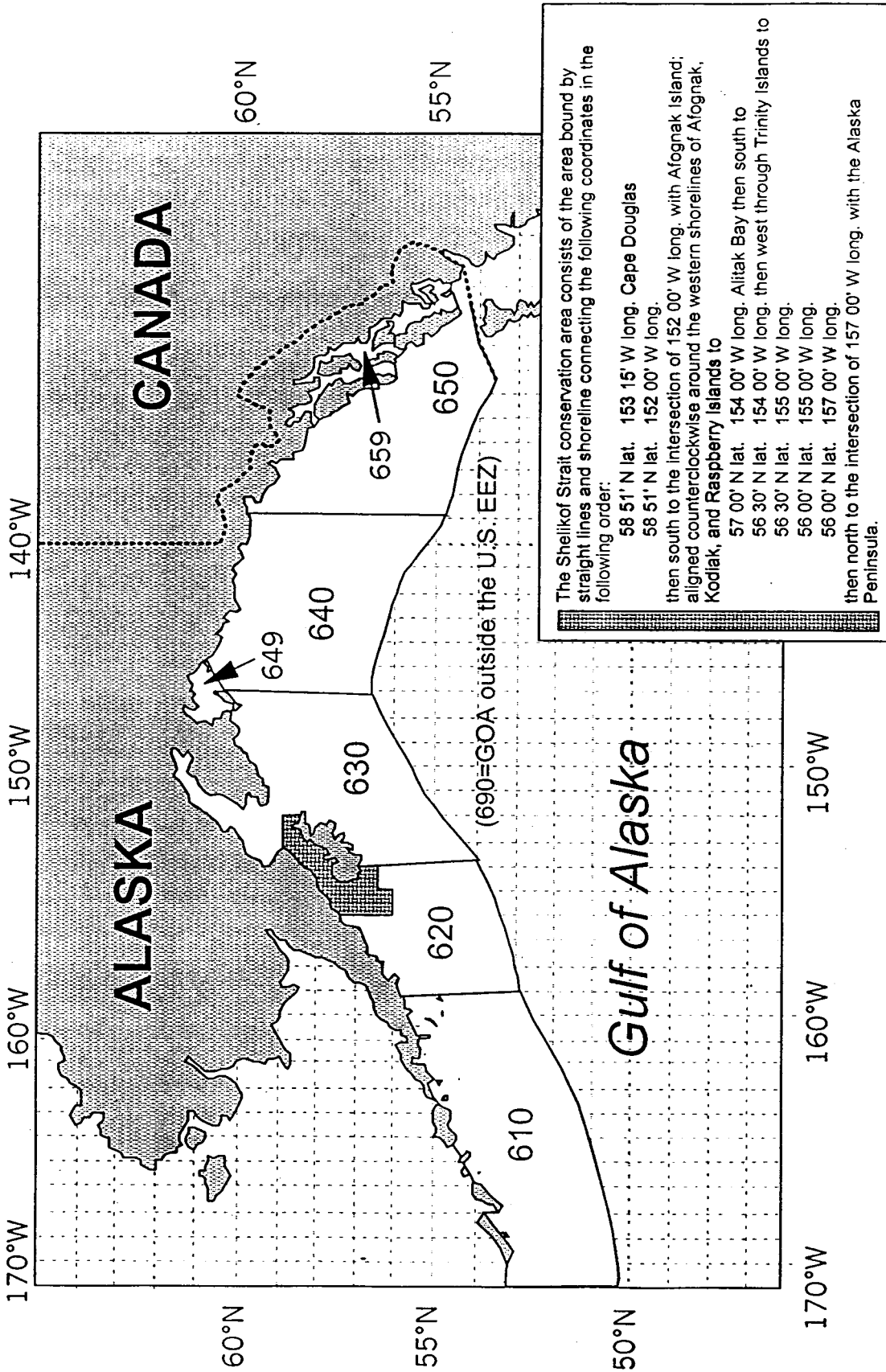


Figure 19 to Part 679. Shelikof Strait Conservation Area

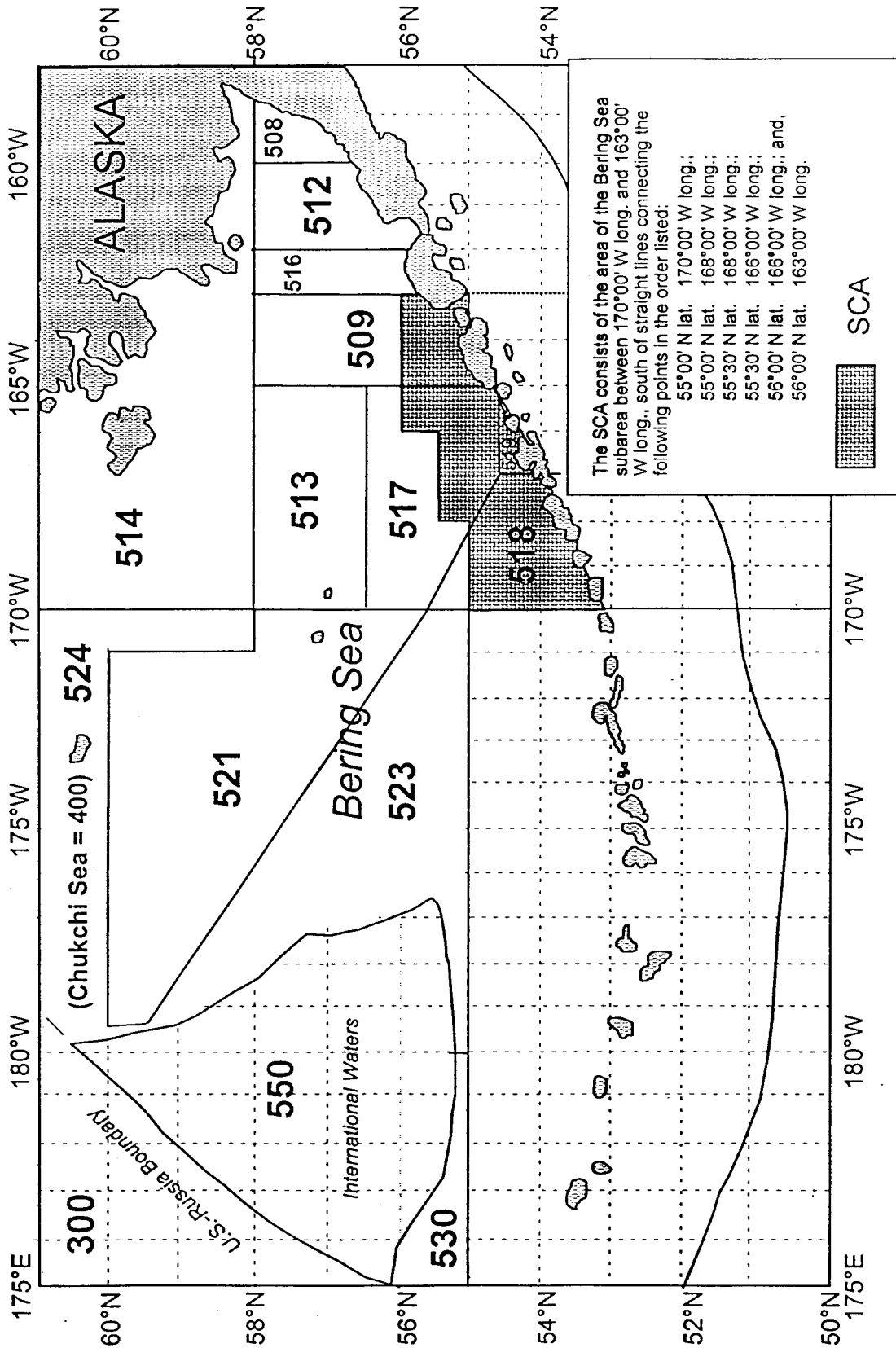


Figure 20 to Part 679. Steller sea lion conservation area (SCA) of the Bering Sea

14. In part 679, Tables 1, 2, 3, 8, 9, 10, 11, and 14a are revised, and Table 19 is added to read as follows:

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
GENERAL USE CODES*	
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head. (ancillary only)	19
Bled only. Throat, or isthmus, slit to allow blood to drain.	03
Bled fish destined for fish meal (includes offsite production) DO NOT RECORD ON PTR.	42
Bones (if meal, report as 32) (ancillary only).	39
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.	37
Cheeks. Muscles on sides of head (ancillary only)	17
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only)	18
Filletts, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.	24
Filletts, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.	23
Filletts with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.	22
Filletts with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.	20
Filletts with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.	21
Fish meal. Meal from whole fish or fish parts; includes bone meal.	32
Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard.	33
Gutted, head on. Belly slit and viscera removed.	04

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Head and gutted, with roe.	06
Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.	10
Heads. Heads only, regardless where severed from body (ancillary only).	16
Kirimi (Steak) Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.	11
Mantles, octopus or squid. Flesh after removal of viscera and arms.	36
Milt. (in sacs, or testes) (ancillary only).	34
Minced. Ground flesh.	31
Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses.	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh.	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only).	14
Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.	12
Stomachs. Includes all internal organs (ancillary only)	35
Surimi. Paste from fish flesh and additives	30
Whole fish/meal. Whole fish destined for meal (includes offsite production.) DO NOT RECORD ON PTR.	41 ¹
Whole fish/food fish.	01 ¹
Whole fish/bait. Processed for bait. Sold	02

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Wings. On skates, side fins are cut off next to body.	13
DISCARD/DISPOSITION CODES	
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.	86
Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.	92 ¹
Whole fish/damaged. Whole fish damaged by observer's sampling procedures.	93 ¹
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait	95 ¹
Whole fish, discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, catcher/processors, motherships, or vessel buying stations. DO NOT RECORD ON PTR.	98
Whole fish, discard, infested. Flea-infested fish, parasite-infested fish.	88
Whole fish, discard, decomposed. Decomposed or previously discarded fish	89
Whole fish, discard, onshore. Discard after delivery and before processing by shoreside processors, stationary floating processors and buying stations and in-plant discard of whole ground-fish and prohibited species during processing. DO NOT RECORD ON PTR.	99
PRODUCT DESIGNATION CODES	
Ancillary product. A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.	A
Primary product. A product, such as fillets, made from each fish, with the highest recovery rate.	P

TABLE 1 TO PART 679—PRODUCT AND DELIVERY CODES—Continued

(These codes describe the condition of the fish at the point it is weighed and recorded)

Product Description	Code
Reprocessed or rehandled product. A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.	R
PACIFIC HALIBUT IFQ & CDQ CODES The following codes are authorized for IFQ and CDQ reporting of Pacific halibut.	
Gutted, head off. Belly slit and viscera removed. Pacific halibut only.	05
Gutted, head on. Belly slit and viscera removed. Pacific halibut.	04
The following codes are effective through December 31, 2001.	
Whole fish/food fish with ice & slime. Sablefish only.	51
Gutted, head on. Belly slit and viscera removed. Pacific halibut and sablefish.	54
Gutted, head off, with ice & slime. Belly slit and viscera removed. Pacific halibut only.	55
Headed and gutted, Western cut, with ice & slime. Sablefish only.	57
Headed and gutted, Eastern cut, with ice & slime. Sablefish only.	58

¹When using whole fish codes, record round weights not product weights, even if the whole fish is not used.

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Atka mackerel (greenling)	193
FLOUNDER	
Arrowtooth and/or Kamchatka	121
Starry	129
Alaska Plaice	133
Octopus	870
Pacific Cod	110
Pollock	270
ROCKFISH	
Aurora	185
Black (BSAI)	142
Blackgill	177
Bocaccio	137
Canary	146
Chilipepper	178

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
China	149
Copper	138
Darkblotched	159
Dusky	154
Greenstriped	135
Harlequin	176
Northern	136
Pacific Ocean Perch (<i>S. alutus</i> only)	141
Pygmy	179
Quillback	147
Redbanded	153
Redstripe	158
Rosethorn	150
Rougheye S. Aleutianus	151
Sharpchin	166
Shortbelly	181
Shortraker (<i>S. borealis</i>)	152
Silvergray	157
Splitnose	182
Stripetail	183
Thornyhead (all <i>Sebastes</i> species)	143
Tiger	148
Vermilion	184
Widow	156
Yelloweye	145
Yellowmouth	175
Yellowtail	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS	
general	689
Pacific sleeper	692
salmon	690
spiny dogfish	691
Skate, longnose	701
Skates, general	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid	875
Turbot, Greenland	134
FORAGE FISH (all species of the following families)	
Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>)	209
Capelin smelt (family <i>Osmeridae</i>)	516
Deep-sea smelts (family <i>Bathylagidae</i>)	773
Eulachon smelt (family <i>Osmeridae</i>)	511
Gunnels (family <i>Pholidae</i>)	207
Krill (order <i>Euphausiacea</i>)	800
Laternfishes (family <i>Myctophidae</i>)	772
Pacific herring (family <i>Clupeidae</i>)	235
Pacific Sand fish (family <i>Trichodontidae</i>)	206

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Pacific Sand lance (family <i>Ammodytidae</i>)	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <i>Stichaeidae</i>)	208
Surf smelt (family <i>Osmeridae</i>)	515
GROUP CODES (DO NOT USE FOR SORTING SPECIES. Do not record on ADF&G fish tickets).	
<i>Demersal shelf rockfish</i> (china, copper, quillback, rosethorn, tiger, yellow-eye, canary)	168
<i>Miscellaneous flatfish</i> (all flatfish without separate codes)	120
<i>Pelagic shelf rockfish</i> (dusky, yellowtail, widow)	169
Shortraker/rougheye rockfish	171
<i>Slope rockfish</i> (aurora, blackgill, Bocaccio, redstripe, silvergray, chili-pepper, dark-blotched, green-striped, harlequin, pygmy, redbanded, shortbelly, splitnose, stripetail, vermilion, yellowmouth, sharpchin)	144
PROHIBITED SPECIES CODES	
CRAB	
Red king	921
Blue king	922
Gold/brown king	923
Scarlet king	924
Bairdi tanner	931
Opilio Tanner	932
Tanner, grooved	933
Tanner, triangle	934
Pacific halibut	200
Pacific herring (family <i>Clupeidae</i>)	230
SALMON	
Chinook	410
Sockeye	420
Coho	430
Pink	440
Chum	450
Steelhead trout	540
Additional *non-FMP CODES (*These species codes may be recorded in NMFS logbooks and reports but are not required by regulations of this part.)	
Abalone	860
Albacore	720
Arctic char, anadromous	521*
CLAMS	
Butter	810*
Cockle	820*
Eastern softshell	842*
Geoduck	815*
Little-neck	840*
Razor	830*
Surf	812*
Coral	899*
CRAB	
Box	900*
Dungeness	910
Korean horsehair	940*
Multispine	951*
Verrilli	953*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Dolly varden, anadromous	531*
Eels or eel-like fish	210*
Giant grenadier	214*
Greenling, kelp	194*
Greenling, rock	191*
Greenling, whitespot	192*
Grenadier (rattail)	213*
Jellyfish	625*
Lamprey, pacific	600*
Lingcod	130*
Lumpsucker	216*
Mussel, blue	855*
Pacific flatnose	260*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
Pacific hagfish	212*
Pacific saury	220*
Pacific tomcod	250*
Prowfish	215*
Rockfish, black	142*
Rockfish, blue	167*
Sardine, Pacific (pilchard)	170*
Scallop, weathervane	850*
Scallop, pink (or calico)	851*
Sea cucumber	895*
Sea urchin, green	893*
Sea urchin, red	892*
Shad	180*

TABLE 2 TO PART 679—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

(Codes without asterisks are FMP species—Federal groundfish or Prohibited Species in groundfish fisheries—that must be recorded in R&R systems)

Species description	Code
SHRIMP	
Pink	961*
Sidestripe	962*
Humpy	963*
Coonstripe	964*
Spot	965*
Skilfish	715*
Smelt, surf	515*
Snails	890*
Sturgeon, general	680*

BILLING CODE 3510-22-S

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE							
		32 MEAL	33 OIL	34 MILT	35 STOMACHS	36 MANTLES	37 BUTTERFLY BACKBONE REMOVED	88, 89 INFESTED OR DECOMPOSED FISH	98, 99 DISCARDS
PACIFIC COD	110	0.17	...	...	...	...	0.43	0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17	...	...	...	...	...	0.00	1.00
FLATHEAD SOLE	122	0.17	...	...	...	...	...	0.00	1.00
ROCK SOLE	123	0.17	...	...	...	...	...	0.00	1.00
DOVER SOLE	124	0.17	...	...	...	...	...	0.00	1.00
REX SOLE	125	0.17	...	...	...	...	...	0.00	1.00
YELLOWFIN SOLE	127	0.17	...	...	...	...	...	0.00	1.00
GREENLAND TURBOT	134	0.17	...	...	...	...	...	0.00	1.00
THORNYHEAD ROCKFISH	143	0.17	...	...	...	...	...	0.00	1.00
SCULPINS	160	0.17	...	...	...	...	...	0.00	1.00
ATKA MACKEREL	193	0.17	...	...	...	...	...	0.00	1.00
POLLOCK	270	0.17	...	...	...	0.43	0.00	0.00	1.00
SMELTS	510	0.17	...	...	...	...	...	0.00	1.00
BULACHON	511	0.17	...	...	...	...	...	0.00	1.00
CAPELIN	516	0.17	...	...	...	...	...	0.00	1.00
SHARKS	689	0.17	...	...	...	...	...	0.00	1.00
SKATES	700	0.17	...	...	...	...	...	0.00	1.00
SABLEFISH	710	0.17	...	...	...	...	...	0.00	1.00
OCTOPUS	870	0.17	...	...	...	0.85	0.00	0.00	1.00
SQUID	875	0.17	...	...	...	0.75	0.00	0.00	1.00
ROCKFISH	...	...	...	...	...	...	...	0.00	1.00
Conversion rates to Net Weight for PACIFIC HALIBUT	200	...	...	...	...	...	...	0.00	0.75

¹Standard pollock surimi rate during January through June
²Standard pollock surimi rate during July through December.
 Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.
 To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate
 To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 Or multiply by 1.33333.

BILLING CODE 3510-22-C

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS

Harvest Zone	Description
A1	BSAI EEZ off Alaska
A2	GOA EEZ off Alaska
B	State waters of Alaska
C	State waters other than Alaska

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS—Continued

Harvest Zone	Description
D	Donut Hole
F	Foreign Waters Other than Russia
I	International Waters other than Donut Hole and Seamounts

TABLE 8 TO PART 679—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS—Continued

Harvest Zone	Description
R	Russian waters
S	Seamounts in International waters
U	U.S. EEZ other than Alaska

TABLE 9 TO PART 679—REQUIRED LOGBOOKS, REPORTS, FORMS AND ELECTRONIC LOGBOOK AND REPORTS FROM PARTICIPANTS IN THE FEDERAL GROUND FISH FISHERIES

Requirement Name	Catcher vessel	Catcher/Processor	Mothership	Shoreside Processor ³	Buying Station
Daily Fishing Logbook (DFL) ¹	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL) ¹	NO	YES	YES	YES	NO
Buying Station Report (BSR)	NO	NO	NO	NO	YES
Check-in/Check-out Report	NO	YES	YES	YES	NO
Optional: Electronic Check-in/out report	NO	YES	YES	YES	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Optional: Electronic WPR	NO	YES	YES	YES	NO
Shoreside Processor Electronic Logbook Report (SPELR) instead of DCPL and WPR when receiving AFA pollock or pollock harvested in a directed pollock fishery	NO	NO	NO	YES	NO
Optional: SPELR instead of DCPL and WPR	NO	NO	NO	YES	NO
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Daily Production Report (DPR) ²	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO
Required use AFA and CDQ at-sea scales, including daily scale test, printed scale output, request for inspection of scales and observer station, scale approval sticker	NO	YES	YES	NO	NO
VMS when fishing for Atka mackerel or AFA pollock	YES	YES	NO	NO	NO

¹ Two formats of the DFL and catcher/processor DCPL exist: one for trawl gear and one for longline and pot gear.

² DPR is submitted only when specifically requested by Regional Administrator.

³ Also stationary floating processor.

BILLING CODE 3510-22-S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES													
Code	Species	Pollock	Pacific cod	DW flat ¹	Rex sole	Flathead sole	SW flat ²	Arrowtooth	Sablefish	Aggregated rockfish ⁽³⁾	SR/RE ERA ⁽¹⁾	DSR SEO	Atka mackerel	Aggregated forage ⁽⁶⁾ fish	Other species
110	Pacific cod	20	na ⁹	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20
121	Arrowtooth	5	5	0	0	0	0	na ⁹	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	20	na ⁹	20	35	7	15	7	1	20	2	20
125	Rex sole	20	20	20	na ⁹	20	20	35	7	15	7	1	20	2	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
143	Thomyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
152/ 151	Shortraker/ rougheye ⁽³⁾	20	20	20	20	20	20	35	7	15	na ⁽⁹⁾	1	20	2	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	⁽³⁾	10	na ⁽⁹⁾	2	20
270	Pollock	na ⁹	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20
710	Sablefish	20	20	20	20	20	20	35		15	7	1	20	2	20
	Flatfish, deep water ⁽¹⁾	20	20	na ⁽⁹⁾	20	20	20	35	7	15	7	1	20	2	20
	Flatfish, shallow water ⁽³⁾	20	20	20	20	na ⁽⁹⁾	20	35	1	5	⁽³⁾	10	20	2	20
	Rockfish, other ⁽⁴⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, pelagic ⁽⁵⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, DSR-SEO ⁽⁶⁾	20	20	20	20	20	20	35	7	15	7	na ⁽⁹⁾	20	2	20
	Other species ⁽⁷⁾	20	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	na ⁽⁹⁾
	Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	⁽³⁾	10	20	2	20

Notes to Table 10 to Part 679	
1	Deep-water flatfish Dover sole, Greenland turbot, and deep-sea sole
2	Shallow water flatfish Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder
3	Shortraker/rougheye rockfish SR/RE shortraker/rougheye rockfish (171) shortraker rockfish (152) rougheye rockfish (151) SR/RE ERA shortraker/rougheye rockfish in the Eastern Regulatory Area.
Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish	
4	Other rockfish Western Regulatory Area Central Regulatory Area West Yakutat District Southeast Outside District means slope rockfish and demersal shelf rockfish means slope rockfish
5	Slope rockfish <u>S. auroa</u> (aurora) <u>S. variegatus</u> (harlequin) <u>S. brevispinis</u> (silvergrey) <u>S. melanostomus</u> (blackgill) <u>S. wilsoni</u> (pygmy) <u>S. diploproa</u> (splitnose) <u>S. paucispinis</u> (bocaccio) <u>S. babcocki</u> (redbanded) <u>S. saxicola</u> (stripetail) <u>S. goodei</u> (chilipepper) <u>S. proriger</u> (redstripe) <u>S. miniatus</u> (vermillion) <u>S. frameji</u> (darkblotch) <u>S. zacentrus</u> (sharpchin) <u>S. reedj</u> (yellowmouth) <u>S. elongatus</u> (greenstriped) <u>S. jordani</u> (shortbelly)
In the Eastern GOA only, Slope rockfish also includes <u>S. polyspinous</u> . (Northern)	
6	Pelagic shelf rockfish <u>S. ciliatus</u> (dusky) <u>S. entomelas</u> (widow) <u>S. flavidus</u> (yellowtail)
7	Demersal shelf rockfish (DSR) <u>S. pinniger</u> (canary) <u>S. maliger</u> (quillback) <u>S. ruberrimus</u> (yelloweye) <u>S. nebulosus</u> (china) <u>S. helvomaculatus</u> (rosethorn) <u>S. saurinus</u> (copper) <u>S. nigrocinctus</u> (tiger)
DSR-SEO = Demersal shelf rockfish in the Southeast Outside District	
8	Other species sculpins skates octopus

	sharks	squid	
9	Aggregated rockfish means rockfish of the genera <i>Sebastes</i> and <i>Sebastolobus</i> defined at § 679.2 except in: Southeast Outside District (SEO) where DSR is a separate category for those species marked with a numerical percentage Eastern Regulatory Area (ERA) where SR/RE is a separate category for those species marked with a numerical percentage		
10	N/A not applicable		
11	FORAGE FISH (all species of the following families) Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>) 209 Capelin smelt (family <i>Osmeridae</i>) 516 Deep-sea smelts (family <i>Bathylagidae</i>) 773 Eulachon smelt (family <i>Osmeridae</i>) 511 Gunnels (family <i>Photidae</i>) 207 Krill (order <i>Euphausiacea</i>) 800 Lanternfishes (family <i>Myctophidae</i>) 772 Pacific herring (family <i>Clupeidae</i>) 235 Pacific Sand fish (family <i>Trichodontidae</i>) 206 Pacific Sand lance (family <i>Ammodytidae</i>) 774 Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <i>Stichaeidae</i>) 208 Surf smelt (family <i>Osmeridae</i>) 515		

TABLE 11 TO PART 679—BSAI RETAINABLE PERCENTAGES
INCIDENTAL CATCH SPECIES¹

BASIS SPECIES	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish ¹	Rock sole	Flathead sole	Greenland turbot	Sablefish	Shortraker/rougheye	Aggregated Rockfish ²	Squid	Aggregate Forage Fish ³	Other Species
Pollock (270)	na ⁴	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod (110)	20	na ⁽⁴⁾	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel (193)	20	20	na ⁴	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth (121)	0	0	0	na ⁽⁴⁾	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole (127)	20	20	20	35	na ⁴	35	35	35	1	1	2	5	20	2	20
Other flatfish ¹	20	20	20	35	35	na ⁴	35	35	1	1	2	5	20	2	20
Rock sole	20	20	20	35	35	35	na ⁴	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na ⁴	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na ⁴	15	7	15	20	2	20
Sablefish ⁵	20	20	20	35	20	20	20	20	35	na ⁴	7	15	20	2	20
Other rockfish ⁶	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS ⁷	20	20	20	35	20	20	20	20	35	15	na ⁽⁴⁾	15	20	2	20
Pacific Ocean perch (141)	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin (166)/Northern AI (136)	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortaker/Rougheye AI (171)	20	20	20	35	20	20	20	20	35	15	na ⁴	5	20	2	20
Squid (875)	20	20	20	35	20	20	20	20	1	1	2	5	na ⁴	2	20
Other species ⁸	20	20	20	35	20	20	20	1	1	2	5	20	2	na ⁴	
Aggregated amount of non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

¹For definition of grouped species, see footnotes to Table 1 of the GOA groundfish specifications (<http://www.fakr.noaa.gov/sustainablefisheries/2000harvestspecs.htm>). ²Aggregated rock fish of the genera *Sebastes* and *Sebastes* except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category. ³Forage fish are defined at Table 1 to this part. ⁴na = not applicable ⁵For fixed gear restrictions, see 50 CFR 679.7 (f)(3)(ii) and 679.7 (f)(11). ⁶“Other rockfish” includes all *Sebastes* and *Sebastes* species except for Pacific ocean perch; and sharpchin, northern, shortraker, and rougheye rockfish. ⁷ Other red rockfish (Bering Sea) includes shortraker, rougheye, sharpchin, and northern rockfish. ⁸ “Other species” includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2 are not included in the “other species” category.

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Adak	186	ADA			
Akutan	101	AKU	X	54°08'05"	165°46'20"
Akutan Bay	102				
Alitak	103	ALI			
Anchor Point	104				
Anchorage	105	ANC			
Angoon	106	ANG			
Aniak		ANI			
Anvik		ANV			
Atka	107	ATK			
Auke Bay	108				
Baranof Warm Springs	109				
Beaver Inlet	110				
Bethel		BET			
Captains Bay	112				
Chignik	113	CHG			
Chinitna Bay	114				
Cordova	115	COR	X	60°33'00"	145°45'00"
Craig	116	CRG	X	55°28'30"	133°09'00"
Dillingham	117	DIL			
Douglas	118				
Dutch Harbor/Unalaska	119	DUT	X	53°53'27"	166°32'05"
Edna Bay	121				

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA—Continued

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Egegik	122	EGE			.....
Ekuk		EKU			.....
Elfin Cove	123	ELF			.....
Emmonak		EMM			.....
False Pass	125	FSP			.....
Fairbanks		FBK	.....		.....
Galena		GAL		.....	.....
Glacier Bay		GLB		.....	.....
Glennallen		GLN	.....		.....
Gustavus	127	GUS			.....
Haines	128	HNS			.....
Halibut Cove	130	.....			.....
Hollis	131	.....			.....
Homer	132	HOM	X	59°38'40"	151°33'00"
Hoonah	133	HNH			.....
Hydaburg		HYD		.....	.....
Hyder	134	HDR			.....
Ikatan Bay	135	.....			.....
Juneau	136	JNU			.....
Kake	137	KAK			.....
Kaltag		KAL			.....
Kasilof	138	KAS			.....
Kenai	139	KEN			.....
Kenai River	140				.....
Ketchikan	141	KTN	X	55°20'30"	131°38'45"
King Cove	142	KCO	X	55°03'20"	162°19'00"
King Salmon	143	KNG			.....
Kipnuk	144				.....
Klawock	145	KLA			.....
Kotzebue		KOT			.....
La Conner		LAC			.....
Mekoryuk	147				.....
Metlakatla	148	MET			.....
Moser Bay		MOS			.....
Naknek	149	NAK			.....
Nenana		NEN			.....
Nikiski (or Nikishka)	150	NIK			.....
Ninilchik	151	NIN			.....
Nome	152	NOM			.....
Nunivak Island		NUN			.....
Old Harbor	153	OLD			.....
Other/Unknown ¹	499	UNK			.....
Pelican	155	PEL	X	57°57'30"	136°13'30"
Petersburg	156	PBG	X	56°48'10"	132°58'00"
Point Baker	157				.....
Port Alexander	158	PAL			.....
Port Armstrong		PTA			.....
Port Bailey	159	PTB			.....
Port Graham	160	GRM			.....
Port Lions		LIO			.....
Port Moller		MOL			.....
Port Protection	161				.....
Resurrection Bay	163				.....
Sand Point	164	SPT	X	55°20'15"	160°30'00"
Savoonga	165				.....
Seldovia	166	SEL			.....
Seward	167	SEW	X	60°06'30"	149°26'30"
Sitka	168	SIT	X	57°03'	135°20'
Skagway	169	SKG			.....
Soldotna		SOL			.....
St. George	170	STG			.....
St. Lawrence	171				.....
St. Mary		STM			.....
St. Paul	172	STP	X	57°07'20"	170°16'30"
Tee Harbor	173				.....
Tenakee Springs	174	TEN			.....
Thorne Bay	175				.....

TABLE 14A TO PART 679--PORT OF LANDING CODES, INCLUDING CDQ AND IFQ PRIMARY PORTS (A) ALASKA—Continued

Port Name	NMFS Code	ADF&G Code ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Togiak	176	TOG			
Toksook Bay	177				
Tununak	178				
Ugadaga Bay	179				
Ugashik		UGA			
Unalakleet		UNA			
Valdez	181	VAL			
Wasilla		WAS			
Whittier	183	WHT			
Wrangell	184	WRN			
Yakutat	185	YAK	X	59°33'	139°44'

¹To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that we may update our list. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

TABLE 19 TO PART 679—SEABIRD AVOIDANCE GEAR CODES

Code	Seabird Avoidance Gear
1	<i>Bird streamer line.</i> Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks. Streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. This device can be single or paired.
2	<i>Buoy bag, bird bag, or other float device.</i> Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking baited hooks. Each of these devices consist of two components: a length of line (without streamers attached), and one or more float devices at the terminal end. Multiple devices may be used.
3	<i>Lining tube and /or line shooter.</i> Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from setting on hooks during deployment of gear.
4	<i>Combination of devices.</i> Any combination of the above devices (codes 1, 2, and / or 3).
9	<i>No bird deterrent device</i> deployed.
0	<i>Night fishing</i> Deploy gear only during the hours specified in § 679.24 (e)(3) using only the minimum vessel's lights necessary for safety.

§§ 679.1, 679.2, 679.4, 679.5, 679.6, 679.7, 679.20, 679.21, 679.22, 679.23, 679.24, 679.26, 679.30, 679.32, 679.41, 679.43, 679.50, and Figure 3 to Part 679 [Amended]

phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column.
BILLING CODE 3510-22-S

15. At each of the locations shown in the "Location" column, remove the

LOCATION	REMOVE	ADD	FREQUENCY
§ 679.1(f)	(applicable through December 31, 1997)	(applicable through December 31, 2002)	1
§ 679.2 Definition for Area endorsement	means a	means (for purposes of groundfish LLP) a	1
§ 679.2 Definition for Area endorsement, paragraph (3)	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.2 Definition for Area endorsement, paragraph (5)	Western Area of the Gulf of Alaska	Western GOA regulatory area	1
§ 679.2 Definition for Area/species endorsement, paragraph (1)	Aleutian Islands brown king	Aleutian Islands brown king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (2)	Aleutian Islands red king	Aleutian Islands red king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (3)	Bristol Bay red king	Bristol Bay red king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (4)	Bering Sea and Aleutian Islands Area <u>C. opilio</u> and <u>C. bairdi</u>	Bering Sea and Aleutian Islands Area <u>C. opilio</u> and <u>C. bairdi</u> (see Figure 16 to this part)	1

§ 679.2 Definition for Area/species endorsement, paragraph (5)	Norton Sound red king and Norton Sound blue king	Norton Sound red king and Norton Sound blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (6)	Pribilof red king and Pribilof blue king	Pribilof red king and Pribilof blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Area/species endorsement, paragraph (7)	St. Matthew blue king	St. Matthew blue king (see Figure 15 to this part)	1
§ 679.2 Definition for Authorized distributor	taken as	taken as incidental catch	1
§ 679.2 Definition for Authorized fishing gear	limitations) means	limitations and Table 15 to this part for gear codes) means	1
§ 679.2 Definition for Buying station	shoreside processor	shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Central Gulf or GOA Central Regulatory Area	Central Gulf or GOA Central Regulatory Area	Central GOA Regulatory Area	1
§ 679.2 Definition for CDQ number or group number	CDQ number or group number	CDQ group number	1
§ 679.2 Definition for Clearing officer	ports listed in § 679.5(1)(3)(vi ii)	ports listed in Table 14 to this part	1

§ 679.2 Definition for Crab species	Crab species means	Crab species means (see also king crab and tanner crab)	1
§ 679.2 Definition for Directed fishing, subparagraph (1)	maximum retainable bycatch amount	maximum retainable amount	1
§ 679.2 Definition for Eastern Gulf or GOA Eastern Regulatory Area	Eastern Gulf or GOA Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Eligible applicant	means a	means (for purposes of the LLP program) a	1
§ 679.2 Definition for Eligible community	means a	means (for purposes of the CDQ program) a	1
§ 679.2 Definition for Federal waters	EEZ off Alaska	EEZ off Alaska (see also reporting area)	1
§ 679.2 Definition for Fishing day	means a	means (for purposes of Subpart E) a	1
§ 679.2 Definition for Fishing month	refers to	means (for purposes of subpart E) a	1
§ 679.2 Definition for Food bank distributor	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for Food bank network	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for groundfish license	means a	means (for purposes of the LLP program) a	1
§ 679.2 Definition for Halibut CDQ fishing, paragraph (1) (ii)	maximum retainable bycatch amounts	maximum retainable amounts	1

§ 679.2 Definition for Hunger relief agency	free of charge	free of charge (see § 679.26)	1
§ 679.2 Definition for IFQ regulatory area, paragraph (1)	chapter III of this title	chapter III of this title (see also Figure 15 to this part)	1
§ 679.2 Definition for IFQ regulatory area, paragraph (2)	limited entry program	limited entry program (see Figure 14 to this part)	1
§ 679.2 Definition for Manager	shoreside processor	shoreside processor, stationary floating processor	2
§ 679.2 Definition for Observer	vessels or shoreside processors	vessels, shoreside processors, or stationary floating processors	1
§ 679.2 Definition for Observer contractor	vessels and shoreside processors	vessels, shoreside processors, or stationary floating processors	1
§ 679.2 Definition for Red King Crab Savings Area (RKCSA) of the BSAI	(see § 679.22(a)(3))	(see § 679.22(a)(3) and Figure 11 to this part)	1
§ 679.2 Definition for Red King Crab Savings Subarea (RKCSS) of the BSAI	(see §679.21(e)(3)(ii)(B))	(see § 679.21(e)(3)(ii)(B)) and Figure 11 to this part)	1
§ 679.2 Definition for Resident fisherman	means an	means (for purposes of the CDQ Program) an	1

§ 679.2 Definition for Rockfish, paragraph (1)	For the Gulf of Alaska	For the GOA	1
§ 679.2 Definition for Rockfish, paragraph (2)	For the Bering Sea and Aleutian Islands Management Area	For the BSAI	1
§ 679.2 Definition for Southeast Outside District of the GOA	Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Tender vessel	shoreside processor	shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (1)	or shoreside processor	shoreside processor, or stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (1)	at any shoreside processor	at any shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Transfer, paragraph (2)	at any shoreside processor	at any shoreside processor, stationary floating processor,	1
§ 679.2 Definition for Unsorted codend	mothership or shoreside processor	mothership, shoreside processor, or stationary floating processor	1

§ 679.2 Definition for Vessel Activity Report (VAR)	(see § 679.5)	(see § 679.5(k))	1
§ 679.2 Definition for Vessel operations category	(see § 679.4)	(see § 679.5(b)(3))	1
§ 679.2 Definition for West Yakutat District of the GOA	GOA Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Western Gulf or GOA Western Regulatory Areas	Western Gulf or GOA Western Regulatory Areas	Western GOA Regulatory Area	1
§ 679.4(b)(4)(ii), (f)(4)(ii)	RAM Division	RAM Program	1
§ 679.4(f)(1)	or vessel of the United States operating solely as a mothership in Alaska State waters	or stationary floating processor	1
§ 679.4(f)(2)(vi)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.4(f)(6)(i)	shoreside processor	shoreside processor, or stationary floating processor	1
§ 679.4(j)	Salmon donation program permits	Prohibited species donation program permits	1

§ 679.4(k)(1)(i)	issued by NMFS to a qualified person	issued by NMFS	1
§ 679.4(k)(4)(ii)(C) (1), (2), (3), and (4)	Western Area of the Gulf of Alaska	Western GOA regulatory area	once for (1), (2), (4); twice for (3)
§ 679.4(k)(4)(ii)(D) (1), (2), and (3)	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.6(b)(7) introductory text, (d)(1)(iii), (d)(1)(v), (d)(1)(vi), (d)(2), (e) introductory text, (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(7), (e)(8)	experimental fishing	exempted fishing	1
§ 679.6(b) introductory text, (b)(3), (b)(9), (d)(1) introductory text	experimental fishing	exempted fishing	2
§ 679.6(f)	Experimental fishing	Exempted fishing	2
§ 679.6(f)	Experimental fishing	Exempted fishing	1
§ 679.7(a)(15)	or vessel of the United States operating solely as a mothership in Alaska State waters	or stationary floating processor	1

§ 679.7(a)(16)	maximum retainable groundfish bycatch amount	maximum retainable groundfish amount	1
§ 679.7(d)(16)	retainable bycatch amounts	maximum retainable amounts	1
§ 679.7(d)(20)	shoreside processor	shoreside processor, stationary floating processor	1
§ 679.8	§ 600.740	§ 600.730	1
§ 679.20(a)(4)(i) heading	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.20(a)(4)(i) text	Eastern Area of the GOA	Eastern GOA regulatory area	1
§ 679.20(a)(4)(ii) heading	GOA Central and Western Areas	Central and western GOA regulatory areas	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas of the GOA	Central and western GOA regulatory areas	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas	Central and western GOA regulatory areas	1
§ 679.20(e) heading	Maximum retainable bycatch amounts	Maximum retainable amounts	1
§ 679.20(e)(1), (e)(2)(i), (e)(2)(ii), (e)(2)(iii)	maximum retainable bycatch amount	maximum retainable amount	1
§ 679.20(e)(1)	bycatch species or species group	incidental catch species	1

§ 679.20(e)(2)(i) (e)(2)(ii) (e)(2)(iii)	bycatch species	incidental catch species	1
§ 679.20(e)(2)(i) (e)(2)(ii) (e)(2)(iii)	individual retainable bycatch amount	individual retainable amount	1
§ 679.21(d)(4)(iii) (A)	GOA Eastern Regulatory Area	Eastern GOA regulatory area	1
§ 679.22(a)(3)	§ 679.21(e)(4)(i) i)(B)	§ 679.21(e)(3)(ii) (B)	1
§ 679.22(a)(11)(iv) (B) introductory text	SCA	SCA (see Figure 20 to this part)	1
§ 679.22(b)(3)(iii)(A)	defined at § 679.23(d)(3) of this part	defined at § 679.23(d)(3) and Figure 20 to this part,	1
§ 679.22(b)(3)(iii) (B) introductory text	Shelikof Strait conservation area	Shelikof Strait conservation area (see Figure 19 to this part)	1
§ 679.23(h)(1)	Western and Central Regulatory Areas of the GOA	Western and Central GOA regulatory areas	1
§ 679.23(h)(2)	Western Regulatory Area of the GOA	Western GOA regulatory area	2
§ 679.23(h)(3)	Central Regulatory Area of the GOA	Central GOA regulatory area	2

§ 679.24(c)(2) heading, (c)(2)(i)(A)	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.24(c)(2)(ii)(A), (B)	GOA Eastern Regulatory Area	Eastern GOA regulatory area	1
§ 679.24(c)(3) heading	GOA Central and Western Areas	Central and Western GOA regulatory areas	1
§ 679.24(c)(3)	GOA Central and Western Regulatory Areas	Central and western GOA regulatory areas	1
§ 679.24(d)(2) introductory text	in this paragraph (d)	in this paragraph (d) and in Figure 7 to this part	1
§ 679.26(b)(3) heading	SDP Permit	PSD Permit	1
§ 679.26(c)(3)	until 1 year after	until 3 years after	1
§ 679.30(a)(5)(i)(B) heading	Shoreside processors	shoreside processors or stationary floating processors	1
§ 679.30(a)(5)(i)(B)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.32(c)	shoreside processors	shoreside processors or stationary floating processors	1

§ 679.32(c)(3) heading	Shoreside processors and vessels of the United States operating solely as a mothership in Alaska State waters	shoreside processors and stationary floating processors	1
§ 679.32(c)(3) introductory text	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.32(d)(1)	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.32(f)(1)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.32(f)(3)	shoreside processor	shoreside processor or stationary floating processor	2
§ 679.41(e)(2)(iii)	Central Gulf area	Central GOA regulatory area	1
§ 679.41(e)(2)(iv)	Western Gulf area	Western GOA regulatory area	1

§ 679.43 (a)	under part 679 of this chapter	under this subpart D as well as portions of subpart C of this part	1
§ 679.50 (c) (1) (vi)	Eastern Regulatory Area of the GOA	Eastern GOA regulatory area	1
§ 679.50 (c) (3) (iii)	shoreside processor or to a mothership processor vessel in Alaska State waters	shoreside processor or stationary floating processor	1
§ 679.50 (d) introductory text heading	shoreside processors	shoreside processors and stationary floating processors	1
§ 679.50 (d) introductory text and (d) (4) (i)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (e) (2), (g)	vessels or shoreside processors	vessels, shoreside processors or stationary floating processors	1
§ 679.50 (f) (2) heading	Shoreside processor	shoreside processor or stationary floating processor	1

§ 679.50 (f) (2)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (f) (2) (iii) (A), (f) (2) (iv), (f) (2) (v)	shoreside processor's	shoreside processor's or stationary floating processor's	1
§ 679.50 (h) (2) (i) (A) (4)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor	1
§ 679.50 (i) (2) (v) (A)	shoreside processor	shoreside processor or stationary floating processor	1
§ 679.50 (i) (2) (v) (C)	vessels and/or shoreside processors	vessels, shoreside processors and/or stationary floating processors	1
§ 679.50 (i) (2) (xiv) (B), (C), and (D)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor	1
§ 679.50 (i) (2) (xiv) (G) (3) and (4)	Shoreside processors	Shoreside processors or stationary floating processors	1
§ 679.50 (j) (4) (i)	vessels and shoreside processors	vessels, shoreside processors, and stationary floating processors	1



Federal Register

**Monday,
January 28, 2002**

Part IV

Department of Housing and Urban Development

**Statutory and Regulatory Waivers Granted
to New York State for Recovery From the
September 11, 2001 Terrorist Attacks;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4732-N-01]

**Statutory and Regulatory Waivers
Granted to New York State for
Recovery From the September 11, 2001
Terrorist Attacks**

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements for this purpose. This notice lists the provisions being waived.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73, approved November 26, 2001) provides for the use of Community Development Block Grant (CDBG) funds made available from the Emergency Response Fund by the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38, approved September 18, 2001) to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001, terrorist attacks on New York City. Section 434 authorizes the Secretary of HUD to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to

fair housing, nondiscrimination, labor standards, and the environment. The Department finds that the following waivers and alternative requirements are necessary to facilitate the use of the initial \$700 million in CDBG funds made available from the Emergency Response Fund, and that such use is not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

**Description and Justification of
Requirements Waived or Alternative
Requirements Specified**

1. Waiver of the Requirement That 70% of the CDBG Funds Received by the State Over a One-to-Three Year Period be for Activities That Benefit Persons of Low and Moderate Income

The provisions of 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the 70% overall benefit requirement are waived with respect to CDBG funds appropriated under the Emergency Response Fund. HUD expects the grantee will make a good faith effort to maximize benefits to low- and moderate-income persons, and maintain documentation of such efforts.

2. Waiver and Alternative Requirement—Streamlined Citizen Participation Requirements

The provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings, but do provide for a reasonable opportunity for citizen comment and for ongoing citizen access to information about the use of grant funds. The streamlined requirements for this grant are:

a. Before the state adopts the action plan for or any substantial amendment to this grant, the state will publish the proposed plan or amendment (including the information required in waiver eight (8) below). Publication will be carried out in a manner that affords citizens, New York City, and other interested parties a reasonable opportunity to examine the plan or amendment's contents and to submit comments. The state's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. Subsequent to publication, the state must provide a reasonable period to receive comments on the plan or substantial amendment.

b. In the action plan, the state will specify the criteria for determining what changes in the state's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change.

c. The state must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of these comments and the state's response with the action plan or substantial amendment.

d. The state must make the action plan, any substantial amendments, and all performance reports available to the public, on request. Also on request, the state must make these documents available in a form accessible to persons with disabilities. During the term of this grant, the state will provide citizens, New York City, and other interested parties reasonable and timely access to information and records relating to the action plan and the state's use of this grant.

e. The state will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days, if practicable, of the complaint.

3. Waiver and Alternative Requirement—Modification of Requirement for Consultation With Local Governments

Currently statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with New York City in determining the use of funds.

4. Waiver of Requirements for Consistency With the Consolidated Plan

Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that require that housing activities undertaken with CDBG, HOME, ESG, and HOPWA funds be consistent with the strategic plan, are waived. Also, 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria is also waived.

5. Alternative Requirement—Revision of the Process for Environmental Release of Funds so the State May Carry Out Activities Directly

Usually, a state distributes CDBG funds to units of local government and serves in HUD's place as the responsible federal official reviewing environmental

determinations made by the grant recipients and approving releases of funds. For this grant, waiver seven (7) below allows New York State to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, HUD must serve as the responsible federal official and approve releases of funds.

6. Waiver and Alternative Requirement—Allowance for Reimbursement for Pre-Agreement Costs

The provisions of 24 CFR 570.489(b) are modified to permit New York State or New York City to reimburse itself for otherwise allowable costs incurred on or after September 11, 2001.

7. Waiver and Alternative Requirement—Distribution and Use of Funds to and in a Metropolitan City

Provisions of 42 U.S.C. 5306 currently require a state to distribute CDBG funds to units of general local government in nonmetropolitan areas for use in nonmetropolitan areas rather than carrying activities out directly. These provisions are waived with alternative requirements with respect to CDBG funds appropriated under the Emergency Response Fund to permit the state of New York to carry out activities directly in New York City and to permit the state to distribute these funds to New York City. Additionally, because New York State may carry out activities directly, HUD is waiving the regulations at 24 CFR 570.494 regarding timely distribution of funds. However, HUD expects New York State to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

8. Waiver and Alternative Requirement—Action Plan for Disaster Recovery

Current state CDBG requirements for an action plan envision a state using a method for distributing substantially all CDBG funds received to other governments and not carrying out activities directly. This waiver allows the state to submit an action plan that may include activities directly undertaken by the state. With respect to CDBG funds appropriated under the Emergency Response Fund, the last sentence of 42 U.S.C. 5304 (a)(1), 42 U.S.C. 12705, and provisions of 24 CFR 91.320 and 91.325(a)(5) are waived with alternative requirements that the state submit an action plan for disaster recovery that includes the following:

a. Information specified at 24 CFR 91.220(a),(b),(d) and (g).

b. A description of the activities the state will assist with grant funds. This description of activities shall estimate the number and type of beneficiaries of the proposed activities, proposed accomplishments, and a target date for completion of each activity. This information must be submitted in a form prescribed by HUD.

9. Waiver and Alternative Requirement—Changing Limitations on Administrative and Planning Expenses

The current law and regulations require that 50 percent of any administrative expenses, in excess of \$100,000, that do not exceed 2 percent of the grant be paid from the grant. Provisions at 42 U.S.C. 5306(d)(3)(A), 24 CFR 570.489(a)(1)(i) and 24 CFR 570.489(a)(3) are waived to allow use of CDBG disaster grant funds for planning and administrative expenses that do not exceed 10 percent of the grant amount plus 10 percent of program income.

10. Waiver—Public Benefit Standards for Economic Development Activities

Currently, grantees are limited in the amount of CDBG assistance per job retained or created, or amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity, that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

11. Waiver of Duplication of Benefits

The CDBG funds appropriated under the Emergency Response Fund may not be used to provide funds for the same specific uses as disaster loans made available by the Small Business Administration (SBA), in compliance with 15 U.S.C. 636(b)(1)(A). If the needs for assistance are more than the SBA disaster loan amount, CDBG disaster assistance may be used to fund such additional need. New York State should encourage the use of SBA physical damage and economic injury disaster loans; they offer low interest rates and favorable terms. Additionally, CDBG disaster assistance may not be used for the same specific uses as disaster assistance made available by the Federal Emergency Management Agency, e.g.,

for public works and facilities, in compliance with duplication of benefits prohibitions of 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended).

12. Waiver and Alternative Requirements—Performance Reports

Generally, grantees submit an annual performance report 90 days after the jurisdiction's program year. The conferees for Public Law 107-73 requested that HUD submit reports to the Committees on Appropriations quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the state must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), numbers of properties and housing units assisted; for activities benefiting low- and moderate income persons, the number of jobs taken by persons of low- and moderate-income, and numbers of low- and moderate-income households benefiting. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

13. Waiver and Alternative Requirements—Allow Flexibility in Use of Program Income During Grant and Provide for Disposition at Grant Closeout

A combination of CDBG provisions limits the flexibility available to the state and city for the use of program income. Generally, program income earned on disaster grants has been program income to the regular CDBG program of the applicable entitlement or state and has lost its disaster grant

identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly and the law specifically provides for local governments receiving grants to retain program income if they use it for additional eligible activities under the regular CDBG program. This waiver and the alternate requirements allow program income to the disaster grant to be governed by the original grant's requirements and waivers and to remain the state's until grant closeout, at which point any program income on hand or received subsequently will become program income to New York City's regular entitlement CDBG program. Therefore, 42 U.S.C. 5304(j), 24 CFR 570.481(a) to the extent it relates to defining program income, and 24 CFR 570.489(e) are waived and the following alternative requirements apply:

a. Program income is defined at 24 CFR 570.500(a);

b. The requirements of 24 CFR 570.504(a) and (c);

c. Program income received before grant closeout may be retained by the recipient if the income is treated as additional funds under this grant subject to all of this grant's applicable requirements;

d. Substantially all program income other than any held in revolving funds shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity; and

e. Program income on hand at the time of grant closeout and program income received after grant closeout shall be program income to the ongoing CDBG entitlement program of New York City.

14. Waiver—Modification of the Anti-Pirating Clause to Permit Assistance to Help a Business Return

42 U.S.C. 5305(h) is hereby waived only to allow the state to provide assistance under this grant to any business that was operating in the covered disaster area before September 11, 2001, and has since moved in whole or in part from the affected area to continue business.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73) requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is February 2, 2002.

Dated: January 22, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02-1936 Filed 1-25-02; 8:45 am]

BILLING CODE 4210-29-P



Federal Register

**Monday,
January 28, 2002**

Part IV

Department of Housing and Urban Development

**Statutory and Regulatory Waivers Granted
to New York State for Recovery From the
September 11, 2001 Terrorist Attacks;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4732-N-01]

**Statutory and Regulatory Waivers
Granted to New York State for
Recovery From the September 11, 2001
Terrorist Attacks**

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements for this purpose. This notice lists the provisions being waived.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73, approved November 26, 2001) provides for the use of Community Development Block Grant (CDBG) funds made available from the Emergency Response Fund by the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38, approved September 18, 2001) to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001, terrorist attacks on New York City. Section 434 authorizes the Secretary of HUD to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to

fair housing, nondiscrimination, labor standards, and the environment. The Department finds that the following waivers and alternative requirements are necessary to facilitate the use of the initial \$700 million in CDBG funds made available from the Emergency Response Fund, and that such use is not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

**Description and Justification of
Requirements Waived or Alternative
Requirements Specified**

1. Waiver of the Requirement That 70% of the CDBG Funds Received by the State Over a One-to-Three Year Period be for Activities That Benefit Persons of Low and Moderate Income

The provisions of 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the 70% overall benefit requirement are waived with respect to CDBG funds appropriated under the Emergency Response Fund. HUD expects the grantee will make a good faith effort to maximize benefits to low- and moderate-income persons, and maintain documentation of such efforts.

2. Waiver and Alternative Requirement—Streamlined Citizen Participation Requirements

The provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings, but do provide for a reasonable opportunity for citizen comment and for ongoing citizen access to information about the use of grant funds. The streamlined requirements for this grant are:

a. Before the state adopts the action plan for or any substantial amendment to this grant, the state will publish the proposed plan or amendment (including the information required in waiver eight (8) below). Publication will be carried out in a manner that affords citizens, New York City, and other interested parties a reasonable opportunity to examine the plan or amendment's contents and to submit comments. The state's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. Subsequent to publication, the state must provide a reasonable period to receive comments on the plan or substantial amendment.

b. In the action plan, the state will specify the criteria for determining what changes in the state's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change.

c. The state must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of these comments and the state's response with the action plan or substantial amendment.

d. The state must make the action plan, any substantial amendments, and all performance reports available to the public, on request. Also on request, the state must make these documents available in a form accessible to persons with disabilities. During the term of this grant, the state will provide citizens, New York City, and other interested parties reasonable and timely access to information and records relating to the action plan and the state's use of this grant.

e. The state will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days, if practicable, of the complaint.

3. Waiver and Alternative Requirement—Modification of Requirement for Consultation With Local Governments

Currently statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with New York City in determining the use of funds.

4. Waiver of Requirements for Consistency With the Consolidated Plan

Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that require that housing activities undertaken with CDBG, HOME, ESG, and HOPWA funds be consistent with the strategic plan, are waived. Also, 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria is also waived.

5. Alternative Requirement—Revision of the Process for Environmental Release of Funds so the State May Carry Out Activities Directly

Usually, a state distributes CDBG funds to units of local government and serves in HUD's place as the responsible federal official reviewing environmental

determinations made by the grant recipients and approving releases of funds. For this grant, waiver seven (7) below allows New York State to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, HUD must serve as the responsible federal official and approve releases of funds.

6. Waiver and Alternative Requirement—Allowance for Reimbursement for Pre-Agreement Costs

The provisions of 24 CFR 570.489(b) are modified to permit New York State or New York City to reimburse itself for otherwise allowable costs incurred on or after September 11, 2001.

7. Waiver and Alternative Requirement—Distribution and Use of Funds to and in a Metropolitan City

Provisions of 42 U.S.C. 5306 currently require a state to distribute CDBG funds to units of general local government in nonmetropolitan areas for use in nonmetropolitan areas rather than carrying activities out directly. These provisions are waived with alternative requirements with respect to CDBG funds appropriated under the Emergency Response Fund to permit the state of New York to carry out activities directly in New York City and to permit the state to distribute these funds to New York City. Additionally, because New York State may carry out activities directly, HUD is waiving the regulations at 24 CFR 570.494 regarding timely distribution of funds. However, HUD expects New York State to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

8. Waiver and Alternative Requirement—Action Plan for Disaster Recovery

Current state CDBG requirements for an action plan envision a state using a method for distributing substantially all CDBG funds received to other governments and not carrying out activities directly. This waiver allows the state to submit an action plan that may include activities directly undertaken by the state. With respect to CDBG funds appropriated under the Emergency Response Fund, the last sentence of 42 U.S.C. 5304 (a)(1), 42 U.S.C. 12705, and provisions of 24 CFR 91.320 and 91.325(a)(5) are waived with alternative requirements that the state submit an action plan for disaster recovery that includes the following:

a. Information specified at 24 CFR 91.220(a),(b),(d) and (g).

b. A description of the activities the state will assist with grant funds. This description of activities shall estimate the number and type of beneficiaries of the proposed activities, proposed accomplishments, and a target date for completion of each activity. This information must be submitted in a form prescribed by HUD.

9. Waiver and Alternative Requirement—Changing Limitations on Administrative and Planning Expenses

The current law and regulations require that 50 percent of any administrative expenses, in excess of \$100,000, that do not exceed 2 percent of the grant be paid from the grant. Provisions at 42 U.S.C. 5306(d)(3)(A), 24 CFR 570.489(a)(1)(i) and 24 CFR 570.489(a)(3) are waived to allow use of CDBG disaster grant funds for planning and administrative expenses that do not exceed 10 percent of the grant amount plus 10 percent of program income.

10. Waiver—Public Benefit Standards for Economic Development Activities

Currently, grantees are limited in the amount of CDBG assistance per job retained or created, or amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity, that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

11. Waiver of Duplication of Benefits

The CDBG funds appropriated under the Emergency Response Fund may not be used to provide funds for the same specific uses as disaster loans made available by the Small Business Administration (SBA), in compliance with 15 U.S.C. 636(b)(1)(A). If the needs for assistance are more than the SBA disaster loan amount, CDBG disaster assistance may be used to fund such additional need. New York State should encourage the use of SBA physical damage and economic injury disaster loans; they offer low interest rates and favorable terms. Additionally, CDBG disaster assistance may not be used for the same specific uses as disaster assistance made available by the Federal Emergency Management Agency, e.g.,

for public works and facilities, in compliance with duplication of benefits prohibitions of 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended).

12. Waiver and Alternative Requirements—Performance Reports

Generally, grantees submit an annual performance report 90 days after the jurisdiction's program year. The conferees for Public Law 107-73 requested that HUD submit reports to the Committees on Appropriations quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the state must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), numbers of properties and housing units assisted; for activities benefiting low- and moderate income persons, the number of jobs taken by persons of low- and moderate-income, and numbers of low- and moderate-income households benefiting. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

13. Waiver and Alternative Requirements—Allow Flexibility in Use of Program Income During Grant and Provide for Disposition at Grant Closeout

A combination of CDBG provisions limits the flexibility available to the state and city for the use of program income. Generally, program income earned on disaster grants has been program income to the regular CDBG program of the applicable entitlement or state and has lost its disaster grant

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c. Program income received before grant closeout may be retained by the recipient if the income is treated as additional funds under this grant subject to all of this grant's applicable requirements;

d. Substantially all program income other than any held in revolving funds shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity; and

e. Program income on hand at the time of grant closeout and program income received after grant closeout shall be program income to the ongoing CDBG entitlement program of New York City.

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The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73) requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is February 2, 2002.

Dated: January 22, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02-1936 Filed 1-25-02; 8:45 am]

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Federal Register

Vol. 67, No. 18

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1-264.....	2
265-478.....	3
479-638.....	4
639-790.....	7
791-1066.....	8
1067-1274.....	9
1275-1412.....	10
1413-1602.....	11
1603-1858.....	14
1859-2130.....	15
2131-2316.....	16
2317-2548.....	17
2549-2792.....	18
2793-3034.....	22
3035-3426.....	23
3427-3580.....	24
3581-3810.....	25
3811-4166.....	28

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7463 (See EO 13253).....	2791
7516.....	479
7517.....	2787

Executive Orders:

12171 (Amended by EO 13252).....	1601
12343 (Revoked by EO 13251).....	1599
12543 (See Notice of January 3, 2002).....	637
12544 (See Notice of January 3, 2002).....	637
12947 (See Notice of January 18, 2002).....	3033
13099 (See Notice of January 18, 2002).....	3033
13182 (Superseded by EO 13249).....	639
13194 (See Notice of January 15, 2002).....	2547
13213 (See Notice of January 15, 2002).....	2547
13223 (Amended by EO 13253).....	2791
13249.....	639
13250.....	1597
13251.....	1599
13252.....	1601
13253.....	2791

Administrative Orders:

Notices:	
Notice of January 3, 2002.....	637
Notice of January 15, 2002.....	2547
Notice of January 18, 2002.....	3033

5 CFR

532.....	3035
534.....	3581
1201.....	3811

Proposed Rules:

213.....	3128
970.....	3266

7 CFR

301.....	1067, 3427, 3583
353.....	2317
354.....	1070
457.....	3036
764.....	791
905.....	801
920.....	1413
987.....	1275
1410.....	2131
1464.....	481
1703.....	3039
1721.....	484

1945.....	791
Proposed Rules:	
Ch. I.....	525
330.....	697
800.....	25
930.....	3540
Ch. IX.....	525
925.....	1315
959.....	1317
979.....	1319
Ch. X.....	525
Ch. XI.....	525
1240.....	849
1464.....	526
1703.....	3128
3017.....	3266
3021.....	3266

8 CFR

Proposed Rules:	
236.....	1670

9 CFR

93.....	649, 1418
94.....	649, 1072
101.....	1910
116.....	1910
381.....	1277
391.....	3428
590.....	3428
592.....	3428
441.....	1277

10 CFR

1.....	3584
2.....	3263
19.....	3263
20.....	3263, 3584
21.....	3263
30.....	3263
34.....	3584
40.....	3263
51.....	3263
60.....	3263
61.....	3263
63.....	3263
70.....	3263, 3584
71.....	3584
72.....	3263, 3431, 3584
73.....	3263, 3584
75.....	3263

Proposed Rules:

35.....	274
63.....	3628
430.....	3449
606.....	3266
607.....	3266
1036.....	3266

12 CFR

3.....	3784
208.....	3784
225.....	3784

325.....3784
 516.....3264
 614.....1281
 619.....1281
 1777.....3587

13 CFR

121.....3041
Proposed Rules:
 121.....3826
 125.....3826
 126.....3826
 145.....3266
 147.....3266

14 CFR

25.....487, 2118, 2793
 39...1, 123, 265, 489, 491, 492,
 494, 495, 497, 499, 500,
 502, 503, 505, 507, 509,
 651, 653, 809, 812, 815,
 1286, 1603, 1859, 2132,
 2317, 2318, 2320, 2323,
 2795, 2797, 2799, 2801,
 2802, 2804, 3605
 43.....2098
 45.....2098
 71.....510, 511, 512, 513, 514,
 515, 516, 517, 816, 2134,
 2806, 3264
 73.....2807
 91.....2774
 95.....2808
 97.....267, 269, 1288, 1289,
 3608, 3610, 3611
 107.....655, 3810, 3682
 108.....655, 3810
 121.....2112, 2118
 330.....250
Proposed Rules:
 25.....1846, 2827, 3456
 39...29, 31, 33, 35, 38, 40, 530,
 534, 537, 538, 541, 542,
 544, 547, 550, 697, 700,
 1165, 1167, 1169, 1419,
 1670, 1913, 2145, 2146,
 3844
 71.....552, 702, 703, 704, 705,
 706, 1322, 2148, 2149,
 2150, 2151, 2152, 2154,
 2155, 2156, 2613, 2828,
 2830, 2832, 2835, 2836,
 3263, 3264
 93.....123
 330.....263
 1265.....3266
 1267.....3266

15 CFR

4a.....2135
 743.....458
 752.....458
 772.....458
 774.....458
Proposed Rules:
 26.....3266
 29.....3266
 70.....3631

16 CFR

4.....123
Proposed Rules:
 432.....1915

17 CFR

228.....232

229.....232
 230.....228
 240.....232
 241.....6
 249.....232

17 CFR

240.....3056

18 CFR

Proposed Rules:
 35.....3632
 101.....1026
 201.....1026
 284.....44
 352.....1026
 388.....3129

19 CFR

10.....3058
 12.....953, 1809
Proposed Rules:
 35.....3632
 141.....3135
 142.....3135

20 CFR

Proposed Rules:
 345.....2157
 436.....3266
 439.....3266

21 CFR

173.....271
 330.....3059
 864.....1606
 876.....3431
Proposed Rules:
 1404.....3266
 1405.....3266

22 CFR

41.....1413
 42.....1414, 1415
 126.....1074
Proposed Rules:
 137.....3266
 139.....3266
 196.....1420
 208.....3266
 210.....3266
 310.....3266
 312.....3266
 1006.....3266
 1008.....3266
 1508.....3266
 1509.....3266

23 CFR

Proposed Rules:
 650.....2837

24 CFR

Proposed Rules:
 570.....2960

25 CFR

170.....1290
 500.....2384
 513.....1274
Proposed Rules:
 292.....3846
 542.....1917, 3461

26 CFR

1.....8, 817, 1075, 2327, 2841,

3811
 53.....3076
 301.....1416, 2327, 3076
 602.....8, 817, 1075, 3076
Proposed Rules:
 1...48, 1672, 2387, 3461, 3846
 31.....3846
 46.....707
 301.....1421, 2387, 2549, 2558
 602.....1421

27 CFR

Proposed Rules:
 4.....3135

28 CFR

2.....2568

29 CFR

102.....656, 657
 1912.....658
 1912a.....658
 1915.....2846
 2520.....772, 777
 2560.....772, 777
 2570.....777
 4022.....1861
 4044.....1861

Proposed Rules:

94.....3266
 98.....3266
 2700.....1673
 1471.....3266
 1472.....3266

30 CFR

203.....1862
Proposed Rules:
 250.....275, 1171, 3632
 917.....3847
 931.....1173
 938.....3633

32 CFR

Proposed Rules:
 25.....3266
 26.....3266
 326.....1673
 505.....1421
 806B.....1423

33 CFR

84.....2329
 110.....17
 117.....17, 1095, 1416, 1417,
 1607
 160.....2571
 165.....517, 1097, 1099, 1101,
 1607, 2330, 2332, 2571,
 3812, 3814
 183.....2329

Proposed Rules:

100.....1177
 165.....2614
 167.....2616
 401.....3466

34 CFR

Proposed Rules:
 Ch. II.....2770
 84.....3266
 85.....3266
 303.....1410
 668.....3266
 682.....3266

36 CFR

Proposed Rules:
 2.....1424
 7.....1424
 1209.....3266
 1212.....3266

37 CFR

1.....520

38 CFR

2.....3433
 3.....3612
 15.....3433
 52.....660
 19.....3099
 20.....3099

Proposed Rules:

3.....200
 17.....200
 21.....200
 44.....3266
 48.....3266

39 CFR

3.....2135

Proposed Rules:

111.....275, 2388

40 CFR

9.....1812, 3370
 50.....1430
 52.....18, 19, 822, 2573, 2811,
 3816, 3819
 60.....1295
 61.....1295, 3106
 62.....271
 63.....825, 1295, 3106
 70.....1431
 72.....1295
 75.....1295
 80.....3435, 3440
 141.....1812
 142.....1812
 180.....1102, 1880, 2333, 2580,
 3113
 260.....2962
 261.....1888, 1896
 264.....2962
 271.....2962
 434.....3370

Proposed Rules:

3.....278
 32.....3266
 36.....3266
 51.....278
 52.....50, 849, 3849
 55.....2846
 60.....278, 1676
 61.....1676, 3137
 62.....279
 63.....278, 850, 2286, 2390,
 3137
 70.....278
 80.....3468
 86.....2159, 3640
 123.....278
 142.....278
 145.....278
 162.....278
 180.....1917, 1925, 2175, 2393
 233.....278
 257.....278
 258.....278
 260.....2518

261.....2518	Proposed Rules:	95.....1710	556.....710
264.....2518	17.....3266		557.....710
265.....2518	21.....3266	48 CFR	564.....710
266.....2518	67.....709	19.....1858	565.....710
268.....2518	206.....3412	52.....1858, 3441	566.....710
270.....2518		Proposed Rules:	567.....710
271.....278, 1931, 2518	45 CFR	23.....631	568.....710
281.....278	Proposed Rules:	52.....631	569.....710
403.....278	76.....3266	1813.....3669	570.....710
501.....278	82.....3266	1852.....3669	572.....710
721.....1937	620.....3266		573.....710
725.....1179	630.....3266	49 CFR	574.....710
745.....278	689.....3666	1.....629	575.....710
763.....278	1154.....3266	192.....1108	576.....710
	1155.....3266	195.....831, 1650, 2136	577.....710
41 CFR	1169.....3266	199.....2611	578.....710
101-44.....2583	1173.....3266	214.....1903	579.....710
102-37.....2583	1185.....3266	219.....21, 1116	
105-68.....3266	1186.....3266	240.....22	
105-74.....3266	1626.....3470	Proposed Rules:	
Ch. 301.....1899	2542.....3266	29.....3266	
301-10.....1902	2545.....3266	32.....3266	
		173.....852	
42 CFR	46 CFR	176.....3673	
82.....2343	25.....2329	192.....1537, 3675	
447.....2602	126.....2343	195.....3675	
Proposed Rules:		219.....3138	
81.....2397	47 CFR	241.....2179	
Ch. VI.....3641	Ch. 1.....3616, 3617	529.....710	
401.....3662	1.....1615, 3441, 3620	531.....710	
	6.....678	533.....710, 3471	
43 CFR	7.....678	535.....710	
Proposed Rules:	15.....1623	537.....710	
12.....3266	20.....1626, 1643, 1903	538.....710, 713	
42.....3266	22.....1626	541.....710	
43.....3266	54.....3118, 3441, 3620	542.....710	
3430.....2618	64.....1643, 2814, 3621	543.....710	
3470.....2618	73.....828, 829, 830, 3622	544.....710	
	76.....678, 1649	551.....710	
44 CFR	Proposed Rules:	552.....710	
65.....1610, 1611	51.....1945, 1947	553.....710	
67.....675, 1614	73.....851, 1704	554.....710	
	76.....1704	555.....710	

50 CFR

17.....680, 1662, 3120
216.....2820
223.....1116
229.....1133, 1142
600.....1540, 2343, 3820
635.....1668
648.....1908, 2824, 3126, 3442, 3444, 3623
660.....1540, 3820
679.....956, 1160, 1163, 3126, 3446, 3447, 3825, 4100

Proposed Rules:

17.....280, 1712, 3675, 3849, 3940
229.....1300
300.....3867
600.....1555
622.....1323, 3679
635.....629
648.....1324
660.....1186, 1555
679.....1325
697.....282

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 28, 2002**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Pork promotion, research, and consumer information order; published 12-28-01

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Testimony by agency employees and production of official records in legal proceedings; published 12-27-01

ENERGY DEPARTMENT Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Electronic filing of Form No. 423; published 12-28-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 1-28-02

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 11-28-01

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—
Schools and libraries, internet connections; Alaska; denial of waiver request; published 12-28-01

Radio stations; table of assignments:

Colorado; published 1-8-02

Television broadcasting:

Cable television systems—
Multichannel video and cable television service; 1998 biennial review; published 12-28-01

INTERIOR DEPARTMENT National Park Service

Historic properties leasing regulations; published 12-27-01

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Case suspension procedures; published 1-28-02

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; published 11-14-01

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled—
Recovery of overpayments; disclosure of information to consumer reporting agencies; modifications in regulations; published 12-28-01

Ticket to Work and Self-Sufficiency Program; implementation; published 12-28-01

TRANSPORTATION DEPARTMENT**Research and Special Programs Administration**

Pipeline safety:

Hazardous liquid transportation—
Hazardous liquid and carbon dioxide pipelines; corrosion control standards; published 12-27-01

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; disease status change—

Czech Republic; comments due by 2-4-02; published 12-4-01 [FR 01-30001]

Plant pest regulations update; risk-based criteria; comments due by 2-6-02; published 1-7-02 [FR 02-00263]

Plant quarantine safeguard regulations:

Untreated oranges, tangerines, and grapefruit from Mexico transiting

U.S. to foreign countries; comments due by 2-4-02; published 12-4-01 [FR 01-30000]

AGRICULTURE DEPARTMENT**Commodity Credit Corporation**

Conservation Reserve Program:

Cropland eligibility and private sector technical assistance; comments due by 2-4-02; published 12-6-01 [FR 01-30213]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Steller sea lion protection measures; comments due by 2-7-02; published 1-8-02 [FR 01-32251]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic coastal fisheries cooperative management—

American lobster; comments due by 2-4-02; published 1-3-02 [FR 02-00142]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Marine mammals:

Incidental taking—

Atlantic Large Whale Take Reduction Plan; comments due by 2-8-02; published 1-9-02 [FR 02-00274]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Permits:

Endangered and threatened species; comments due by 2-4-02; published 12-21-01 [FR 01-31544]

DEFENSE DEPARTMENT

Acquisition regulations:

Performance-based contracting; comments due by 2-4-02; published 12-6-01 [FR 01-30262]

DEFENSE DEPARTMENT

Acquisition regulations:

Research and development streamlined contracting procedures; comments

due by 2-4-02; published 12-6-01 [FR 01-30261]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Various States; comments due by 2-4-02; published 1-3-02 [FR 02-00104]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Various States; comments due by 2-4-02; published 1-3-02 [FR 02-00105]

Air programs; State authority delegations:

Maine; comments due by 2-7-02; published 1-17-02 [FR 02-01244]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Virginia; comments due by 2-7-02; published 1-8-02 [FR 02-00407]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Virginia; comments due by 2-7-02; published 1-8-02 [FR 02-00408]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alaska; comments due by 2-7-02; published 1-8-02 [FR 02-00218]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alaska; comments due by 2-7-02; published 1-8-02 [FR 02-00219]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Various States; comments due by 2-4-02; published 1-8-02 [FR 02-00370]

Television stations; table of assignments:

Colorado; comments due by 2-4-02; published 12-21-01 [FR 01-31457]

INTERIOR DEPARTMENT**Fish and Wildlife Service**

Endangered and threatened species:
San Miguel Island fox, etc. (4 subspecies of island fox); comments due by 2-8-02; published 12-10-01 [FR 01-30188]

INTERIOR DEPARTMENT**Minerals Management Service**

Outer Continental Shelf; oil, gas, and sulphur operations: Exploration under salt sheets; operations suspension; comments due by 2-8-02; published 1-9-02 [FR 02-00521]

INTERIOR DEPARTMENT**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:
New Mexico; comments due by 2-8-02; published 1-9-02 [FR 02-00481]

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing: Light water reactor electric generating plants; fire protection; comments due by 2-4-02; published 12-20-01 [FR 01-31217]

POSTAL SERVICE

Domestic Mail Manual: Free matter for blind and other physically handicapped persons; eligibility standards; comments due by 2-4-02; published 1-3-02 [FR 02-00078]

SOCIAL SECURITY ADMINISTRATION

Social security benefits: Federal old age, survivors, and disability insurance—Skin disorders; medical criteria; impairments listing; comments due by 2-8-02; published 12-10-01 [FR 01-30431]

TRANSPORTATION DEPARTMENT**Coast Guard**

Civil and criminal penalty proceedings: Marine violation notices; response options; comments due by 2-8-02;

published 12-10-01 [FR 01-30480]
Outer Continental Shelf activities: Gulf of Mexico; petroleum and gas production facilities; safety zones; comments due by 2-8-02; published 12-10-01 [FR 01-30481]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: Agusta S.p.A.; comments due by 2-8-02; published 12-10-01 [FR 01-30211]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: Bombardier; comments due by 2-7-02; published 1-8-02 [FR 02-00088]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: Dassault; comments due by 2-6-02; published 1-2-02 [FR 01-32194]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: McDonnell Douglas; comments due by 2-4-02; published 12-5-01 [FR 01-30084]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: Raytheon; comments due by 2-4-02; published 12-6-01 [FR 01-30083]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives: Rolls-Royce Corp.; comments due by 2-4-02; published 12-4-01 [FR 01-29950]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Rolls-Royce plc; comments due by 2-4-02; published 12-4-01 [FR 01-29949]

Airworthiness standards:

Special conditions—

Dassault Aviation Model Mystere-Falcon 200, 20-C5, 20-D5, 10-E5, and 20-F5 airplanes; comments due by 2-4-02; published 1-4-02 [FR 02-00247]

Class E airspace; comments due by 2-4-02; published 1-4-02 [FR 02-00165]

TRANSPORTATION DEPARTMENT National Highway Traffic Safety Administration

Practice and procedure:

Defects; retention of records, early warning reporting requirements; comments due by 2-4-02; published 12-21-01 [FR 01-31382]

TRANSPORTATION DEPARTMENT**Research and Special Programs Administration**

Hazardous materials:

Hazardous materials transportation—Cargo tank motor vehicles; construction and maintenance requirements; comments due by 2-4-02; published 12-4-01 [FR 01-28117]

TREASURY DEPARTMENT Customs Service

Articles conditionally free, subject to reduced rates, etc.:

Wool products; limited refund of duties; comments due by 2-7-02; published 1-23-02 [FR 02-01664]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Inpatient hospital care and outpatient medical care; copayments; comments due by 2-4-02; published 12-6-01 [FR 01-30182]

LIST OF PUBLIC LAWS

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H.R. 3392/P.L. 107-136

To name the national cemetery in Saratoga, New York, as the Gerald B.H. Solomon Saratoga National Cemetery, and for other purposes. (Jan. 24, 2002; 115 Stat. 2466)

Last List January 25, 2002

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3 (1997 Compilation and Parts 100 and 101)	(869-044-00002-4)	36.00	¹ Jan. 1, 2001
4	(869-044-00003-2)	9.00	Jan. 1, 2001
5 Parts:			
1-699	(869-044-00004-1)	53.00	Jan. 1, 2001
700-1199	(869-044-00005-9)	44.00	Jan. 1, 2001
1200-End, 6 (6 Reserved)	(869-044-00006-7)	55.00	Jan. 1, 2001
7 Parts:			
1-26	(869-044-00007-5)	40.00	⁴ Jan. 1, 2001
27-52	(869-044-00008-3)	45.00	Jan. 1, 2001
53-209	(869-044-00009-1)	34.00	Jan. 1, 2001
210-299	(869-044-00010-5)	56.00	Jan. 1, 2001
300-399	(869-044-00011-3)	38.00	Jan. 1, 2001
400-699	(869-044-00012-1)	53.00	Jan. 1, 2001
700-899	(869-044-00013-0)	50.00	Jan. 1, 2001
900-999	(869-044-00014-8)	54.00	Jan. 1, 2001
1000-1199	(869-044-00015-6)	24.00	Jan. 1, 2001
1200-1599	(869-044-00016-4)	55.00	Jan. 1, 2001
1600-1899	(869-044-00017-2)	57.00	Jan. 1, 2001
1900-1939	(869-044-00018-1)	21.00	⁴ Jan. 1, 2001
1940-1949	(869-044-00019-9)	37.00	⁴ Jan. 1, 2001
1950-1999	(869-044-00020-2)	45.00	Jan. 1, 2001
2000-End	(869-044-00021-1)	43.00	Jan. 1, 2001
8	(869-044-00022-9)	54.00	Jan. 1, 2001
9 Parts:			
1-199	(869-044-00023-7)	55.00	Jan. 1, 2001
200-End	(869-044-00024-5)	53.00	Jan. 1, 2001
10 Parts:			
1-50	(869-044-00025-3)	55.00	Jan. 1, 2001
51-199	(869-044-00026-1)	52.00	Jan. 1, 2001
200-499	(869-044-00027-0)	53.00	Jan. 1, 2001
500-End	(869-044-00028-8)	55.00	Jan. 1, 2001
11	(869-044-00029-6)	31.00	Jan. 1, 2001
12 Parts:			
1-199	(869-044-00030-0)	27.00	Jan. 1, 2001
200-219	(869-044-00031-8)	32.00	Jan. 1, 2001
220-299	(869-044-00032-6)	54.00	Jan. 1, 2001
300-499	(869-044-00033-4)	41.00	Jan. 1, 2001
500-599	(869-044-00034-2)	38.00	Jan. 1, 2001
600-End	(869-044-00035-1)	57.00	Jan. 1, 2001
13	(869-044-00036-9)	45.00	Jan. 1, 2001

Title	Stock Number	Price	Revision Date
14 Parts:			
1-59	(869-044-00037-7)	57.00	Jan. 1, 2001
60-139	(869-044-00038-5)	55.00	Jan. 1, 2001
140-199	(869-044-00039-3)	26.00	Jan. 1, 2001
200-1199	(869-044-00040-7)	44.00	Jan. 1, 2001
1200-End	(869-044-00041-5)	37.00	Jan. 1, 2001
15 Parts:			
0-299	(869-044-00042-3)	36.00	Jan. 1, 2001
300-799	(869-044-00043-1)	54.00	Jan. 1, 2001
800-End	(869-044-00044-0)	40.00	Jan. 1, 2001
16 Parts:			
0-999	(869-044-00045-8)	45.00	Jan. 1, 2001
1000-End	(869-044-00046-6)	53.00	Jan. 1, 2001
17 Parts:			
1-199	(869-044-00048-2)	45.00	Apr. 1, 2001
200-239	(869-044-00049-1)	51.00	Apr. 1, 2001
240-End	(869-044-00050-4)	55.00	Apr. 1, 2001
18 Parts:			
1-399	(869-044-00051-2)	56.00	Apr. 1, 2001
400-End	(869-044-00052-1)	23.00	Apr. 1, 2001
19 Parts:			
1-140	(869-044-00053-9)	54.00	Apr. 1, 2001
141-199	(869-044-00054-7)	53.00	Apr. 1, 2001
200-End	(869-044-00055-5)	20.00	⁵ Apr. 1, 2001
20 Parts:			
1-399	(869-044-00056-3)	45.00	Apr. 1, 2001
400-499	(869-044-00057-1)	57.00	Apr. 1, 2001
500-End	(869-044-00058-0)	57.00	Apr. 1, 2001
21 Parts:			
1-99	(869-044-00059-8)	37.00	Apr. 1, 2001
100-169	(869-044-00060-1)	44.00	Apr. 1, 2001
170-199	(869-044-00061-0)	45.00	Apr. 1, 2001
200-299	(869-044-00062-8)	16.00	Apr. 1, 2001
300-499	(869-044-00063-6)	27.00	Apr. 1, 2001
500-599	(869-044-00064-4)	44.00	Apr. 1, 2001
600-799	(869-044-00065-2)	15.00	Apr. 1, 2001
800-1299	(869-044-00066-1)	52.00	Apr. 1, 2001
1300-End	(869-044-00067-9)	20.00	Apr. 1, 2001
22 Parts:			
1-299	(869-044-00068-7)	56.00	Apr. 1, 2001
300-End	(869-044-00069-5)	42.00	Apr. 1, 2001
23	(869-044-00070-9)	40.00	Apr. 1, 2001
24 Parts:			
0-199	(869-044-00071-7)	53.00	Apr. 1, 2001
200-499	(869-044-00072-5)	45.00	Apr. 1, 2001
500-699	(869-044-00073-3)	27.00	Apr. 1, 2001
700-1699	(869-044-00074-1)	55.00	Apr. 1, 2001
1700-End	(869-044-00075-0)	28.00	Apr. 1, 2001
25	(869-044-00076-8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1.60	(869-044-00077-6)	43.00	Apr. 1, 2001
§§ 1.61-1.169	(869-044-00078-4)	57.00	Apr. 1, 2001
§§ 1.170-1.300	(869-044-00079-2)	52.00	Apr. 1, 2001
§§ 1.301-1.400	(869-044-00080-6)	41.00	Apr. 1, 2001
§§ 1.401-1.440	(869-042-00081-1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501-1.640	(869-044-00083-1)	44.00	Apr. 1, 2001
§§ 1.641-1.850	(869-044-00084-9)	53.00	Apr. 1, 2001
§§ 1.851-1.907	(869-044-00085-7)	54.00	Apr. 1, 2001
§§ 1.908-1.1000	(869-044-00086-5)	53.00	Apr. 1, 2001
§§ 1.1001-1.1400	(869-044-00087-3)	55.00	Apr. 1, 2001
§§ 1.1401-End	(869-044-00088-1)	58.00	Apr. 1, 2001
2-29	(869-044-00089-0)	54.00	Apr. 1, 2001
30-39	(869-044-00090-3)	37.00	Apr. 1, 2001
40-49	(869-044-00091-1)	25.00	Apr. 1, 2001
50-299	(869-044-00092-0)	23.00	Apr. 1, 2001
300-499	(869-044-00093-8)	54.00	Apr. 1, 2001
500-599	(869-044-00094-6)	12.00	⁵ Apr. 1, 2001
600-End	(869-044-00095-4)	15.00	Apr. 1, 2001
27 Parts:			
1-199	(869-044-00096-2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-044-00097-1)	26.00	Apr. 1, 2001	100-135	(869-044-00151-9)	38.00	July 1, 2001
28 Parts:				136-149	(869-044-00152-7)	55.00	July 1, 2001
0-42	(869-044-00098-9)	55.00	July 1, 2001	150-189	(869-044-00153-5)	52.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001	190-259	(869-044-00154-3)	34.00	July 1, 2001
29 Parts:				260-265	(869-044-00155-1)	45.00	July 1, 2001
0-99	(869-044-00100-4)	45.00	July 1, 2001	266-299	(869-044-00156-0)	45.00	July 1, 2001
100-499	(869-044-00101-2)	14.00	⁶ July 1, 2001	300-399	(869-044-00157-8)	41.00	July 1, 2001
500-899	(869-044-00102-1)	47.00	⁶ July 1, 2001	400-424	(869-044-00158-6)	51.00	July 1, 2001
900-1899	(869-044-00103-9)	33.00	July 1, 2001	425-699	(869-044-00159-4)	55.00	July 1, 2001
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001	700-789	(869-044-00160-8)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001	790-End	(869-044-00161-6)	44.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	⁶ July 1, 2001	41 Chapters:			
1926	(869-044-00107-1)	45.00	July 1, 2001	1, 1-1 to 1-10	13.00		³ July 1, 1984
1927-End	(869-044-00108-0)	55.00	July 1, 2001	1, 1-11 to Appendix, 2 (2 Reserved)	13.00		³ July 1, 1984
30 Parts:				3-6	14.00		³ July 1, 1984
1-199	(869-044-00109-8)	52.00	July 1, 2001	7	6.00		³ July 1, 1984
200-699	(869-044-00110-1)	45.00	July 1, 2001	8	4.50		³ July 1, 1984
700-End	(869-044-00111-7)	53.00	July 1, 2001	9	13.00		³ July 1, 1984
31 Parts:				10-17	9.50		³ July 1, 1984
0-199	(869-044-00112-8)	32.00	July 1, 2001	18, Vol. I, Parts 1-5	13.00		³ July 1, 1984
200-End	(869-044-00113-6)	56.00	July 1, 2001	18, Vol. II, Parts 6-19	13.00		³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52	13.00		³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100	13.00		³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-044-00162-4)	22.00	July 1, 2001
1-39, Vol. III		18.00	² July 1, 1984	101	(869-044-00163-2)	45.00	July 1, 2001
1-190	(869-044-00114-4)	51.00	⁶ July 1, 2001	102-200	(869-044-00164-1)	33.00	July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001	201-End	(869-044-00165-9)	24.00	July 1, 2001
400-629	(869-044-00116-8)	35.00	⁶ July 1, 2001	42 Parts:			
630-699	(869-044-00117-9)	34.00	July 1, 2001	1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001	400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001	430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
33 Parts:				43 Parts:			
1-124	(869-044-00120-9)	45.00	July 1, 2001	1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001	1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001	44	(869-044-00171-3)	45.00	Oct. 1, 2001
34 Parts:				45 Parts:			
1-299	(869-044-00123-3)	43.00	July 1, 2001	1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001	200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
35	(869-044-00126-8)	10.00	⁶ July 1, 2001	1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
36 Parts:				46 Parts:			
1-199	(869-044-00127-6)	34.00	July 1, 2001	1-40	(869-044-00176-4)	43.00	Oct. 1, 2001
200-299	(869-044-00128-4)	33.00	July 1, 2001	41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001	70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
37	(869-044-00130-6)	45.00	July 1, 2001	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
38 Parts:				140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
0-17	(869-044-00131-4)	53.00	July 1, 2001	156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
39	(869-044-00133-1)	37.00	July 1, 2001	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
40 Parts:				500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
1-49	(869-044-00134-9)	54.00	July 1, 2001	47 Parts:			
50-51	(869-044-00135-7)	38.00	July 1, 2001	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001	20-39	(869-044-00186-1)	43.00	Oct. 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
53-59	(869-044-00138-1)	28.00	July 1, 2001	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001	48 Chapters:			
61-62	(869-044-00141-1)	35.00	July 1, 2001	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001	2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001	3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001	29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001	49 Parts:			
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001	100-185	(869-044-00202-7)	26.00	Oct. 1, 2001
				186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200-End	(869-044-00203-5)	21.00	Oct. 1, 2001
50 Parts:			
1-199	(869-042-00200-8)	55.00	Oct. 1, 2000
200-599	(869-044-00205-1)	36.00	Oct. 1, 2001
600-End	(869-044-00206-0)	55.00	Oct. 1, 2001
CFR Index and Findings			
Aids	(869-044-00047-4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.